

201/2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3811-2018 (O&M)
Decided on : 10.03.2023

Balwan

..... Petitioner

Versus

Sultan and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Himmat Singh Deol, Advocate
for the petitioner.

Mr. Ramesh Kumar Dhiman, Advocate
for respondents No.1 to 6.

Mr. Chetan Sharma, AAG, Haryana.

Manjari Nehru Kaul, J.(Oral)

The petitioner is impugning the order dated 06.10.2018 passed by the learned trial Court vide which his application under Section 319 Cr.PC for summoning respondents No.1 to 5 as additional accused to face trial in case FIR No.125 dated 08.08.2016 for offences under Sections 307, 325, 323, 341, 427, 506, 148 and 149 IPC registered at Police Station Bawal was dismissed.

Learned counsel for the petitioner while challenging the impugned order has *inter alia* contended as follows:

- (i) that except for respondent No.6 Mahipal, all other accused were named not only by the complainant but also by injured Sarjit Singh and eyewitnesses Satyawan,

Kartar Singh and Narender, while getting their statements recorded under Section 161 Cr.PC, on 08.08.2016. They had categorically stated that on the fateful day i.e. 08.08.2016, the accused along with the private respondents had inflicted injuries on the person of Kamla Devi, which were declared dangerous to life, and also on complainant Balwan and Sarjit Singh. This fact was however, erroneously ignored by the trial Court while passing the impugned order.

- (ii) that eyewitness Kartar Singh in his statement under Section 161 Cr.PC had categorically stated that on learning about the quarrel, he alongwith Narender reached the spot of occurrence where Attar Singh s/o Ratti Ram, Anil s/o Kamal Singh, Rohit s/o Kamal Singh, Mahavir s/o Kishna, Rajender @ Kalia s/o Kishna, Sher Singh s/o Ratti Ram, Dharambir s/o Sube Singh, Vijay s/o Khem Chand, Sube Singh s/o Kishna were inflicting injuries to Balwan s/o Khem Chand with lathis and dandas and extending threats of dire consequences. They managed to save Balwan with great difficulty from the above assailants, and also saw Satyawar s/o Ram Phal lying in an injured condition in front of the house of Mahavir s/o Kishna and Kamla wife of Umed Singh, was also lying unconscious with injuries

in front of house of Chhotu Ram s/o Ratti Ram in the street. In support, he drew the attention of the Court to the contents of the FIR annexed as Annexure P-3.

- (iii) that the petitioner while recording his statement under Section 161 Cr.PC reiterated the allegations levelled in the FIR that Sultan s/o Ratti Ram was boasting and declaring at the place of occurrence itself that he had already killed two and now it was the turn of the petitioner-complainant, and it would be only thereafter, they would be able to get the possession of the plot in dispute. Thereafter, Attar Singh- respondent No.2, Rohit-respondent No.3, Anil-respondent No.4, Mahabir, Kalia, Sher Singh, Dharambir, Vijay – respondent No.5 and accused Sube Singh came forward and inflicted lathi blows on his i.e. petitioner-complainant's chest and back. Respondent No.5 Vijay gave a lathi blow on his head, which he blocked with his right hand as a result of which he received an injury on his right thumb. The petitioner then raised a hue and cry, which attracted a few persons, who then rushed to his rescue.
- (iv) that it was a matter of record that soon after the occurrence in question, both the injured witnesses i.e. Satyawar and Kamla Devi were immediately removed to the hospital and were medico-legally examined.

- (v) that Kamla Devi while stepping into the witness box as PW-1, gave a vivid account of the role played by each of the private respondents in the occurrence in question, which in turn found due corroboration from the medical evidence on record. In support, learned counsel drew the attention of this Court to the CT Head examination of Kamla Devi (Annexure P-4) as well as opinion of the doctor (Annexure P-6).

It was thus, vehemently argued that it was evident that the investigating agency had carried out a tainted investigation by ignoring the relevant material and had wrongly placed the private respondents in Column No.2, by not appreciating the aforementioned facts.

Per contra, learned counsel for the respondents opposed the prayer and submissions made by the learned counsel opposite. He submitted that the petitioner had tried to falsely rope in the private respondents by attributing some role or the other to them in the crime in question. He urged that totally vague allegations had been levelled against the respondents, particularly against respondent No.1- Sultan, respondent No.2- Attar Singh, respondent No.3-Rohit and respondent No.6-Mahipal. It was further urged that had injured Kamla Devi been actually inflicted the alleged injuries by the private respondents, the complainant would have mentioned so while getting the FIR registered and even Kamla Devi would have disclosed their names soon after the occurrence to the police and not waited for as long as 7 months to spell out the roles played by each of these

respondents including respondents No.4 and 5 in the occurrence in question.

