

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 3369 of 2019

Mohammad Munir

.....Petitioner

versus

State of Punjab and others

.....Respondents

Criminal Misc. No. M-4346 of 2020

Shakila

.....Petitioner

versus

State of Punjab

.....Respondent

Date of Decision: November 23, 2020

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. P.S. Ahluwalia, Advocate and
Mr. H.S. Randhawa, Advocate
for the petitioner in CRR-3369-2019 and
for the complainant in CRM-M-4346-2020

Mr. Luvinder Sofat, AAG Punjab

Mr. P.S. Khurana, Advocate
for respondents No. 2 to 5 in CRR-3369-2019 and
for the petitioner in CRM-M-4346-2020

Sudhir Mittal, J.

Criminal Revision No. 3369 of 2019

The petitioner in this case is the complainant. He is the brother of deceased Rizwana, whose death led to the registration of the present FIR. The accused in the FIR are Mohammad Nadeem (husband), Shakila (mother-in-law), Abdul Shakur (father-in-law), Mohammad Naseem (brother-in-law i.e. younger brother of the husband), Jamila (Jethani) and Seefan (maternal aunt i.e. sister of

Shakila – mother-in-law).

Rizwana got married with Mohammad Nadeem on 22.01.2018. She died on 14.06.2019 and thereafter FIR No. 60 dated 15.06.2019 was registered at Police Station City-II, Malerkotla, District Sangrur under Section 304-B IPC. After investigation, the police presented the challan only against Mohammad Nadeem (husband) and Shakila (mother-in-law). Charges have been framed under Sections 498-A and 304-B IPC or in alternative under Section 302 IPC. During the course of the trial, an application under Section 319 Cr.P.C. was filed for summoning the father-in-law, brother-in-law, Jethani and Seefan as additional accused but the same was rejected vide order dated 26.11.2019. The said order is under challenge in the present revision petition.

According to the FIR, at the time of marriage dowry was demanded beyond the financial capacity of the complainant and his family members. The dowry included a motorcycle make Hero Passion Pro. However, the accused persons were dis-satisfied with the same and they demanded a Bullet motorcycle. Since the demand could not be met on account of financial incapacity, Rizwana was harassed continuously and beaten up. On more than two occasions deceased was sent home and panchayats had to be convened for her rehabilitation. The harassment increased as time passed because Rizwana was also unable to bear a child. On 14.06.2019, the complainant received a phone call from the deceased and she sounded very upset. Later at night, he was informed that Rizwana had died. The complainant went to her house alongwith his father, one Haji Mohammad and other residents of his Mohalla including some relatives. There she was found hanging from the ceiling fan in the Chobara constructed on the first floor. The police was informed and FIR was registered.

As mentioned hereinabove, the police challaned only Mohammad

Nadeem (husband) and Shakila (mother-in-law). During the course of the trial,

four prosecution witnesses were examined before the application under Section 319 Cr.P.C. was filed. These were PW-1 Mohammad Munir (complainant - brother of the deceased), PW-2 Hazi Shamshad Ali (one of the persons who went to the house of the deceased alongwith the complainant upon receipt of news of her death), PW-3 Mohd. Mushtaq (father of deceased) and PW-4 Dr. Sukhwinder Singh Medical Officer, Civil Hospital Sangrur. Their testimony has been relied upon for summoning the additional accused.

At the very outset, learned counsel for the petitioner submits that he does not press this petition against Seefan - respondent No. 5 (maternal aunt i.e. sister of Shakila).

Learned counsel for the petitioner has argued that from the evidence of PW-2 Hazi Shamshad Ali as well as the evidence of PW-3 Mohammad Mushtaq, it has been established that Rizwana was being harassed on account of dowry. Panchayats had been convened on more than two occasions for her rehabilitation as she had been beaten and thrown out of the matrimonial home. Active participation of the brother in law, Jethani and father-in-law in her harassment and death stands established. The evidence of PW-4 establishes that this is a case of murder. The death took place in the matrimonial house where the persons sought to be summoned as additional accused also reside. Thus, they should have been summoned as they are equally responsible for the death of Rizwana. Being residents of the same house, they had special knowledge of the goings on in the house and under Section 106 of the Indian Evidence Act, 1872 (for short 'the Act') only they could have offered a plausible explanation for her death. No such explanation is forthcoming and, thus, the trial Court has erred in dismissing the application.

