

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRR No. 5 of 2017 (O&M)

Reserved on : 29.01.2020

Pronounced on : 03.02.2020

Kaur Singh & others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. S. K. Garg Narwana, Sr. Advocate with
Mr. J. S. Johal, Advocate &
Mr. Vishal Garg Narwana, Advocate
for the petitioners.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. A. P. S. Deol, Sr. Advocate with
Mr. Vishal Rattan Lamba, Advocate
for respondent No. 2.

ARVIND SINGH SANGWAN, J.

1. Prayer in this petition is for setting aside the order dated 16.11.2016, passed by the trial Court, vide which the petitioners have been summoned as additional accused while allowing an application filed by the prosecution under Section 319 Cr.P.C. in case/FIR No. 12 dated 07.01.2016, registered under Sections 323, 325, 341, 506, 307 and 34 of the IPC at Police Station Kalanwali, District Sirsa.

2. It is worth noticing here that this petition is pending since 2017 and since the proceedings before the trial Court were stayed, this case was taken upon in the urgent list and arguments were heard.

3. Brief facts of the case are that the aforesaid FIR was registered on the statement of complainant/respondent No. 2 Kuldeep Singh with the

allegations that he is an agriculturist and in the evening of 06.01.2016, he, along with his paternal uncle Baljinder Singh, was going to a shop. When they reached near the house of one Ajaib Singh, petitioners Kaur Singh, Manpreet Singh, Gurpreet Singh, Sarabjeet Singh, Gurmeet Singh, Jagseer Singh along with Gursewak Singh and Sukhdev Singh were standing carrying *lathi*, *dandas*, *kappa*, rods etc. in their hands. Then Kaur Singh stated that Baljinder Singh has never cast his vote in their favour and will not cast vote even on that day, so he should be eliminated by giving beatings. Thereafter, Sewak Singh gave a *kappa* blow on the head of Baljinder Singh which landed on his forehead and Baljinder Singh fell down. When the complainant tried to rescue Baljinder Singh, Kaur Singh again stated that if he will intervene, he will also be eliminated. Due to this, the complainant remained standing out of fear. Thereafter, Manpreet Singh gave a *lathi* blow on the chest of Baljinder Singh and Sarabjeet gave *danda* blow on the mouth of Baljinder Singh; Gurmeet Singh gave *gandasi* blow on the left hip of Baljinder Singh; Sukhdev Singh gave a *lathi* blow on the left thigh of Baljinder Singh and Gurpreet Singh, Jagseer Singh and Gursewak gave kicks blow to Baljinder Singh. When Baljinder Singh raised voice to save him, many persons came there, upon which, accused persons left the place. Thereafter, the complainant, along with Jagseer Singh and Avtar Singh, brought Baljinder Singh to Govt. Hospital, Sirsa. The police, thereafter, recorded the statement of the complainant and registered the present FIR.

4. Learned senior counsel for the petitioners has argued that as per the MLR of Baljinder Singh, doctor has reported five injuries, which are as under:

- “1. Lacerated wound of size 5x2 cm is present horizontally over frontal region along midline with fresh bleeding present.
2. Lacerated wound of size 2x0.5 cm is present over just above the hip with fresh bleeding.
3. Bruise of size 4x2 cm is present over lateral aspect of left thigh middle 1/3rd and is of reddish colour.
4. Diffuse swelling present over B/L eyes.
5. Bruise of size 5x2 cm is present over right middle of chest and is of reddish in colour.”

5. Learned senior counsel for the petitioners has further argued that initially the FIR was registered under Sections 323, 148, 149, 341, 506 and 109 of the IPC, however, later on, the victim/injured was shifted to Bombay Hospital, Sirsa, where the doctor gave an opinion that injury No. 1 is dangerous to life, subsequent to which, Section 307 IPC was added.

