

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

CRR 536 of 2020 (O&M)
Date of Decision: January 06, 2022

Kamlesh ...Petitioner
Versus
State of Haryana and others
... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Lajpat Rai, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G. Haryana
for respondent No.1/State.

None for respondent No.2.

Service of respondent No. 3-dispensed with.

Mr. Ranjit S. Kalra, Advocate
for respondent No. 4.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through Video
conferencing on account of outbreak of pandemic COVID-19.

The criminal case by way of FIR No. 156 dated 12.03.2018 under Sections 307/364/366/376/302 IPC was registered with Police Station Bhiwani (City) on the statement of one Kamlesh mother of the deceased girl then aged 20 years at the time of death.

The brief allegations levelled by the complainant are that her daughter (deceased) was attending coaching for 'SCC' and on 10th March 2018 in the morning around 09.00 a.m. has left her house on her scooty bearing HR-16-T 8931 but did not return back. On inquiries, it was revealed that the deceased had been admitted in a hospital at Rohtak in 'ICU' and when the complainant reached found her daughter to be in unconscious state.

Upon further inquiries, it was revealed that two boys namely Arjun the principal accused facing trial and Naveen placed in Column No. 2 of report under Section 173 Cr.P.C. both co-villagers had kidnapped the deceased and raped her

and tried to kill her and to escape their guilt had got her admitted in the hospital.

During the course of investigations, the police challaned the accused Arjun and placed Naveen in Column No. 2. The complainant, subsequently, on 29.10.2018 moved an application for summoning of Naveen and Mehar Singh as additional accused before the trial Court of learned Additional Sessions Judge, Bhiwani. Upon due process, the Court vide impugned order dated 10.02.2020 dismissed this application of the complainant against which she has preferred the instant criminal revision before this Court.

In the revision a miscellaneous application (CRM No. 28026 of 2021) has been moved by one of the accused for his impleadment. This applicant is a co-accused of the persons who are being sought to be summoned as additional accused. Admittedly, against him the entire trial has been completed and that the challenge in the present revision by the complainant

side is over non-summoning of persons as additional accused.

Thus, the application is ill found and stands dismissed.

Heard Mr. Lajpat Rai, Advocate for the petitioner,
Mr. Gaurav Jindal, Addl. A.G. Haryana for respondent
No.1/State and Mr. Ranjit S. Kalra, Advocate for respondent
No. 4.

The very allegations in the FIR (Annexure P-1)
which is first in point of time having been made by mother of the
deceased shows that after she reached hospital, she was
informed that her daughter was admitted in the hospital in an
unconscious state by two boys and has enumerated their
names as Arjun son of Balwan and Naveen son of Balwan,
though it is strongly contended by Mr. Kalra Advocate for the
respondent side to the arguments raised by Mr. Lajpat Rai for
the petitioner as to the specific claim of Naveen having been
spelled out in the FIR and, therefore, ought to have been
summoned. Mr. Kalra has further contended that her testimony

is mere based on hearsay and, thus, cannot be relied and there is no substantial evidence to connect Naveen with the commission of the offence.

Appreciating the submissions of the two sides from the way the initial statement of the complainant was got recorded the names of Naveen alongwith his co-accused Arjun (facing trail) has cropped up and therefore needs further exploration of the role of this person in the commission of offences and as well as that of one Mehar Singh against both of whom application under Section 319 Cr.P.C. has come about. The counsel for the two sides fairly states at the bar that name of Mehar Singh does not figure any where during the investigations and, therefore, this Court even upon perusal of the records is unable to decipher any iota of evidence against him and, therefore, the claim qua summoning of Mehar Singh as an additional accused is not tenable and is thus declined.

However, the statement that has come in the

investigation of hotel officials where Arjun and the deceased girl have checked in establishes beyond any doubt that at the time of the occurrence there were two boys at the hotel. Furthermore, the medical evidence especially of Dr. Ashok Chauhan, Medical Officer of All India Institute of Medical Sciences, Delhi and Dr. Rakesh Khatak Community Health Centre Loharu shows and reflects that deceased as per their opinion has died an unnatural death due to use of constricted force around the neck and there were strains of semen on the under garments of the accused which is corroborative feature as to the circumstances in which the girl has died. No doubt, on account of lack of necessary technicalities in the laboratory and the half hearted attempt of the police to explore the 'CCTV' Footage has washed away material evidence which could have assisted the Courts to arrive at a judicious decision.

No doubt, some sort of discrepancies as has been pointed out during the course of arguments have come about in

the statement of the complainant made before the Court and her previous statement, however, this Court refrains from commenting upon that aspect of the matter. It needs to be appreciated that the present incident is based on circumstantial evidence and cannot be equated with cases having direct evidence against the accused. Since the initial statements of the hotel staff and that of the hospital shows presence of two boys and which corroborates with the initial stand of the complainant that two boys were there at the time of the occurrence cannot be put to doubt at this juncture. The impugned order by the learned trial Court merely on the basis of premise that if **“proposed accused persons”** are in the hospital then they do not become accomplices with the accused is too preposterous. Even the DITAC report have not been brought on the record by the Investigating Agency is another distressing feature how the evidence at the trial is being subverted for obvious reasons. The claim of Mr. Kalra that girl has committed

suicide is rather negated by the testimony of the hotel staff Deep Chand and Mahipal made before the police under Section 161 Cr.P.C. It is neigh impossible that the girl would be able to commit suicide in the presence of others in the room. No doubt the trial Court has ample powers under Section 319 Cr.P.C. but it needs to be reiterated here that under Section 319 Cr.P.C. during the course of trial an offence it is suggestive that any person not being an accused is likely to have committed an offence. The Court needs to proceed against such a person for offences which appears to have been committed by him. The evidence so collected during the investigation is prima facie suggestive that Naveen was accompanying principal accused Arjun at the time of commission of the offence. The impugned order by the trial Court on the grounds that power under Section 319 Cr.P.C. being extra ordinary are to be sparingly used. It needs to be kept in mind that young girl aged around 20 years has met her nemesis in a suspicious manner in a hotel when

presence of two persons is well established at the time of occurrence deserves that any person so left out from this needs to be tried alongwith the principal accused and it is during the trial the Court would be able to adjudge his guilt or innocence and at this stage is quite evident prima facie. The impugned order certainly is illegal, perverse and needs to be set-aside by way of allowing the instant revision to that extent. Ordered accordingly.

January 06, 2022
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No