Learned State counsel supports the arguments of counsel for the petitioner. He additionally submits that the trial Court has passed a non-reasoned

order. That apart, medical opinion/evidence was not available at the time of presentation of challan and, thus, the additional accused sought to be summoned, were exonerated. After the medical evidence has come on record it is apparently a case of murder and being residents of the same household the additional accused were equally liable.

On the other hand learned counsel for the respondents submits that Section 106 of the Act is not attracted in the present case. The evidence of PW-1 and PW-3 does not corroborate that of PW-2. No specific role of the additional accused has been mentioned. If the evidence of all the witnesses is considered together, it becomes clear that involvement of the additional accused is not established. The power under Section 319 Cr.P.C. can be exercised only if cogent and reliable evidence is available on record. That being not the case, the trial Court was justified in dismissing the application. Reliance is placed upon judgment in *Hardeep Singh vs. State of Punjab & others, Criminal Appeal No. 1750 of 2008 decided on 10.01.2014*.

In *Hardeep Singh (supra)*, the Supreme Court resolved the conflict between judgment in the case of *Rakesh vs. State of Haruaa 2001(3) RCR(Criminal) 681* and *Mohd. Shafi vs. Mohd. Rafiq, 2007(2) RCR(Criminal) 762*. The questions answered in the said judgment are regarding the stage at which power under Section 319 Cr.P.C. can be exercised, the meaning of word "evidence" used in the said provision, nature of satisfaction required before a person can be summoned as an additional accused and whether the power under Section 319 Cr.P.C. can be utilized to summon even those persons who were not named in the FIR. After exhaustive examination of various earlier judgments and statutory provisions the five Judges Bench has opined that the word "enquiry" used in Section 319(1) Cr.P.C. refers to a stage prior to commencement of trial but pertains to an enquiry conducted by the Court after filing of charge-sheet/challan.

"Trial" commences only after framing of charges. Thus, power under Section 319 Cr.P.C. can be exercised at any time after filing of charge-sheet/challan and before pronouncement of judgment except at the stage of committal. The word "evidence" can not be construed in the strict legal sense. The material collected by the Court during enquiry can also be relied upon by it for summoning the additional accused. After trial has commenced the said word refers to examination-in-chief not necessarily tested by cross-examination. The degree of satisfaction required for invoking the power would be similar to the degree of satisfaction required at the time of framing of charges only where strong and cogent evidence is available. A Court should not exercise this power in a casual and cavalier manner. Further, this power can be exercised to summon any person, whether named in the FIR or not, as an additional accused.

In this case, the application under Section 319 Cr.P.C. was moved after commencement of the trial. Four witnesses already stood examined before application was filed. Thus, the application was filed at the proper stage. The evidence relied upon by the petitioner has been tested by way of cross-examination and there can be no doubt that the said evidence can be relied upon. Persons against whom the application was filed were named in the FIR and there can be no doubt on this score as well. The only relevant question to be examined was regarding the 'degree of satisfaction'.

Relevant part of the evidence of PW-4 is reproduced below:-

"Thereafter, police moved another application Ex.PW4/1 before the Board of Doctors for ascertaining the cause of death and our Board of Doctors opined that after going through report of Chemical Examiner and postmortem report, the cause of death in this case is asphyxia, which was sufficient to cause death in ordinary course of nature. The opinion of Board of Doctors is Ex.PW4/J. I identify my

signatures as well as signatures of other members of the Board on it.

Our Board of Doctors have forwarded on the inquest report.