6. Learned senior counsel for the petitioners has further submitted that after the registration of the FIR, an inquiry was conducted by two DSPs. The operative part of the inquiry report reads as under:

“That on 23.02.16 I had verified the investigation of the case in village Jagmalwali, during verification the place of occurrence was inspected and inquiry was conducted from the persons residing in the houses near the place of occurrence and inquiry was conducted from both the parties separately. During verification, complainant party stated all the persons mentioned in the First Information Report to be the real accused persons and the accused party had stated all the other 6 persons mentioned in the First Information Report to be innocent except from Gursevak and Sukhdev and both the parties were ready take sworn, in these circumstances the situation was not clear except from conducting inquiry

from both the parties face to face and due to apprehension of fight in the village, inquiry was not conducted from both the parties face to face. Therefore, by calling respectable persons of both the parties in my office on 24.02.16, I conducted face to face inquiry, the complainant party was ready to sworn regarding injuries being caused by Kaur Singh etc. 9 persons mentioned in the First Information Report to Baljinder Singh and the defendant party was ready to sworn regarding no injury being caused to Baljinder Singh s/o Balbir Singh by Kaur Singh, Saravjeet, Manpreet, Jagseer and Gurpreet and Gurmeet Singh and regarding reaching on the spot after the fight finished, from which it is clear that both the parties cannot be truthful and one of the parties is ready to take or give false swear, from which there was no possibility of truth coming to light, so by getting information about the mobile numbers of Kaur Singh and his grandsons, the call details and tower location of the day of the occurrence i.e. 06.01.16 was obtained because the defendant party had taken the stand that to be present at their shops in Kalanwali on the the day of occurrence and to have returned back home in the evening, apart from this inquiry was made from the neighbouring shopkeepers of accused Kaur Singh in Kalanwali Mandi through security agent, P.S. Kalanwali and FO of detective department, at my own level through secret sources.

I have perused the call details of mobiles received from cyber cell, Sirsa. The mobile No.9991629297 which was stated to be with accused Kaur Singh, the ID of the same was found to be in the name of Sasdev s/o Kaur Singh, the mobile No.9467131903 was stated to be with accused Gurpreet, the ID of the same was found to be in the name of D. Gurpreet Singh s/o Sukhmander

Singh, in the First Information Report the father's name of the accused Gurpreet is Bira Singh, on inquiring about the same it was found that the real name of Bira Singh is Sukhmander Singh and the mobile No.9467131904 was stated to be with accused Jagseer, the ID of the same was found to be in the name of Jagseer Singh, apart from this no mobile phone was stated to be with Manpreet. The tower location of all the above 3 mobiles on the day of occurrence dated 06.01.16 in the day time has come to be of Kalanwali and the tower location in the evening is of village Jagmalwali. During my inquiry both the parties stated the time of fight to be between 06:30 to 7:15 in the evening but from the secret inquiry it was found that the fight had taken place between 6:30 to 6:45 in the evening, on the day 06.01.16, it was dwadasi of dark night and due to winter season it was dark at the time of incident. From the inquiry conducted by security agent Kalanwali, FO of CID Unit and on my inquiry at my level in secret manner, it has been confirmed that on 06.01.16 in the morning Kaur Singh and his 3 grandsons Gurpreet, Jagseer and Manpreet, in daily manner hand gone to their 2 shops of sand, bajri, cement, shuttering and stone in Kalanwali Mandi and it has been found that in the evening Kaur Singh had returned to his house along with all his 3 grandsons in his Jeep – DI Mahindra and the call details of above mobiles also confirms the same. The case file was again thoroughly perused, from perusal of the file and verification following facts have surfaced.

1. As per the statement of complainant Kuldeep Singh and injured Baljinder Singh @ Bhinder Singh, Gursewak s/o Kaur Singh had caused injury on the head of Baljinder with Kappa and Gurmeet Singh with Gandasa, Kappa and

Gandasa comes in the category of sharp edged weapons but in the MLR of Baljinder Singh, no injury is sharp and all the 5 injuries have been shown to be with blunt weapons.

2. As per complainant party, injuries were caused to Balwinder @ Bhinder Singh by Gursewak s/o Kaur Singh with Kappa, Manpreet Singh and Sukhdev with sticks, Saravjeet with danda, Gurmeet Singh with Gandasa and Gurpreet Singh, Jagseer Singh and Gursewak s/o Jagraj Singh with legs but the complainant has suffered only 5 injuries, it is not possible that in the fight, from all these persons no person will give second blow after giving one injury with his weapon.

