

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

CRR-3780-2017(O&M)
Date of Decision: July 04, 2022

Jasvir Kaur and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

--

Present: - Mr. Surinder Singh Virk, Advocate for the petitioners.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

-

HARINDER SINGH SIDHU, J.

Petitioners Jasvir Kaur and Satwinder Singh have impugned the order dated 19.09.2017 of the Ld. Additional Sessions Judge, Fatehgarh Sahib whereby the application under 319 Cr.P.C. has been allowed and they have been summoned to face trial under Sections 307, 323, 324, 450, 506 and 34 IPC alongwith with other co-accused.

FIR No.53 dated 08.03.2013 under Sections 452, 323, 324, 506, 148, 149 IPC was lodged against the petitioners and other co-accused by respondent No.2-Amandeep Singh. He alleged that at about 7:15 a.m. he was sitting in a room in his house. His mother-Kulwinder Kaur asked Jitender Singh and Jagjit Singh @ Sahib Singh that they should keep the street clean and should not keep their agricultural implements in the street. On this Jitender Singh and Jagjit Singh @ Sahib Singh started abusing his mother and other family members. His mother came inside the house. Then Jitender

Singh, Jagjit Singh, Jashan and Karan sons of Jagjit Singh and Rupinder Kaur wife of Jitender Singh forcibly entered the house. Jitender Singh and Jagjit Singh were carrying Kirpans, Jashan and Karan were having iron rods. Jasvir Kaur (petitioner No.1) and Rupinder Kaur were carrying dandas. They attacked the complainant-Amandeep Singh and his mother. Jitender Singh inflicted a Kirpan blow which hit on the left side of the neck of the complainant. Jashan gave iron rod blow hitting on the head of the complainant. Jasvir Kaur and Rupinder Kaur beat the mother of the complainant with dandas which hit on her legs and other parts of the body. Jagjit Singh gave a Kirpan blow hitting on the head of the mother of the complainant. He inflicted another blow which hit on her left hand. Karan gave blows with a rod to the mother of the complainant hitting on her back. On hearing the noise Baldev Singh-father of the complainant and Dharminder Singh his younger brother came there. The accused attacked them as well. Jagjit Singh gave a Kirpan blow hitting on the head of the father of the complainant. He inflicted another blow with his kirpan on the right arm of the father of the complainant. Jitender Singh inflicted a kirpan blow hitting on the fingers of the left hand of Dharminder Singh. Jashan gave a rod blow on the left hand of the father of the complainant. Jagjit Singh gave a kirpan blow which hit the right arm of Dharminder. It is further alleged that Satwinder Singh (petitioner No.2) was carrying a gandassa and raised lalkara that the complainant and his family members be finished. Meanwhile, Gurpreet Singh came there to deliver milk. Then all the accused ran away from the spot.

The FIR was investigated. It was found that the petitioners and Rupinder Kaur were not present at the time of the fight. They were found to be innocent. Challan was presented against the other accused under Sections 323, 324, 506, 201, 34 IPC.

On 15.06.2013, an application under Section 319 Cr.P.C. for summoning the petitioners and Rupinder Kaur was filed. The same was dismissed by the Ld. JMIC Fathegarh Sahib vide order dated 26.09.2014. The Ld. JMIC held that there were no corroborative injuries on the body of the mother of the complainant to suggest that she had been beaten by Rupinder Kaur and Jasvir Kaur with sticks. The Court held that the version that Satwinder Singh was holding a gandasi and had raised lalkara was improbable. It opined that a lalkara is usually raised at the inception of the fight or during the course thereof. However, the lalkara was alleged to be raised by Satwinder Singh after all the 20 injuries had been inflicted by the co-accused. Moreover, there was no allegation that he was present at the time of inception of the fight. His presence at the time of the occurrence was thus held to be doubtful. It was opined that all the injuries to the complainant and his family members had been caused by accused Jagjit Singh, Jitender Singh, Jashan and Karan. The application for summoning Satwinder Singh, Jasvir Kaur and Rupinder Kaur was dismissed.

Respondent No.2 then filed a criminal complaint under Section 307, 323, 324, 450, 506 34 IPC against the petitioners, Rupinder Kaur and the other accused. Vide order dated 10.09.2014 of the Ld. JMIC only four accused namely, Jagjit Singh, Jitender Singh, Jashanpreet Singh and

Karanbir Singh were summoned. The petitioners and Rupinder Kaur were not summoned. Aggrieved by the non-summoning of the petitioners and Rupinder Kaur, Respondent No.2 filed a revision petition before the learned Additional Sessions Judge, Fatehgarh Sahib, but vide order dated 09.04.2015 the same was got dismissed as withdrawn by reserving his rights to file a fresh application under Section 319 Cr.P.C.