Learned counsel for the petitioner, however, yet again controverted the submissions made by learned counsel for the respondents by arguing that it was a matter of record that PW-1 Kamla Devi on account of the injuries received at the hands of all the accused, including the respondents, had become unconscious. After being removed to the hospital on the same day, she was medico-legally examined and remained unfit thereafter. She also remained hospitalized for a long time. It was only after she recovered, she gave her statement wherein she spelt out the role played by each of the private respondents. Learned counsel also urged that while registering the FIR, the complainant had clearly stated that when he arrived at the spot, both Satyawar and Kamla Devi were lying unconscious there. Hence, in this background, if the complainant did not name the private respondents and give the details as to how PW-1 Kamla had received injuries, the same would not in any manner raise a question mark about the authenticity of the allegations levelled, much less create any dent in the case of the prosecution as he had arrived after PW-1 Kamla had already been inflicted injuries. It was also submitted that had it been a case of false implication of the accused, PW-1 Kamla Devi would have also named the other accused i.e. Rajender, Sher Singh, Ombir, Sher Singh, Sube Singh and Mahabir along with the respondents, which she fairly did not do, as she had received injuries only at the hands of the private respondents.

Heard learned counsel for the parties and perused the relevant material available on record.

The Constitution Bench of Hon'ble Supreme Court while dealing with the scope of Section 319 Cr.PC in ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92***, 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.”

In light of the settled position of law as reproduced hereinabove, this Court would now proceed to examine as to whether or not there exists sufficient evidence to summon the private respondents as additional accused under Section 319 Cr.PC.

Learned counsel for the petitioner has placed a great deal of reliance on the statements of Satyawan and Kartar Singh recorded under Section 161 Cr.PC (Annexures P-2 and P-3) respectively. However, this Court has no hesitation in observing that the statements recorded under Section 161 Cr.PC would be of no relevance while deciding an application under Section 319 Cr.PC. The word “evidence” appearing in Section 319 Cr.PC would mean and include only such evidence as is produced and made before the Court and the Court cannot take into account the material collected during investigation as the same would not fall within the ambit of “evidence”.

Having said that, the material worth consideration for adjudication upon the application under Section 319 Cr.PC in the present case would be the deposition of injured Kamla Devi as well as the medical evidence qua the injuries sustained by her in the occurrence in question. During her deposition (Annexure P-7), injured Kamla Devi -PW-1 deposed that when she tried to rescue Satyawan, Sultan shouted that she be nabbed and thereafter, Mahipal and Rohit caught hold of her while Attru exhorted that injuries be inflicted upon her. Injured Kamla Devi further specifically deposed that Anil-respondent No.4, who was armed with an iron rod and

Vijay-respondent No.5, who was having a danda in hand, ran towards her and they both then gave blows with their respective weapons on her head.

The complainant Balwan while getting the FIR registered did not even by way of a whisper attributed any role to the private respondents in the occurrence in question, however, the same would be inconsequential since a perusal of the contents of the FIR reveal that when complainant Balwan reached the place of occurrence, injuries had already been inflicted upon Satyawan and Kamla Devi and they were lying unconscious. Thus, it is evident that the complainant Balwan did not witness the incident and thus, did not attribute any role to private respondents while getting the FIR registered. It was injured Kamla Devi, who had suffered injuries and it was only she, who was the best witness to reveal about the role played by the private respondents.

The head injuries reflected in the CT head scan (Annexure P-4) further corroborates the version put forth by injured Kamla Devi during her deposition qua the receipt of head injuries at the hands of respondent No.4 Anil and respondent No.5 Vijay. As far as the other private respondents are concerned, there is no supporting material to substantiate the allegations levelled by injured Kamla Devi in her deposition qua them.

As a sequel to the above discussion, this Court does find sufficient evidence to summon respondents No.4 Anil and 5-Vijay as additional accused to face trial under Section 319 Cr.PC.

Accordingly, the instant petition is partly allowed and only respondent No.4-Anil and respondent No.5 Vijay are ordered to be

summoned under Section 319 Cr.PC to face trial alongwith other accused.

(MANJARI NEHRU KAUL)
JUDGE

10.03.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No