3. As stated the complainant was going to the shop with his uncle Baljinder Singh and injuries were caused to Baljinder Singh by the accused persons by stopping them on the way for not casting the vote and no injury was caused to Kuldeep. Here a question arise that why no injury was caused to complainant Kuldeep who was accompanying Baljinder, whether Kuldeep casts vote on the asking of Kaur Singh and whether in reality Kuldeep was going to the shop with his uncle or had reached on the spot afterwards.

4. On seeing the injury caused in the head of injured Baljinder Singh it seems that the injury caused in the head has been caused with heavy blunt object because the skull of head of Baljinder Sing is still fully sinked in from right side, regarding this situation can be cleared from the opinion of the doctor.

Thorough consideration was taken on the above mentioned facts. From the inquiry conducted on

23.02.16 from the persons nearby the place of occurrence at village Jagmalwali, injured Baljinder Singh, from the separate inquiry from both the parties and the inquiry conducted from both the parties face to face on 24.02.16, mobile call detail and tower location and from the inquiry got conducted through Security Agent P.S. Kalanwali and F.O of detective Department from the neighbouring shop keepers of accused Kaur Singh and from the inquiry conducted at my own level with secret sources, it has been found that the place of occurrence is of open street near the house of Ajaib Singh s/o Baghar Singh, majbi sikh r/o Jagmalwali. At the time of occurrence of this case, both Gursewak son of Jagraj and Baljinder Singh son of Lila Singh residents of Jagmalwali, were drinking liquor by taking water and glasses from the house of Ajaib Singh and were standing in the street in front of house of Ajaib Singh, it has been found that in the same street a person by the name of Sohan Chamar sells liquor, at that time Gursewak son of Kaur Singh had came to his servant (siri) Nakely Naib Singh, mazbi sikh regarding the water in his field, Ajaib and Naib Singh both are real brothers and the houses of both of them are nearby, in the mean while Baljinder s/o Balbir and Daljeet Singh @ Beda s/o Hargobind Singh reached near the house of Ajaib on motorcycle then Gursewak s/o Jagraj and Baljinder Singh s/o Lila Singh stopped the motorcycle of Baljinder, altercation took place between both the parties, on seeing them Gursewak s/o Kaur Singh also reached on the spot, in a meanwhile Janti @ Gurjant s/o Tehla Singh also reached on the spot and Janti caught hold of Gursewak s/o Kaur Singh and Daljeet @ Beda caused injury to Gursewak by picking up danda from vacant plot, then Gursewak s/o Jagraj Singh uprooted a Khunta from the adjoining plot and hit

the same in the head of Baljinder Singh s/o Balbir Singh and in a meanwhile Sukhdev Singh s/o Babu Singh also came on the spot and joined in the fight and all of them together caused injuries to Baljinder Singh and Daljeet Singh @ Beda but as no serious injury was suffered by Daljeet, he did not get conducted his medical. At the time of fight, complainant Kuldeep Singh etc. many persons had come on the spot and on receiving the information Gurdev Singh representative Sarpanch in his vehicle along with his companions was taking Gursewak s/o Kaur Singh. During this, Kaur Singh and his grandsons Gurpreet, Manpreet and Jagseer Singh in jeep and Saravjeet s/o Kaur Singh on motorcycle came near the spot till the vehicle of Gurdev Sarpanch and on seeing the inquiry suffered by Gursewak went back after the vehicle of Sarpanch and Balwinder Singh in injured condition was taken by his nephew Kuldeep and Jagseer Singh, ex-sarpanch etc. in their vehicle. In reality Gursewak Singh s/o Jagraj Singh, Gursewak s/o Kaur Singh, Baljinder Singh s/o Lila Singh and Sukhdev Singh s/o Babu Singh were involved in causing injuries to Baljinder, out of whom the name of Baljinder Singh s/o Lila Singh was not got written in the First Information Report due to family relation with the complainant party and due to political rivalry and party faction, the name of entire family of Kaur was got written. From my verification, in this case Gursewak Singh s/o Jagraj Singh, Gursewak s/o Kaur Singh, Baljinder Singh s/o Lila Singh and Sukhdev Singh s/o Babu Singh residents of Jagmalwali, were found to be real accused apart from this Kaur Singh, his son Saravjeet Singh, grandsons Manpreet Singh, Gurpreet and Jagseer Singh mentioned in the First Information Report had reached the place of occurrence after the

