

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

201

1. **2023:PHHC:115522**
CRR-2199-2019 (O&M)
Date of decision: August 18th, 2023

Sukhwinder Singh @ Sukha and others
.....Petitioners

Versus

State of Punjab and another
.....Respondent

2. CRR-2255-2019 (O&M)
Bishamber Singh
.....Petitioner

Versus

State of Punjab and another
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Salil Dev Singh Bali, Advocate
for the petitioners (in CRR-2199-2019)
for respondent No.2 (in CRR-2255-2019).

Mr. Gagan Bajaj, Advocate
for the petitioner (in CRR-2255-2019)
for respondent No.2 (in CRR-2199-2019).

Mr. Subhash Godara, Additional Advocate General,
Punjab.

MANJARI NEHRU KAUL, J.

The petitioners in CRR No.2199 of 2019 are impugning the order dated 29.07.2019 passed by the Additional Sessions Judge, Ferozepur, on an application filed under Section 319 Cr.P.C. by the complainant, vide which they were summoned to face trial in case FIR No.120 dated 26.10.2017 registered under Sections 302, 324, 341, 323, 148, 149 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') at Police Station Lakho Ke Behram.

2. In CRR No.2255 of 2019, the complainant (petitioner therein) is impugning the same order i.e. order dated 29.07.2019 passed by the Additional Sessions Judge, Ferozepur, whereby application moved under Section 319 Cr.P.C. for summoning accused Sona Singh was dismissed.

3. Learned counsel for the petitioners in CRR-2199-2019, *inter alia*, contends that it is a case of version and cross-version. Soon after the occurrence in question, DDR No.25 dated 28.10.2017 under Sections 452, 323, 34 IPC was lodged by co-accused Sona Singh, however, on account of the influence wielded by the opposite party, the said DDR was cancelled. The investigating agency thereafter submitted challan on 10.01.2018 along with the MLR and post-mortem report of deceased Makhan Singh. A perusal of the MLR as well as the post-mortem report of the deceased, which has been annexed as Annexure P-4, clearly indicates that the deceased died after four days of the alleged occurrence. Learned counsel contends that as per allegations levelled in the FIR which was lodged by complainant-Bishamber Singh, on 24.10.2017 at about 5:00 pm, when he was ploughing his land with a tractor, his father was present in close proximity; allegedly all the accused i.e. Gurmej Singh carrying a *gandasa*, petitioner No.2-Kulwant Singh armed with *sotta*, petitioner No.1 Sukhwinder Singh alias Sukha armed with an iron rod, petitioner No.3-Manjit Singh armed with a *dang*, Sona Singh armed with a *sotta*, came to the spot. After extending threats, they encircled his father i.e. Makhan Singh (hereinafter referred to as 'deceased'); Gurmej Singh inflicted a blow with a *gandasa* on the left side of his head while petitioner No.2

inflicted a *sotta* blow on his left side as a result of which the deceased fell to the ground. Thereafter, petitioner No.1 inflicted another rod on the back of the deceased while petitioner No.3 targeted the left knee and right shoulder of the deceased with the *dang* that he was carrying. On a hue and cry raised, his uncle Lachman Singh, who too was working in the adjoining fields, rushed to the spot. Deceased-Makhan Singh was immediately removed to Civil Hospital, Mamdot, from where he was referred to Government Medical College, Faridkot, on account of his serious condition. Initially the FIR was registered under Sections 307, 341, 324, 323, 148, 149 IPC on 26.10.2017, however, after Makhan Singh succumbed to his injuries, offence under Section 302 IPC was also added.

4. Learned counsel has vehemently argued that though the occurrence took place on 24.10.2017, however, there was an abnormal delay of two days in lodging of the FIR as it was lodged only on 26.10.2017. While drawing the attention of this Court to the testimony of PW-1 ASI Gurdial Singh and PW-2 ASI Harmeet Chand, annexed as Annexures P-5 and P-6 respectively, it has been further submitted that it was a matter of record that no intimation qua the alleged occurrence was sent to the police by the complainant, and it was only on 25.10.2017, at about 3:40 pm, the police was informed about the admission of injured Makhan Singh in Civil Hospital, Mamdot. He submits that, thus, there was no manner of doubt that the delay in reporting the crime to the police had been used by the complainant party to fabricate a false version and to implicate as many people as possible, in the occurrence in question. It has been also submitted that since it was a case of version

and cross-version and it was also a matter of record that co-accused Sona Singh had lodged a DDR No.25 dated 28.10.2017 regarding the very same occurrence, the police had caved in to the pressure wielded by the complainant party, who were influential people of the area.

