

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

CRR-682-2023 (O&M)

Date of Decision: 16.03.2023

Rajender Singh Petitioner

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Narender Kaajla, Advocate
for the petitioner.

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MANJARI NEHRU KAUL, J. (Oral)

CRM-12178-2023

Instant application has been filed for condonation of delay of 76 days in filing the present revision petition.

For the reasons mentioned in the application, the same is allowed. The delay of 76 days in filing the present revision petition is condoned.

CRR-682-2023

The petitioner is challenging the order dated 27.09.2022 passed by the learned Additional Sessions Judge, Charkhi Dadri, vide which an application filed by him under Section 319 Cr.P.C. to summon the private respondents, namely, Ranbir Singh, Suman and Parveen as additional accused in FIR No.399 dated 29.06.2018 under Sections 302/34 IPC registered at Police Station Sadar Dadri was dismissed.

Learned counsel *inter alia* contended that while passing the

impugned order, the trial court had gravely erred in observing that since the complainant was not a witness to the incident and had named the proposed accused i.e. the private respondents, in his supplementary statements recorded under Section 161 Cr.P.C. on 06.07.2018 and 29.08.2018, there was thus no cogent evidence to connect them with the crime in question. Learned counsel submitted that the Court had clearly erred by failing to appreciate that there was enough evidence in the shape of some mobile calls between respondent No.3 Suman, wife of Ranbir Singh, and the deceased which hinted towards their complicity in the murder of Attar Singh. He further submitted that, undoubtedly, it was a case resting on circumstantial evidence, however, once there were call record details between respondent No.3 Suman and the deceased, even though the duration was only for 10 seconds, it was sufficient to connect them with the crime in question. He still further contended that the trial court erred in relying upon the results of the polygraph tests conducted upon the proposed accused, as the result of the polygraph tests was not substantive piece of evidence and thus not worth any credence.

Heard.

As per the complainant while recording the FIR, his brother i.e. the deceased-Attar Singh, aged 64 years, went to sleep at night in a separately constructed portion, after taking his dinner. However, in the morning, the deceased was found lying unconscious with injuries on his body by the complainant. On being taken to the hospital, deceased was declared brought dead. A perusal of the FIR reveals that neither any allegations were levelled against any person nor any suspicion raised qua the involvement of any one much less the proposed accused. Subsequently,

on the basis of secret information, accused, Usil @ Sushil and Rakesh @ Sonu @ Katia were arrested on 08.07.2018 who then suffered their separate disclosure statements to the effect that on 29.06.2018, they had murdered the deceased with an iron chain, stone umbrella after inflicting kick and fist blows on his person. In pursuance of the disclosure statement made by accused-Usil @ Sushil, recovery of a motor cycle CD Delux No. HR-14-C-6594 was effected from a room constructed in the forest area of village Siwana Jhajhar and a mobile phone Ex-Mart EMEI No. 911525530105179 black colour belonging to the deceased was effected from village Pehladgarh, District Bhiwani. Besides this, an iron chain allegedly used in the crime was got recovered pursuant to the disclosure statement made by the other accused-Rakesh @ Sonu @ Katia, along with clothes worn by him at the time of the crime in question. A broken umbrella and the shoes of the deceased-Attar Singh were also got recovered from village Ghasola at the instance of accused-Rakesh @ Sonu @ Katia. It was only on 6.7.2018, a supplementary statement was made by the petitioner-complainant wherein for the first time, he named the proposed accused i.e. Respondents and raised an apprehension about their involvement in the murder of the deceased. During investigation, polygraph tests were carried out on the proposed accused and their mobile call detail records were collected. As no incriminating evidence or material came to the fore qua their involvement in the crime in question, they were not challaned.

At the very outset this court would refrain from giving any expression of opinion on the merits of the case lest it causes prejudice to either of the parties during trial.

I have thoroughly examined the material on record including

the deposition of the petitioner, and have also minutely scrutinized it in the light of the impugned order.

The least this court would want to comment is that there is no infirmity in the impugned order which would persuade this court to take a contrary view.

The bare reading of the deposition of the complainant as PW3 goes a long way to show that at every stage after the crime in question was reported to the police, he has tried to make improvements not only on minor aspects but also on every material aspect of the case. The improvements made by the complainant cannot by any stretch be termed as insignificant improvements. Rather, the improvements made by the complainant, have changed the entire complexion of the prosecution story, from it being initially dubbed as a case resting on circumstantial evidence, to later on being projected as an eye-witness account on the basis of the statement of one Shamsher Singh made under Section 161 Cr.P.C., wherein he stated that he had seen the deceased being assaulted on the fateful day, by already challaned accused Usil @ Sushil and Rakesh@Sonu@Katia.

As already observed earlier, in the FIR lodged by the petitioner, there was not even a shred of whisper qua the involvement of any person in the crime. Still further, as per the statement of Indrawati, widow of the deceased, which was recorded on 06.07.2018 she stated that Shamsher Singh had disclosed to her that he had seen accused Rakesh@Sonu@Katia and Usil @ Sushil causing injuries to the deceased, which fact was also reiterated by said Shamsher Singh in his statement recorded under Section 161 Cr.P.C. on 29.08.2018.

As per the supplementary statements recorded under Section

161 Cr.P.C. of Indrawati on 06.07.2018 and Shamsheer Singh on 29.08.2018, both accused Rakesh@Sonu@Katia and Usil@Sushil were shown to be murderers of deceased. On the other hand, the petitioner-complainant also made a supplementary statement on 06.07.2018 wherein he raised suspicion about the involvement of the respondents in the crime. Evidently, it ran contrary to the statement given by Indrawati on 06.07.2018 and also the statement given by Satyawar later on, on 29.08.2018. Resultantly, the case was thoroughly investigated by the police and polygraph tests also carried out on the respondents, however no incriminating evidence or material came to the fore. Hence, in the above facts and circumstances, it cannot be said to be a case resting on circumstantial evidence but becomes a case of eye witness account in the light of the statement made by Satyawar under Section 161 Cr.P.C., on 29.08.2018. To say the least, the evidence on record, on the basis of which the proposed accused-respondents are being sought to be summoned, is too loosely knit, with gaping holes, which would not meet the test of summoning an accused under Section 319 Cr.P.C. as per the parameters laid down by the Supreme Court in **Hardeep Singh v. State of Punjab** (2014) 3 SCC 92, wherein the Supreme Court has held as under:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.

99. 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 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused."

As a sequel to the above discussion, this court does not find any merit in the instant petition. The same is dismissed.

Nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

16.03.2023
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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No