At this stage, on the request of learned Public Prosecutor, sealed parcel is order to be opened. From the parcel, one Chunni is taken out. The Chunni is Ex.MO-3. In this case, there was fracture of multiple cervical spine was noted and undue movility was noted and neck. The neck tissues were congested and thyroid tissue was crushed. Hyoid bone was also fractured. Larynx and trachea were congested and crushed at many sites. So in this case, asphyxia due to strangulation and throttling is there.”

It is, thus, evident that death was caused due to asphyxia which was caused due to strangulation and throttling. Thus, employment of external force in the death of Rizwana can not be ruled out. PW-1 to PW-3 have all stated that harassment of Rizwana started on account of dowry immediately after the marriage. PW-2 has attributed a specific role to Abdul Shakur (father-in-law) i.e. that of handing over gold jewelry of the deceased to him before she was rehabilitated on one occasion. So far as the other two additional accused are concerned, no specific role has been attributed to them by any of the witnesses. Thus, there exists more than *prima facie* case against Abdul Shakur and the trial Court has erred in dismissing the application under Section 319 Cr.P.C. in toto. It may also be noted that charges have been framed under Section 498-A IPC as well and there was no requirement of proving anything beyond harassment for dowry for summoning the additional accused.

Section 106 of the Indian Evidence Act, 1872 is in the nature of an exception to the general rule of burden of proof incorporated in Section 101 of the said Act, according to which any one who asserts a fact must prove the same.

According to Section 106 of the Act, a person having special knowledge of a fact is

required to prove the same rather than the person asserting the fact. The prosecution is asserting that death was caused by employment of external force and learned counsel for the petitioner submits that all the additional accused must be summoned as the cause of death was specially within their knowledge, being residents of the same house, but they have failed to give any satisfactory explanation. However, the stage of giving an explanation would arise only if and when they lead their defence evidence. At this juncture no explanation could be forthcoming from their side and, thus, Section 106 of the Act is not attracted. The argument is consequently rejected.

In view of the above, the revision petition is partly allowed and the order of the trial Court so far as it concerns Abdul Shakur – respondent No. 3 is set aside. Against the other respondents the revision petition is dismissed.

Criminal Misc. No. M-4346 of 2020

This petition has been filed for grant of regular bail to Shakila (mother-in-law).

Learned counsel for the petitioner has argued that the petitioner has been in custody for more than 1 year and 4 months. The trial is not likely to be concluded at an early date as only 5 out of a total of 32 PWs have been examined till now. The petitioner has been falsely implicated as is evident from the FIR itself wherein the complainant has stated that the room in which the dead body was found hanging was bolted from inside. That being the case, the deceased obviously committed suicide. From the evidence on record, it is established that no external injuries exist and this supports the case of the petitioner because had it been a case of murder or culpable homicide, there would have been external injuries on the body. The petitioner, thus, deserves to be granted regular bail.

In response learned counsel for the complainant submits that the

could not be ruled out. Oral evidence also establishes that Rizwana was being harassed on account of dowry and she had been turned out of her matrimonial home on more than a couple of occasions. Thus, it is incorrect to argue that it a case of false implication. A heinous crime has been committed and the petitioner does not deserve to be granted regular bail. The trial has also recommenced and may be concluded within a short time frame.

Custody certificate dated 27.10.2020 has been produced in the Court. The same is taken on record. According to the custody certificate, the petitioner has undergone 1 year, 4 months and 12 days of custody and there is no other case pending against her.

Learned State counsel supports counsel for the complainant.

The medical evidence on record is in favour of the prosecution. Death appears to have been caused by throttling which implies use of external force. Moreover, *prima facie*, harassment on account of dowry has been established. Death has taken place within one year and five months of marriage and, thus, I cannot accept the submission that it is a case of false implication. The trial has now resumed and even though a number of witnesses remain to be examined, it is not a case of inordinate delay.

The petition has no merit and is dismissed at this stage.

November 23, 2020

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No