5. Furthermore, while drawing the attention of this Court to the MLR of the deceased dated 24.10.2017 annexed as Annexure P-3, learned counsel has argued that the injuries allegedly suffered by the deceased, particularly the fatal injury i.e. injury No.1 has not been attributed to any of the petitioners but to co-accused Gurmej Singh, who had already been challaned and is facing trial. Learned counsel has still further asserted that no doubt, there were some more injuries reflected in the MLR of the deceased, however, they were not the cause of death of the deceased but were primarily complaints of pain and swelling, whereas injuries No.3 to 5 were internal injuries. Thus, the injuries reflected in the MLR of the deceased required to be appreciated in the light of the evidence of PW-7 Dr. Rekha Bhatti, who during her cross-examination did not rule out the possibility of injury No.2 i.e. 'swelling 10 x 5 cm present on left side of head' being a result of a fall on a hard surface. Learned counsel, therefore, has vehemently asserted that in the above factual background, there was hardly any evidence, much less legal or medical, to corroborate the ocular testimony of the complainant, pursuant to whose examination-in-chief, application under Section 319 Cr.P.C. had been moved by the prosecution and subsequently allowed vide the impugned order. Still further, while drawing the attention of this Court to the post-mortem report annexed as Annexure P-4, learned counsel has submitted that the cause of death

given therein was compression of brain due to intracerebral hemorrhage occasioned by injuries No.1 and 2 attributed to co-accused Gurmej Singh, who was allegedly armed with a *gandasa*. He has also argued that since the deceased had died after four days of the occurrence and that too due to compression of brain due to intracerebral hemorrhage (ICH), the death could also possibly have been due to medical negligence as it was discernible that the deceased had not been given proper treatment, after the occurrence in question on 24.10.2017.

6. While placing reliance upon *Hardeep Singh Versus State of Punjab 2014 (1) R.C.R. (Criminal) 623*, learned counsel has asserted that for summoning a person as an additional accused, the test to be applied has to be more than a *prima facie* case than exercised at the time of framing of charges. However, a bare perusal of the FIR along with the MLR (Annexure P-3) pertaining to the deceased as also the testimony of PW-7 Dr. Rekha Bhatti, Medical Officer (Annexure P-7) makes it abundantly clear that the petitioners had been summoned on the basis of evidence which had gaping holes and which would not be insufficient to return a finding of conviction against them. Learned counsel has, therefore, prayed that in the aforementioned facts and circumstances, particularly when all the petitioners were found innocent and not involved in the crime in question, by the investigating agency, the trial Court had gravely erred in allowing the application under Section 319 Cr.P.C. by summoning them to face trial along with the other accused.

7. *Per contra*, learned State counsel assisted by the counsel for the complainant, has vehemently opposed the prayer and

submissions made by the counsel opposite qua the innocence of the petitioners in the crime in question.

8. Learned counsel for the complainant has urged that the occurrence in question took place on 24.10.2017 at 5:00 pm and within a couple of hours, the deceased was admitted in PHC Mamdot at about 8:00 pm, where he was medico-legally treated by the doctors. However, as his condition was serious, he was referred to Government Medical College and Hospital, Faridkot, at about 11:15 pm, where he was then admitted in the wee hours of 25.10.2017 at about 3:00 am. Learned counsel has further submitted that it was also a matter of record that due to the critical condition of the deceased, he was kept in ICU at GMCH, Faridkot, where he ultimately succumbed to his injuries, on 28.10.2017. Further, after the deceased was admitted in GMCH, Faridkot, on 26.10.2017, the complainant got his statement recorded before the police, wherein he gave a vivid account of the entire occurrence, including the role played by each of the accused including the petitioners. He has submitted that the alleged delay of two days in reporting the matter to the police had to be appreciated in the light of the fact that the first concern of the complainant, who was also the son of the deceased, in the circumstances, would have been to get his injured father shifted to the best medical facility for his treatment, rather than rush to the nearest Police Station for lodging an FIR. Learned counsel has submitted that it is also a matter of record that the complainant had accompanied his father not only to PHC Mamdot soon after the occurrence in question but to different hospitals, to which he was referred to for further management of his condition. It was thus evident

that the presence of the complainant at the place of occurrence could not be doubted. Learned counsel has further submitted that it was also a matter of record that the deceased was medico-legally examined without any delay, on the day of occurrence itself, at PHC Mamdot and it had been recorded in the MLR that the deceased had received injuries in an assault carried out on him, coupled with the fact that it was recorded therein that the probable duration of injuries was within six hours, which in turn coincided with the approximate time of the alleged occurrence.

9. Learned counsel has submitted that the contention of the learned counsel for the petitioners that Lachman Singh, brother of the deceased, who was an eyewitness to the occurrence, too could have reported the crime to the police but had not done so, thus, created a huge dent in the case of the prosecution, needs to be appreciated in the light of the fact that even as per the contents of the FIR, Lachman Singh was not present in close vicinity of the place of occurrence but had been attracted to the spot along with co-villagers on hearing hue and cry. However, by the time he reached the spot, all the accused had fled from the spot, along with their respective weapons. Hence, in the circumstances, Lachman Singh could not be said to be an eyewitness to the occurrence and it was the complainant and complainant alone, who was present at the spot when his deceased father was attacked by the accused party.