The complaint case and the FIR case were clubbed and committed to the Sessions Court on 11.03.2015. Respondent No.2 was examined as Prosecution witness where he deposed about the role of the petitioners. He then filed the application dated 10.07.2017 under Section 319 Cr.P.C. for summoning the petitioners, which has been disposed of vide the impugned order.

While allowing the application the learned Additional Sessions Judge has held that from the record it is clear that the role of the petitioners was mentioned in the initial complaint submitted by respondent No.2 to the police on 08.03.2013. When he stepped into the witness box he again clearly stated that Jasvir Kaur-petitioner No.1 was armed with a danda with which she hit the mother of the complainant. He also specifically stated that Satwinder Singh-petitioner No.2 was armed with a gandassi and he raised a lalkara that the complainant and his family members be finished. In view thereof the learned Additional Sessions Judge, opined that there was sufficient evidence on record to show the involvement of the petitioners in the occurrence in question.

Learned counsel for the petitioners while assailing the

impugned order has argued that the learned Additional Sessions Judge has completely lost sight of the fact that though petitioner No.1 is alleged to have caused injuries with a danda to the mother of the complainant there is no such injury on the person of the mother of the complainant. The matter was investigated by the police. The petitioners and Rupinder Kaur were found innocent. It was found that they were not present when the fight took place. Even on the criminal complaint filed by respondent No.2, the learned JMIC did not summon the petitioners and Rupinder Kaur. He argued that the petitioners and other accused are family members. The complainant has tried to falsely implicate all the family members. There is no evidence on the record to summon the petitioners.

Mr. V.G. Jauhar, DAG, Punjab on the other hand argued that the petitioners have been named in the initial FIR and also in the statement of the complainant and they have been rightly summoned as additional accused.

The injuries on the person of the mother of the complainant are as under:

“1. Incised wound measuring 12 cm x 1cm present over midline of skull, bone deep, swelling and tenderness present, hair are cut, fresh bleeding is present. Advised x-ray skull and surgeon's opinion.

2. Incised wound measuring 6 cm x 3 cm present over dorsal aspect of left hand just below left wrist joint, bone deep, obliquely placed, swelling and tenderness present, fresh bleeding is present. Advised x-ray and orthopedic surgeon's opinion.

3. C/o pain back of left shoulder.

4. Swelling and tenderness index and middle finger right hand. Advised x-ray right hand and orthopedic surgeon's opinion.

5. C/o lower back pain.

6. C/o pain in left leg.

Nature of Injuries:(1) After x-ray and sugeons opinion (2 & 4) after orthopedic surgeon opinion. (3,5,6 are simple). 1 and 2 are sharp, 3,4,5 and 6 are blunt.”

The learned Judicial Magistrate First Class, Fatehgarh Sahib, while dismissing the earlier application under Section 319 Cr.P.C. filed by respondent No.2 for summoning the petitioners and Rupinder Kaur as additional accused had clearly held that all the injuries stated in the examination- in- chief of the complainant as also in the FIR and as reflected in the medical record are clearly attributed to the other accused. The injuries that have been attributed to petitioner No.1 and Rupinder Kaur were not present on the person of the mother of the complainant. The presence of petitioner No.2 was not indicated at the inception of the fight. He is only alleged to have raised *lalkara* after all the injuries have been inflicted by the accused. Hence, his presence was doubtful. The same reason weighed with the learned JMFC Fatehgarh Sahib when on the criminal complaint filed by respondent No.2 only four accused were summoned and the petitioners and Rupinder Kaur were left out. The learned Additional Sessions Judge has summoned the petitioners merely relying on the fact that they were named in the FIR and in the deposition of the complainant. The learned Additional Sessions Judge has not referred to the injuries of Kulwinder Kaur as

reproduced above and as to whether there is any corresponding injury on the person of Kulwinder Kaur-mother of the complainant, which can be attributable to petitioner No.1. In fact there is no such injury. Injury No.1 and 2 on the person of Kulwinder Kaur are attributed to accused Jagjit Singh. Injury No.4 is attributed to Karan Singh. Injury No.3, 5 and 6 are only 'complaint of pain' on the back of the left shoulder, lower back and left leg. Hence, the medical evidence does not corroborate the allegations levelled by the complainant against petitioner No.1.

It was also rightly held by the learned Judicial Magistrate First Class, Fatehgarh Sahib that the presence of Satwinder Singh-petitioner No.2 at the spot is doubtful. He is only alleged to have raised *lalkara* when all the injuries had already been inflicted by other accused.

Thus, there was no justifiable reason to summon the petitioners as additional accused.

Accordingly, this petition is allowed. The impugned order is set aside. The Ld. Trial Court may proceed with the trial in accordance with law.

July 04, 2022
gian

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No