fight finished and Gurmeet Singh s/o Nachattar Singh was also on the spot, who is sick person, it has not been confirmed that these 6 persons were involved in the fight or have caused injuries to Baljinder, these persons have been found innocent. Regarding this, I have separately recorded the writing on 23.02.16, 24.02.16 and 03.03.16 and has placed the same on file. And following directions have been given to Incharge Police Station.

1. Gursewak Singh s/o Jagraj Singh, Gursewak s/o Kaur Singh, Baljinder Singh s/o Lila Singh and Sukhdev Singh s/o Babu Singh residents of Jagmalwali be immediately arrested and the weapons used by them for causing injury be recovered from their possession and the same be taken into police possession.
2. After obtaining expert opinion and x-ray report regarding injury No.2, 4 and 5 of injured Baljinder Singh kept as KUO, opinion be taken regarding the injuries from the doctor.
3. As per the orders of Hon'ble Court, the re-medical of Baljinder be conducted through Board of Doctors.
4. In this case, there is an allegation against accused Kaur Singh for instigating the co-accused persons but the involvement of Kaur Singh in this case has not been confirmed, so Section 109 IPC be removed.
5. The computerization copy of MLR of injured and the documents related to treatment be brought on the file.
6. Scaled site plan of the place of occurrence be got prepared.
7. As much as evidence be collected and while completing all the formalities, the challan of the

case be presented in the Court before the prescribed period.

Report is presented.

7. Learned senior counsel for the petitioners has further submitted that based on the aforesaid inquiry, the petitioners were found innocent and they were kept in Column No. 2 while submitting the report under Section 173 Cr.P.C. and thereafter, charges were framed against four of the co-accused who are facing trial. The statement of the complainant was recorded in examination-in-chief as PW-1 and he reiterated the version given in the FIR and no fresh evidence has come against the petitioners. His cross-examination was deferred as it was requested by the public prosecutor that an application under Section 319 Cr.P.C. for summoning the additional accused was to be filed. The examination-in-chief of PW-1 recorded on 03.09.2016 reads as under:

“Stated that on 6.1.2016 at about 7.00 pm, I and my uncle Baljinder Singh son of Balbir Singh, were going from our house to shop and when we reached near the house of Ajaib Singh, Majbi Sikh, resident of Jagmalwali, where Kaur Singh son of Bishan Singh, Manprit Singh son of Sarabjit, Gurprit son of Beera Singh, Sewak Singh son of Kaur Singh, Sarabjit son of Kaur Singh, Gurmit son of Nachhattar Singh, Jagsir Singh son of Sewak Singh, Gursewak son of Jagraj Singh, Sukhdev Singh son of Babu Singh all by caste Jat Sikh, residents of Village Jagmalwali were already present there and they all were having lathi, dandas, kappa, iron road etc. When we were passing through that place Kaur Singh asked that Baljinder be stopped as he had neither casted his vote in our favour nor he will cast his vote in our favour in future and said that today

he should be killed after giving injuries. Upon this Sewak Singh son of Kaur Singh had inflicted a blow with Kapa on the head of my uncle Baljinder Singh which landed on his forehead and the injury was deep, therefore, my uncle fell down on the ground. When I tried to rescue my uncle, Kaur Singh asked that if he will intervene, you will also be killed. Out of fear I got aside and remained standing present at the spot. Thereafter, Manprit inflicted a blow with lathi on the chest of my uncle. Sarabjit Singh caused a danda blow on the mouth of my uncle. Gurmit Singh caused a gandas blow on the left buttock of my uncle. Sukhdev Singh lathi blow on the left thigh of my uncle. Gurprit, Jagsir and Gursewak gave fist and kick blows to my uncle. My uncle raised alarm MAR DIYA MAR DIYA which attracted the nearby neighbours and on seeing coming them at the spot all the assailants aforesaid ran away from the spot along with their respective weapon. While going from the spot they said today Baljinder Singh has been saved but in future they will kill him. I telephonically informed Jagsir Singh son of Niranjana Singh and called him. After some time Jagsir and Avtar Singh son of Darshan Singh came at the spot with a vehicle then I, Jagsir Singh and Avtar Singh took my uncle in that vehicle and brought him to GH Sirsa. Doctor gave first aid and because of the much injuries, doctor referred my uncle. We brought my uncle to Bombay Hospital Sirsa and got him admitted there. Police came in the hospital on 7.1.2016 at about 7.30 pm and recorded my statement. My statement is Ex.PW-1/A which bears my signature at point 'A'. Today accused Sewak Singh @ Gursewak son of Kaur Singh, Gursewak son of Jagraj Singh, Sukhdev Singh son of Babu Singh, Baljinder Singh son of Lila Singh are present in the Court. The other accused are not present. I

do not know whether police took any action against other person or not.

Xxxxxxxx by Sh. J.D. Garg, Advocate for the accused persons.

At this stage cross-examination of this witness is deferred on the request of learned defence counsel. At this stage an application under Section 319 Cr.P.C. for summoning the additional accused has been filed by the complainant through public prosecutor.”

8. Learned senior counsel for the petitioners has further argued that when the examination-in-chief of PW-1 was concluded, before cross-examination of this witness, the prosecution moved an application under Section 319 Cr.P.C. for summoning of the petitioners as additional accused.

9. It is stated in the said application that as per the version given in the FIR, there are specific allegations against the petitioners who have caused injuries in furtherance of their common object but the petitioners were not challaned by the police and, therefore, they may be summoned to face trial along with other accused who are already facing trial.

10. This application was contested by the accused persons on the ground that the proposed additional accused were found innocent by the police and no challan was presented against them and nothing has come against them regarding commission of offence in furtherance of common intention amongst all the accused persons. It was also stated that the deposition made by PW-1 in his examination-in-chief did not inspire any confidence to summon the petitioners as additional accused and even the said application was filed without completing the cross-examination of said witness. It was further stated in the application that even as per FIR, Gurpreet Singh, Jagseer Singh and Gursewak Singh, who were not armed

with any weapon are sought to be summoned though there is no specific allegation against them. It was further stated petitioner Kaur Singh is aged about 90 years and the only allegation against him is that he has raised *lalkara* and did not use any weapon. It was further stated that allegations against Gurpreet Singh is that he gave *gandasi* blow to Baljinder Singh, whereas there is no sharp edged injury on his back. Similarly, Sarabjeet Singh is alleged to have given a *danda* blow on the mouth of the injured, whereas there is no such corresponding injury in the MLR.

11. The trial Court allowed the aforesaid application by passing the impugned order dated 16.11.2016. The operative part of the order reads as under:

“3. I have heard learned counsels for both the sides as well as learned Public Prosecutor for the State on the application u/s 319 of the Cr.P.C. and have gone through the case file minutely.

4. During investigation, the prosecution found Baljinder Singh suffering from injury grievous in nature declared as dangerous to life, falls under offence u/s 307 of IPC on his head and the said injury (injury No.1) has been attributed by the complainant as well as injured himself to Sewak Singh son of Kaur Singh. Whereas, other accused have also been attributed distinct role which is found in conformity with the referred statements of complainant while appearing in the witness box as PW1 as well as statement Ex.PW1/A got recorded by him before the police. No doubt, Kaur Singh exhorted other accused to eliminate Baljinder Singh, yet his presence at the spot and while exhorting other accused also certainly renders him equally liable to face trial in the case. In this regard, reliance can be placed upon case titled as ***Gaya Parsad Ramlal vs. State of Maharashtra, AIR 1971 S.C.***

1112, wherein it was held that the premeditated attack on the deceased with knives commenced at the instance of the accused, the accused must be deemed to share the common intention of the attackers to murder though he was not holding any weapon.

5. The Hon'ble Supreme Court in ***Ram Pal Singh and others vs. State of U.P. and another, 2009(2) RCR (Criminal), 131***, has held that Court can summon a person as an additional accused if complicity of that person in commission of offence appears to be clear. The Hon'ble P&H High Court in ***Ravinder @ Binder and others versus State of Haryana, 2016(2) RCR (Criminal), 60***, has observed that there were specific allegations against the petitioners not only in the FIR but in the statement of the complainant as well and the trial Court while taking into consideration the evidence on record, has rightly summoned the petitioners, as additional accused to face trial alongwith other co-accused. In the present case also, the contents of the FIR clearly refers the names of the persons sought to be summoned u/s 319 of Cr.P.C. who had caused injuries to injured Baljinder Singh. Complainant while appearing as PW1 also got mentioned the name of all these accused persons, who caused injuries to his uncle Baljinder Singh.

6. As such, there are sufficient reasons for summoning i) Kaur Singh son of Bishan Singh, ii) Manpreet Singh son of Sarabjeet Singh, iii) Gurpreet Singh son of Veera Singh IV) Sarabjeet son of Kaur Singh V) Gurmeet Singh son of Nachhatar Singh and VI) Jagseer Singh son of Sewak Singh, all residents of village Jagmalwali, Tehsil Kalanwali, District Sirsa, as additional accused to stand trial alongwith co-accused.

7. Hence, finding merit therein, I hereby allow the

application in hand filed u/s 319 cr.P.C. the accused named in the application in hand to be sought to be summoned to face trial, be summoned. Order accordingly.”

12. Learned senior counsel for the petitioners has argued that petitioner No. 1 Kaur Singh is an old person aged about 92 years and in this regard, he has placed on record his Identity Card issued by the Election Commission of India, dated 23.01.1995, according to which, petitioner No. 1 Kaur Singh is aged about 92 years. The same is taken on record as Mark 'A'.

13. Learned senior counsel for the petitioners has also placed on record photocopy of the Aadhar Card of petitioner No. 1 Kaur Singh showing his date of birth as 01.01.1942. The same is also taken on record as Mark 'B'.

14. Learned senior counsel for the petitioners has further submitted that petitioner No. 1 Kaur Singh is named in the FIR only to rope in the entire family as the other accused persons are either sons or grandsons of petitioner No.1, who is physically incapacitated to cause any injury, therefore, only *lalkara* was attributed to him.

15. Learned senior counsel for the petitioners has next argued that the trial Court, while allowing the application under Section 319 Cr.P.C., has not looked into individual role of these six petitioners and there are general allegations against petitioners Gurpreet Singh, Jagseer Singh and Gursewak Singh, who are attributed only slap blows without any specific role, however, they have also been added just to involve entire family despite the fact that they were neither armed with any weapon nor used any weapon.

16. Learned senior counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court rendered in ***Brijendra Singh and others vs. State of Rajasthan, 2017 (3) R.C.R. (Criminal) 374***, wherein it has been held as under:

“In order to answer the question, some of the principles enunciated in Hardeep Singh’s case may be recapitulated:

Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some ‘evidence’ against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The ‘evidence’ herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be

formed requires stronger evidence than mere probability of his complicity.”

17. Learned senior counsel for the petitioners has, thus, argued that in the absence of strong and cogent reasons, the trial Court has wrongly allowed the application under Section 319 Cr.P.C. solely on the basis of the popular version of PW-1, which is nothing but reiteration of his version given before the police.

18. In reply, learned senior counsel for respondent No.2/complainant has opposed the prayer of the petitioners and submitted that while conducting the inquiry, the police has no recorded any cogent reason for exonerating the petitioners. Learned senior counsel has laid much stress on the role of petitioner No. 2 Manpreet Singh, who is attributed a *lathi* blow on the chest of injured Baljinder Singh.

