

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

245

**CRR-663-2021
Decided on : 01.09.2021**

Sunita

... Petitioner(s)

Versus

State of Haryana and another

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

Argued by: Mr. Bijender Singh Dhankhar, Advocate
for the petitioner(s).

Mr. Gagandeep Singh Chhina, AAG, Haryana.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J. (Oral)

Challenge in the instant criminal revision petition is to the order dated 03.04.2021, passed by the learned Additional Sessions Judge, Sirsa, vide which the application moved by the petitioner under Section 319 Cr.P.C. for summoning respondent No.2 as an additional accused to face trial in case FIR No. 126, dated 05.08.2019, registered under Sections 304-B, 302, 34, 342, 328 of IPC, lodged at Police Station Nathusari Chopta, was dismissed.

The facts in brief leading to the filing of the instant revision petition may be noticed thus:-

FIR under Sections 304-B, 302, 34, 342, 328 of IPC came to be registered at the instance of petitioner – Sonia. Both the complainant – petitioner and her sister Manju (since deceased) were married to two

brothers Rakesh and Sagar, respectively, on 22.02.2016. As per the allegations levelled in the FIR, the relations of the deceased – Manju with her husband – Sagar and mother-in-law – Silochana (respondent No.2) were not very good, as she would be frequently subjected to harassment by both of them. In this regard, many a times, Panchayat was convened between the parties, however, it proved to be a futile exercise. Just two days prior to the occurrence in question, i.e. on 13th August, 2019, the father of both the complainant and the deceased, along with his family members had again convened a Panchayat. There had been some positive outcome, however, it was short-lived, as soon thereafter on 15th August, 2019, when the complainant and her sister Manju (deceased) were doing some household work, a quarrel broke out between the latter and her husband Rakesh, on some issue. Resultantly, both respondent No.2 as well as the complainant's husband – Sagar were attracted to the spot. All the three persons including respondent No.2 locked the complainant in a room. Respondent No.2 caught Manju from her legs, while her husband – Rakesh and brother-in-law – Sagar, forcibly administered some substance into her mouth. The complainant witnessed the entire occurrence through the window of the room, where she had been locked. Though the complainant cried for help, however, all the three aforementioned i.e. respondent No.2, her husband Rakesh and her brother-in-law – Sagar, put Manju inside a water tank situated in their house and covered the same. On seeing the occurrence, the complainant – petitioner lost her consciousness. On regaining her consciousness, she saw that one of her other brothers-in-law (Jeth) namely Ram Murti and sister-in-law (Jethani) namely Shagun took Manju out from the tank. After a while at about 1:30 P.M., the brother of the complainant

came to visit her in the afternoon, as it happened to be Raksha Bandhan. She narrated the entire occurrence to him, who then in turn informed his family, which ultimately led to the registration of the FIR in question at about 10:30 P.M. on the same day.

Subsequent to the registration of the FIR, only accused - Sagar and Rakesh were challaned and arrested, while respondent No.2 – Silochna was put in column No.2, having been declared innocent during investigation.

During trial, since the petitioner – complainant while stepping into the witness-box as PW-1 reiterated the allegations levelled by her in the FIR in question, an application under Section 319 Cr.P.C. was moved on behalf of the prosecution to summon respondent No.2, as an additional accused. However, vide impugned order dated 03.04.2021, the application under Section 319 Cr.P.C. was dismissed.

The trial Court while dismissing the said application under Section 319 Cr.P.C., placed a great deal of reliance on a statement made by the petitioner – complainant under Section 161 Cr.P.C. on 20th August, 2019. The trial Court arrived at a conclusion that not only were the allegations against respondent No.2 general in nature, but they did not even appear to be genuine, more so, in the light of the contradictory statements made by the complainant at the time of lodging the FIR in question on 15.08.2019 and under Section 161 Cr.P.C. recorded on 20.08.2019.