10. Learned counsel appearing for the petitioner in CRR No.2255 of 2019 has further vehemently argued that though the Trial Court had passed a perfectly just order in summoning the

petitioners as additional accused, however, it had fallen into error by dismissing the application under Section 319 Cr.P.C. qua respondent No.2-Sona Singh. He submits that Sona Singh too had been named in the FIR in question and at the time of occurrence, he was armed with a *sotta*. Learned counsel has submitted that no doubt, respondent No.2-Sona Singh had not been attributed any injury on the deceased, however, he too was part of the unlawful assembly; he along with the co-accused had come to the place of occurrence by sharing a common object.

11. I have heard the learned counsel for the parties and perused the relevant material on record including the depositions of the material witnesses, which has been annexed with the petitions.

12. The power under Section 319 Cr.P.C. being discretionary has to be exercised judiciously and after giving due regard to the facts and circumstances of each individual case. The object behind Section 319 Cr.P.C. is to ensure that no person, who *prima facie* appears guilty, escapes trial in relation to that guilt. Hence, if the investigating agency, for some reason, fails to array one of the person as an accused, the Court cannot be expected to remain a mute spectator, else it would frustrate the purpose behind Section 319 Cr.P.C. The Court, therefore, would be well within its powers to summon the accused to face trial as an additional accused under Section 319 Cr.P.C.

13. Adverting to the case in hand, the contention of learned counsel with respect to the alleged delay in lodging of the FIR and the said delay having been used to bring forth a fabricated version, is devoid of any merit. It is a matter of record that the deceased was

immediately shifted to PHC Mamdot by none other than the complainant himself, who also witnessed the occurrence in question. It is a matter of record that in view of the serious condition of the deceased, it was the doctors at PHC Mamdot, who referred him to GMCH, Faridkot. It is also a matter of record that the deceased was indeed admitted in GMCH, Faridkot, where on account of his serious condition, he remained in the ICU till his death on 28.10.2017. It also needs to be observed here that a DDR No.25 as per the admitted case of the petitioners was lodged qua the same occurrence, though on 28.10.2017. In the circumstances, not only the occurrence in question stands admitted but also the place of occurrence i.e. the fields of the complainant. The contention of the learned counsel that a DDR was lodged but was cancelled by the investigating agency on account of influence weilded by them deserves to be rejected precisely for the reason that strangely even though no serious injuries were sustained by the petitioners in the alleged occurrence, they still chose to keep mum for almost four days before recording their version by way of a DDR.

14. Be that as it may, the post-mortem report clearly reflects that the deceased had received the following injuries:-

Examination of External Injuries			
Sr. No.	Injuries	Marked	Injury Number
1.	Dark brown scabbed abrasion 3.6 x 2.4 cm present. Present on left temporoparietal region of head, 6cm above left ear pinna On dissection extra-cranial	Yes	1

	<i>Hematoma present on left temporo-parietal region and occipital region of head. Linear fracture of left parietal bone present, Infiltration of blood present on the fractured ends. On opening of cranial vault, Meninges tense and bulging. The midline of the cerebral hemispheres has shifted to right side. On opening the meninges sulci and gyri narrow and flattened, multiple petechial hemorrhages present on white matter. The right ventricle of cerebral hemisphere is compressed. The blood clot measuring 6 x 4.5 cm is present in the left cerebral hemisphere. On the circle of willis and other vessels of brain, No aneurysm is seen</i>		
2	<i>Stitched wound 1.2cm long with 2 white sutures in situ present on left side of head, 0.5cm below injury no.1</i>	<i>Yes</i>	2
3.	<i>Dark brown scabbed abrasion 2 x 1.8 cm present on left elbow joint</i>	<i>Yes</i>	3

15. *Prima facie*, the nature of injuries found on the person of the deceased does not appear to be the handiwork of a single accused

i.e. Gurmej Singh, else the nature of injuries would have been quite different.

16. It would also be relevant to refer to the deposition of PW-1 ASI Gurdial Singh, wherein he clearly deposed that on being telephonically informed qua the admission of the deceased at PHC Mamdot, the police went there but was told that the deceased had since been referred to GMCH, Faridkot, for further management. Not only this, brother of deceased, Lachman Singh had stated that his nephew i.e. the complainant had gone to arrange money for the treatment of his father and hence, it would be only he, who would be able to give a statement qua the occurrence in question. It would also be relevant to refer to deposition of PW-2 ASI Harmeet Chand, who too deposed on the same lines as PW-1 ASI Gurdial Singh.

17. As a sequel to the above, this Court is satisfied that there does exist sufficient *prima facie* evidence against the petitioners to warrant their summoning as additional accused under Section 319 Cr.P.C. The Court below cannot thus be faulted with for passing the impugned order dated 29.07.2019.

18. This Court does not also find any merit in the submissions made by learned counsel in CRR No.2255 of 2019 for summoning respondent-Sona Singh to face trial under Section 319 Cr.P.C. No role much less any injury has been admittedly attributed to respondent-Sona Singh. In the circumstances, summoning him to face trial under Section 319 Cr.P.C. would not meet the parameters laid down by the Hon'ble Supreme Court in *Hardeep Singh's case (supra)*.

19. Both petitions are accordingly dismissed.

20. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

21. Copy of this order be placed on the file of connected case.

August 18th, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes