

116.

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

CRR-780-2021

Date of Decision: 02.08.2021

Bimla and others

.... Petitioners

Versus

State of Haryana

.... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present:- Mr. Chanderhas Yadav, Advocate,
for the petitioners.

Mr. B.S. Virk, D.A.G., Haryana.

RAJESH BHARDWAJ.J

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The present revision petition has been filed by impugning the order dated 13.07.2021 passed by the learned Additional Sessions Judge (Exclusive Court), Jhajjar wherein the petitioners No.1 to 4 have been summoned under Section 319 Cr.P.C. as additional accused to face trial in FIR No.354, dated 23.09.2019, under Sections 302, 304-B IPC, registered at Police Station Beri.

As per the factual matrix of this case, the present FIR was registered at the complaint made by Monu son of Sheokaran, resident of

Village Beri, wherein he had alleged that the marriage of his sister Meera

was solemnized with Sonu son of Chander Bhan. As per the allegations, after the marriage of his sister, her husband-Sonu, her mother-in-law Bimla, her sister-in-law Manju and her brothers-in-law Kala and Dhola used to beat his sister for bringing less dowry. On the day of occurrence, he received the information that his sister has been given beatings by her in-laws and after receiving the information, he went to her house. There he found his sister lying dead on the bed. On enquiry, he found that his sister had been killed by the above-mentioned accused. The FIR was lodged and on the basis of the same, the investigation was carried out and after the conclusion of the investigation, the challan was presented only against the husband Sonu whereas the rest of the four accused, who are petitioners in this petition, were kept in column No.2. During the recording of evidence before the trial Court, the complainant Monu appeared in the witness-box as PW1 wherein he reiterated the allegations against the petitioners which were made in the FIR. Thereafter, the complainant filed the application under Section 319 Cr.P.C. for summoning the petitioners as additional accused. The learned trial Court after hearing the parties allowed the application vide its order dated 13.07.2021 and thus, directed the petitioners to be tried along with the accused already being tried, namely, Sonu.

Aggrieved by the same, the petitioners have approached this Court by way of filing the present revision petition.

Learned counsel for the petitioners has vehemently contended that the learned trial Court has totally fell in error by summoning the petitioners as additional accused. He contends that the mandate of Section 319 Cr.P.C. has totally been ignored by the trial Court as during

investigation, the petitioners were exonerated by the investigation carried out by a Special Investigation Team. Counsel has relied upon various judgments i.e. ***Keshab Chandra Panda Versus State, Criminal Appeal No.91 of 1993, decided on 21.07.1994 by the Orissa High Court; Babaji Charan Barik Versus The State, Criminal Appeal No.10 of 1990, decided on 08.10.1993 by Orissa High Court; Sham Lal Versus State of Haryana (SC)-Law Finder Doc ID # 40071; Kans Raj Versus State of Punjab (SC)-Law Finder Doc ID # 25870; Hardeep Singh Versus State of Punjab and others (SC)-Law Finder Doc Id # 514451; and Brijendra Singh and others Versus State of Rajasthan (SC)-Law Finder Doc ID # 851765.***

The sum and substance of the arguments raised by the counsel for the petitioners is that the trial Court has relied upon the presumption contained in Section 113-B of Evidence Act and in view of the judgments cited, the interpretation made by the trial Court under Section 113-B of the Evidence Act is contrary to the observations made by the High Court and the Hon'ble Apex Court. He submits that the trial Court had wrongly interpreted the term "harassment soon before death" and thus, has drawn wrong conclusion by accepting the application filed by the complainant under Section 319 Cr.P.C. for summoning the petitioners as additional accused.

I have heard learned counsel for the petitioners and perused the record.

From the bare perusal of the facts on record, it is evident that the sister of the complainant died unnatural death within 1 year of the marriage. The FIR in question was registered by the complainant wherein

the specific allegations were levelled against the petitioners. It was after the investigation the investigating agency came to the conclusion that the allegations are substantiated only qua the husband-Sonu and not against the rest of the accused i.e. the present petitioners. It is pertinent to note that the death of the bride in the case in hand has taken place within 1 year of the marriage. Besides this, the postmortem carried would show that there were 8 injuries antemortem in nature, which in the opinion of the doctor were sufficient to cause death in the ordinary course of the nature. The viscera report showed the presence of the Aluminium Phosphide. In such circumstances, the argument raised by the counsel for the petitioners pertaining to the “harassment soon before death” becomes insignificant as the death in question has taken place within 1 year of the marriage. The allegations of harassment and beatings against the petitioners were since beginning and this is not for the first time, when the complainant entered the witness-box, that the allegations were levelled against them. There is no dispute regarding the judgments cited by the learned counsel for the petitioners. However, I find that same do not come to rescue of the case of the petitioners as these are distinguishable in the facts and circumstances of the present case. The Hon’ble Apex Court in ***Ajay Kumar @ Bittu and another Versus State of Uttarakhand and another-2021(4) SCC 301*** has reiterated the law settled by it in ***Hardeep Singh Versus State of Punjab and others-(2014) 3 SCC 92***, wherein it has been observed as under:-

“5. The principles for exercise of power under Section 319 Cr.P.C. by Criminal Court are well settled. The Constitution Bench of this Court in Hardeep Singh versus State of Punjab and others, (2014) 3 SCC 92, has elaborately considered all

contours of Section 319 Cr.P.C. This Court has held that Power under Section 319 Cr.P.C. is a discretionary and extraordinary power which has to be exercised sparingly. This Court further held that the test that has to be applied is one which is more than prima facie case 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. In paragraph 105 and 106, following has been laid down: -

“105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case 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. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused.” The words used are not “for which such person could be convicted”. There is,

therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.”

Applying the ratio laid down by their Lordships to the present case, I do not find any infirmity in the order passed by the learned Additional Sessions Judge for summoning the petitioners under Section 319 Cr.P.C. As per the law settled, the satisfaction to be derived by the trial Court is required to be more than the satisfaction required for the framing of the charge. In the present case where a bride died unnatural death within 1 year of the marriage and in postmortem, 8 antemortem injuries are found and viscera detected the presence of Aluminium Phosphide, the trial Court was justified in summoning the petitioners as additional accused.

In the facts and circumstances of the present case and in the light of the law settled by the Hon’ble Apex Court, I find no infirmity in the conclusion arrived at by the trial Court in summoning the petitioners as additional accused.

Accordingly, the revision petition, being devoid of any merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

02.08.2021
sanjeev

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No