19. Learned senior counsel has referred to injury No. 5 in the MLR of Baljinder Singh to submit that it is a bruise which has allegedly been caused with a blunt weapon i.e. *lathi*.

20. Learned senior counsel further argued that petitioner No. 5 Gurpreet Singh is attributed a *gandasi* blow on the left hip of injured corresponding to injury No. 2, which is a lacerated wound with fresh bleeding and petitioner No. 4 Sarabjeet @ Sasdev Singh is attributed a stick blow on the mouth of injured Baljinder Singh, though there is no corresponding injury in the MLR to the same, however, it reflects swelling in the eyes as per MLR.

21. Learned senior counsel for respondent No. 2/complainant has relied upon ***Rajesh & others vs. State of Haryana, 2019 (3) R. C. R. (Criminal) 133***, wherein Hon'ble Supreme Court while relying upon its

earlier judgment rendered in *Hardeep Singh vs. State of Punjab, 2014 (1) R.C.R. (Criminal) 623* has observed that word “evidence” used in Section 319(1) Cr.P.C. means as arising in examination-in-chief or also together with cross-examination.

22. Learned senior counsel for respondent No. 2/complainant has, thus, argued that there is no bar to move an application under Section 319 Cr.P.C. after the examination-in-chief of the complainant is recorded.

23. Learned senior counsel has further argued that it is well settled that the Court can exercise power under Section 319 Cr.P.C. even on the basis of the statement made in examination-in-chief of the witness concerned and the Court need not wait till cross-examination of such witness to summon a person as additional accused or a person not named in the FIR or a person who has not been chargesheeted, provided that it appears to Court that such person can be tried along with the accused facing trial.

24. In reply, learned senior counsel for the petitioners has submitted that while passing the impugned order, the trial Court has not recorded a finding that prima facie, the evidence, led before the Court, is stronger than mere probability of their complicity.

25. Learned senior counsel for the petitioners has further argued that in view of *Hardeep Singh's case (supra)*, the trial Court has also not recorded a finding that the evidence is more than prima facie as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.

26. After hearing learned counsel for the parties, I find merit in the present petition qua petitioner Nos. 1, 3 and 6, i.e. Kaur Singh, Gurpreet

Singh and Jagseer Singh, for the following reasons:

- (a) Petitioner No. 1 Kaur Singh was aged about 90 years at the time of incident and except a *lalkara*, no overt act is attributed to him. His age is proved from his Voter I-Card and Aadhar Card and the other accused, who are either sons or grandsons of Kaur Singh, are facing trial.
- (b) Against petitioner Nos. 3 and 6, namely Gurpreet Singh and Jagseer Singh, the only allegations are that they have caused injuries with fist and kick blows, however, there is no such corresponding injury in the MLR of the injured.
- (c) In view of ***Hardeep Singh's case (supra)***, the trial Court has not recorded a finding that prima facie evidence led by the prosecution is stronger than mere probability of their complicity qua petitioner Nos. 1, 3 and 6, i.e. Kaur Singh, Gurpreet Singh and Jagseer Singh.
- (d) There is no dispute about the settled law as held by Hon'ble Supreme Court in ***Rajesh & others' case (supra)*** that examination-in-chief would mean "evidence" as per Section 319(1) Cr.P.C. but qua the aforesaid persons, there is no corroboration of medical evidence as application under Section 319 Cr.P.C. is filed at a very early stage i.e. before adducing medical evidence.

27. Therefore, while partly allowing the present petition, the impugned summoning order dated 16.11.2016 is hereby set aside qua petitioner Nos. 1, 3 and 6, i.e. Kaur Singh, Gurpreet Singh and Jagseer Singh, however, this petition is dismissed qua petitioner Nos. 2, 4 and 5, i.e.

Manpreet Singh, Sarabjeet @ Sasdev Singh and Gurmeet Singh, keeping in view the fact that there are specific allegations against them that they have caused injuries to victim Baljinder Singh, which prima facie correspond with the injuries described in the MLR.

03.02.2020

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No