The relevant contents of the FIR in question, deposition of the complainant before the trial Court and the impugned order, are extracted as under:-

“1. **Relevant extract from FIR No. 126, dated 15.08.2019:-**

Statement of Sunita wife of Rakesh D/o Parlahad Ram,

caste general, resident of Jammal, aged 26 years Mob. 8432397312, stated that I am resident of aforesaid address and do house hold work. I have done B.A. on dated 22.02.2016, my marriage was solemnized with Rakesh son of Rai Singh and marriage of my elder sister Manju was solemnized with Sagar son of Rai Singh residents of Jammal. Manju had passed B.A.-M.A. My sister Manju did not have good relations with her husband Sagar and mother-in-law Silochna after marriage. My sister Manju was being harassed by her husband Sagar and mother-in-law Silochna. My parents convened panchayat on many occasions to make Manju to settle down but they did not mend their ways. On 13.08.2019, my father Parlahad Ram and the family members had brought panchayat for settlement of my sister Manju. That my in-laws were made understood and they agreed. On 15.08.2019 at about 10:30 in the day, I and my sister Manju were doing household work, that a quarrel had taken place between my sister and her husband Sagar on some issue and came near water tank, while quarrelling, in the mean time Rakesh and my mother-in-law Silochna came and I was locked in a room. When I saw by opening the window, I saw that both the legs of my sister Manju were caught by my mother-in-law Silochna and my husband Rakeesh had caught hands and Sagar forcibly administered spray in mouth of my sister Manju. I made lot of noise "Bachao-Bachao" then all three had put my sister Manju in water tank and the water tank was closed by putting cover. I became unconscious by seeing all dispute. After some time, I regained consciousness, then my Rammurty, who is brother-in-law (jeth) in relation and Shagun, who is sister-in-law (jethani) in relation and Manju, my sister was taken out from water tank. Then at about 1:30, my cousin Sher Singh had come to get tied Rakhi, then I narrated the entire incident to my brother. My brother called my family members and my brother, my father by making phone call and my family members informed the police on reaching. Aforesaid

my mother-in-law Silochna, my husband Rakesh and my brother-in-law (jeth) Sagar have killed my sister Manju by administering poison forcibly, by putting in water tank, legal action be taken against them. I have got recorded my statement to you, heard, same is correct. Sd/- Sunita attested Ram Singh ASI, PP Jammal, dated 15.08.2019.

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Sunita w/o Rakesh caste jat resident of Jammal got recorded her aforesaid statement, which was read over word to word and was made understood, who after admitting her statement to be correct put her signatures in Hindi below her statement, which I have verified. That from the statement, on finding the offence to have been committed under Sections 328/302/342/34 of IPC, tehrir is being sent through HC Kuldeep Singh 1202 to police station for registration of case, after registration of case, no. be informed through notice. Special report of the case be sent to the officers and Illaqa Magistrate. SHO Sahab and seen of crime team be informed to reach the spot. I ASI am buzy in the proceedings under Section 174 Cr.P.C. Along with complaint, legal heirs, with co-employees. SD/- Ram Singh, ASI, PP Jammal, dated 15.08.2019 at 10:15 PM, Place Police Station, on receipt of tehrir, after registration of case under aforesaid offences, copy of police file along with original tehrir is being sent through coming HC to ASI at the spot and copies of FIR are being sent to the officers and Illaqa Magistrate through e-mail and seen of crime team and SHO Sahab have been informed to reach at the spot through phone.

2. Relevant extract from deposition of PW-1 Sunita:-

PW1:- Sunita wife of Rakesh daughter of Prahlad Rai, age 26 years, housewife, resident of Village Rattanpura, Tehsil Nohar, District Hanumangarh (Rajasthan). (Qualification Graduation).

Saith on oath before me (Dr. Chander Hass, Additional Sessions Judge) Sirsa today i.e. 02nd April, 2021:-

My marriage as well as marriage of my sister Manju (since deceased) were solemnized on 22.06.2016 with Rakesh son of Rai Singh and Sagar son of Rai Singh, both residents of village Jamal. My sister Manju was M.A. Qualified. After our marriage, my in-laws i.e. my mother-in-law, my husband Rakesh and husband of my sister namely Sagar used to harass my sister for bringing less dowry and they used to demand a luxury car. On 13.08.2019, a quarrel took place between my sister Manju (since deceased) and Sagar, my mother-in-law Sulochna and on the same day, upon being informed by us, my father brought a panchayat consisting of my father and other relatives at our matrimonial house. The panchayat tried to make in-laws understood and upon that, they agreed. In front of panchayat, they agreed but on the very next day, they again start behaving in the same way.

On 15.08.2019, on the occasion of Raksha Bandhan, a quarrel took place between Manju (since deceased), Sagar, Rakesh and Sulochna and while quarreling they came near a Kund (underground water tank) situated in our matrimonial house. Thereafter, accused Rakesh and my mother-in-law Sulochna locked me inside the room. Then from the window of the room I saw that my mother-in-law Sulochna was caught holding of legs of my sister Manju, my husband Rakesh caught holding her arms and accused Sagar forcibly administered some poison into the mouth of my sister Manju and then they all throw my sister Manju inside that Kund (underground water tank) and covered it with iron lid. Thereafter, after shouting for sometime, I become unconscious. Then at about 1:30 P.M. my cousin Sher Singh, who had come to get tied Rakhi on occasion of Raksha Bandhan reached at my matrimonial house. Thereafter, I narrated the entire incident to Sher Singh, who informed my parents. Thereafter, my father alongwith other

*relatives reached at my matrimonial house. Then my father intimated the police and police reached there. Thereafter, police recorded my statement **Ex.P1**, which bears my signatures at point-A.*

On the same day, I shown the place of occurrence to the police and police prepared its rough site plan. Accused Rakesh, Sagar and Sulochna had killed my sister Manju (since deceased). Out of three accused, accused Rakesh, Sagar present in the Court today through video conferencing but Sulochna, my mother-in-law not present in the Court today.

At this stage an application under Section 319 Cr.P.C. has been moved on behalf of the prosecution.

3. Relevant extract from impugned order dated 03.04.2021:-

15. Perusal of statement of complainant under Section 161 Cr.P.C. recorded on 20.08.2019 shows that she has not disclosed the name of Silochna and also she show ignorance regarding how her sister was died, rather she is stated that she was died by her own. Moreover, perusal of disclosure statement of the accused does not show that such incident as explained by the complainant has ever happened.

Moreover, FIR was registered on the basis of complaint Ex.P1 wherein the complainant stated that incident took place about 10:30 A.M. but matter was reported to the police at about 10:15 P.M. on the same day i.e. 15.08.2019. The statement of the complainant is contradictory with her statement under Section 161 Cr.P.C. which was recorded on 20.08.2019, in which, she levelled allegations in respect of demand of dowry but no such allegation were made by the complainant in her complaint Ex.P1.

Learned PP for the State submitted that poisonous substance was found in the food i.e. Roti and vegetable etc. as came in the report of FSL.

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..... *Perusal of contents of the complaint and evidence of PW1 Sunita shows that allegations levelled against the proposed accused is not prima-facie appears genuine as per evidence is self contradictory with the statement under Section 161 Cr.P.C. which was recorded on 20.08.2019. Moreover, allegations are general in character and are confined to demand of dowry. There is also no sufficient evidence against Silochna proposed accused for summoning her to face trial before this Court alongwith both accused.”*

Learned counsel appearing on behalf of the petitioner has vehemently argued that the trial Court while passing the impugned order failed to appreciate that there were specific allegations levelled against respondent No.2 of subjecting the deceased to harassment and on the date of occurrence, she was also an active participant in the crime in question. It was submitted that the allegations levelled against all the three accused in the FIR in question were similar in nature and thus, it was indeed strange that the investigating agency had still found respondent No.2 innocent. He has further submitted that there was *prima facie* sufficient evidence on record, which also found support from the FSL report, wherein, poison was detected in the viscera sent to it. He has further contended that the reliance placed by the trial Court upon the statement of the complainant recorded under Section 161 Cr.P.C. was erroneous on the face of it, more so, when the aforementioned statement was an unsigned statement and could be used only for the limited purpose of impeaching the credibility of a witness. Learned counsel further contended that the very fact that the statement under Section 161 Cr.P.C. of the complainant was recorded after five days of the alleged

occurrence coupled with the fact that it was at complete variance with the allegations levelled in the FIR, did cast a serious doubt about its authenticity. He thus submitted that the trial Court gravely erred in commenting on the nature of the “self-contradictory statements” and jumping at a conclusion that the allegations did not appear genuine, particularly so, when the said statement under Section 161 Cr.P.C. had not even been put to the complainant during her deposition. A prayer was, therefore, made by the learned counsel for the petitioner to set-aside the impugned order dated 03.04.2021 and allow the instant revision petition.

Learned Sr. counsel appearing for the respondent while opposing the submissions made by the learned counsel for the petitioner, submitted that during investigation no such material had come to the fore *qua* the involvement of respondent No.2 in the alleged crime and as such, she had been rightly declared innocent and placed in column No.2. While inviting the attention of the Court to the FIR, learned Sr. counsel contended that it was evident that only general and vague allegations had been levelled against respondent No.2 only because she happened to be the mother-in-law of the deceased. It was submitted that it was on the face of it a case of suicide on account of some dispute in the family. Learned Sr. counsel further submitted that the occurrence took place around 10:30 A.M. in the morning, however, the FIR was registered only at 10:30 P.M., which left no manner of doubt that a fabricated version had been brought forth by the complainant against the accused. It was submitted that in this background, the reliance placed upon the statement of the complainant made under Section 161 Cr.P.C. by the trial Court, could not be said to be erroneous and the trial Court was thus justified in dismissing the application filed under

Section 319 Cr.P.C. for being contrary to the allegations levelled in the FIR.

I have heard learned counsel for the parties and perused the material on record.

Before proceeding further, it would be apposite to reproduce Section 319 Cr.P.C.:-

"319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

On a bare reading of the provisions of Section 319 Cr.P.C., there can be no doubt, that a duty is cast upon the Court to bring all such persons who *prima facie* appear to have committed an offence, to justice. In other words, the object and purpose of Section 319 Cr.P.C. is to ensure that

any one who *prima facie* appears to be guilty on the basis of evidence led does not escape trial in relation to that guilt including any person who may have also been dropped by the police during investigation and declared innocent. The Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab, (Constitution Bench) See.... D.O.D. 10.01.2014, while dealing with the scope of Section 319 Cr.P.C., has observed as under : -

"12. Section 319 Cr.P.C. springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C.

It is the duty of the Court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C.?

The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of Cr.P.C. and the judgments that have been relied on for the said purpose. The controversy centers around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.

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15. Section 319 Cr.P.C. allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the chargesheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not

investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

16. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot free by being not arraigned in the trial in spite of possibility of his complicity which can be gathered from the documents presented by the prosecution.

17. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

In the light of the law as laid down by the Apex Court, there can be no manner of doubt that the term "evidence" appearing in Section 319(1) Cr.P.C. would include only such evidence, which is adduced during the course of trial.

At this stage, I find it apposite to discuss the scope and purpose of Section 161 Cr.P.C. since the trial Court has primarily based the dismissal of the application under Section 319 Cr.P.C., on the statement made by the petitioner (complainant) under Section 161 Cr.P.C., terming it as contrary to the statements made by her in the FIR as well as her deposition in the Court.

It must be borne in mind that a statement made by a witness under Section 161 Cr.P.C. is not, and cannot be treated as a substantive piece

of evidence except, of course, if it falls under Clause (1) of Section 27 of the Evidence, 1872. The statements which may have been made under Section 161 Cr.P.C. by a witness could at best be considered to be material collected during investigation by the investigating agency and would definitely fall outside the ambit of “evidence” as appearing under Section 319(1) Cr.P.C. The limited purpose of a statement made under Section 161 Cr.P.C. is to prove the contradictions, and/or omissions of a prosecution witness, during trial.

Coming to the case in hand, the complainant in her deposition as PW-1, has reiterated her allegations on all material aspects as contained in the FIR, against all the accused including respondent No.2. It would be relevant to observe here that the statement made by the petitioner (complainant) under Section 154 Cr.P.C. i.e. 'First Information Report' on 15.08.2019 would clearly have an edge over her statement recorded under Section 161 Cr.P.C. on 20th August, 2019, while deciding an application under Section 319 Cr.P.C. It would not be out of context to observe that for the purpose of summoning an accused, who may have been assigned a role in the commission of an alleged crime, but may not have been charge-sheeted and instead placed in column No.2, the allegations levelled in the FIR alone, along with her deposition, during trial would have to be taken into consideration at the time of deciding an application under Section 319 Cr.P.C., as against the statement made by a witness under Section 161 Cr.P.C. Undoubtedly, a statement made at the time of lodging of an FIR under Section 154 Cr.P.C. as well as the statement recorded under Section 161 Cr.P.C. are both not substantive pieces of evidence, however, an FIR would stand at a higher pedestal in comparison to the statement made under

Section 161 Cr.P.C. for the reason that the statement on the basis of which the FIR comes into existence is signed by its maker and can be used both for contradicting as well as corroborating its maker, whereas, on the other hand a statement under Section 161 Cr.P.C. can be used only for the limited purpose of contradicting the witness, who has made it. Thus, what flows from the aforementioned discussion is that a statement recorded under Section 161 Cr.P.C. is not “evidence” as appearing in Section 319 Cr.P.C. and, as has also been held time and again, that such statement is inadmissible, except for the limited purpose of impeaching the credibility of a witness.

This Court, therefore, fails to comprehend as to how the trial Court could have decided an application under Section 319 Cr.P.C. on the basis of a statement of the complainant recorded under Section 161 Cr.P.C., more so, when as already observed, this statement had not even been put to complainant during her deposition. The trial Court thus committed patent illegality by placing reliance upon it.

No doubt, the learned Sr. counsel for respondent No.2 vehemently argued that the investigating agency had found respondent No.2 innocent and rightly placed her under column No.2. However, this Court does not find any merit in his submissions. The Court while deciding an application under Section 319 Cr.P.C. as already observed, is to just take into consideration the evidence led during the trial and *prima facie* satisfy itself that the accused who is being sought to be summoned has committed the offence or not, else it would virtually amount to powers under Section 319 Cr.P.C. being controlled by the investigators and the purpose for which Section 319 Cr.P.C. was enacted would stand defeated. In the case in hand,

it cannot be said that the complainant while stepping into the witness-box has made material improvements vis-a-vis her first statement recorded under Section 154 Cr.P.C. at the time of the registration of the FIR, which in turn would cast a shadow of doubt on the case of the prosecution. In fact, a perusal of both the FIR as well as the deposition of the complainant during trial reveals that she has simply reiterated the allegations levelled against all the accused including respondent No.2.

This Court is satisfied that there does exist sufficient material and evidence before the trial Court which *prima facie* inculcates respondent No.2 in the commission of offence.

Accordingly, the order dated 03.04.2021, passed by the learned Additional Sessions Judge, Sirsa, is hereby set-aside and respondent No.2 is ordered to be summoned as an additional accused along with other accused to face trial.

Petition stands disposed of in the above terms. However, anything observed hereinabove shall not be taken to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

September 01, 2021

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*