

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 18th of October, 2023
Pronounced on 30th November, 2023

CRR No.1977 of 2023 (O&M)

Narender Kumar

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Partap Singh, Advocate
for the petitioner.

Mr. Gaurav Bansal, Dy. Advocate General, Haryana.

PANKAJ JAIN, J.

The petitioner has invoked revisional jurisdiction of this Court against order dated 12th of July, 2023 passed by Sessions Judge, Karnal whereby he has been summoned as an additional accused invoking Section 319 Cr.P.C.

2. FIR was registered on the statement made by Anjana Devi wife of Nand Kishore the deceased alleging as under :

“xxx I am resident of the above address and I do domestic work, I have two children one boy and one girl. I have studied upto to 10th Class. On 02.06.2022 at around 11.00 PM my husband Nand Kishore s/o Shiv Naryan aged 36 years was sitting on the ramp of the gate in front of our house, at the same time Narender s/o Dhan Kumar and his father Dhan Kumar, Narender who was carrying an axe his hand and Dhan Kumar who was carrying an iron rod in his hand, keeping an old enmity, Narender hit my husband Nand Kishore on the head with the axe holding in his hand, which hit him in the back of the head. My husband fell down after being hit by the axe. Dhan Kumar hit my husband on

the head, hands and on the eye with an iron rod which is holding in his hand. He gave 2-3 blows with the iron rod on the head of my husband and my husband fell down and become unconscious. I tried to save my husband but they did not stop. They kept on hitting my husband. Hearing the noise of the quarrel when the neighbor comes out the assailants ran away alongwith their weapons (jar-van). They also said that today he is saved but we will kill him in the future. We had a fight with Narender's brother a year ago which was settled. I and my brother in law Ram Kumar, took my husband to GH KNL for treatment where our MIR was given to us and because of the injuries my husband was referred to KCJMC KNL. Action should be taken against Narender Kumar and Dhan Kumar.xxx”

3. Report under Section 173(2) Cr.P.C. was filed and the present petitioner was not challenged. It was filed only against co-accused Dhan Kumar. After framing of charge, complainant appeared as PW-4 who reiterated the version recorded in the FIR. Application under Section 319 Cr.P.C. was moved which stands allowed vide impugned order.

4. Ld. Counsel representing the petitioner has attacked the order passed by the Trial Court asserting that the version as given by Anjana Kumari is wrong which is evident from the medico-legal report of Narender Kumar who himself suffered injuries. The medico-legal report has been placed on record as Annexure P-2. He further submits that the disclosure of accused Dhan Kumar was recorded and he confessed his crime and thus Trial Court without referring to the aforesaid evidence on record erred in invoking Section 319 Cr.P.C.

5. I have heard counsel for the petitioner and have carefully gone through records of the case.

6. The version as recorded in the FIR on the statement of Anjana Devi has already been reproduced hereinabove. Medico legal report of Nand Kishore-the deceased has been placed on record which reads as under :

Sr. No.	Injuries	Marked	Injury Number
1	A LACERATED WOUND OF SIZE 2.5 X 0.5 CM OVER MIDDLE PARIETAL REGION WITH FRESH BLEEDING ADV X RAY SKULL AND SURGEON OPINION	No	1
2	A LACERATED WOUND OF SIZE 2 X 0.5 CM ON THE RIGHT OCCIPITAL REGION WITH FRESH BLEEDING ADV X RAY SKULL AND SURGEON OPINION	No	2
3	A LACERATED WOUND OF SIZE 4 X 0.5 CM ON THE RIGHT OCCIPITAL REGION AND ANOTHER LACERATED WOUND OF SIZE 1.5 X 0.5 CM MEDIAL TO ABOVE MENTIONED INJURY ADV X RAY SKULL AND SURGEON OPINION	No	3
4	FRESH BLEED FROM THE LEFT EAR ADV X RAY SKULL AND ENT OPINION AND SURGEON OPINION	No	4

7. Anjana Devi while appearing as PW-4 reiterated the version of FIR stating as under :

“I have two children. On 2.6.2022 at about 11.00 PM, along with my husband Nand Kishore was sitting on the ramp in front of our house. In the meantime, Narender had come there with an Axe in his hand and attacked upon the head of my husband and caused injury in his neck. My husband Nand Kishore fell down. After that, accused Dhan Kumar also attacked upon my husband Nand Kishore with iron rod on his head, eyes and arms, repeatedly. I tried to save my husband from the clutches of accused. I raised hue and cry. On hearing the noise, neighbors came outside from their houses and on seeing them, both accused fled away from the spot with their respective weapons while extending criminal intimidation. My husband was serious and as such he was shifted to KCGMCH, Karnal, from where he was referred to PGIMER, Chandigarh, but | admitted my husband in Arvind Hospital, Karnal because I was unable to go in PGIMER, Chandigarh due to the serious condition of my husband. During treatment, my husband Nand

Kishore had died on 6.6.2022. Police recorded my statement Ex.P6 on 3.6.2022, which bears my signature at Point-A. Accused Dhan Singh is present in the court and I identify him. The other accused namely Narender, who inflicted injury with Axe upon my husband is not present in the court today.xxx”

8. Investigating Agency gave clean chit to the accused Narender Kumar. The reason assigned for granting such clean chit has been spelled out in the reply filed by way of affidavit of Veer Singh, HPS, Dy. Superintendent of Police, City Karnal, which reads as under :

“4. That the investigation of the case was also verified by Mukesh Kumar, the then DSP (HQ), Karnal on 13.08.2022, who during the course of investigation had joined the inhabitant/witnesses in the investigation and investigation qua the allegation made by complainant against Narender Singh was verified from them. As per investigation conducted by Investigating Officer and verified by DSP (HQ), Karnala, the allegations leveled by the complainant against Narender Kumar were not proved and no involvement of Narender Kumar was found in inflicting injuries to the deceased Nand Kishore and accordingly he was found innocent and he was kept in column No.2. Section 34 of IPC was deleted.”

8. Law with respect to Section 319 Cr.P.C. has been settled by Constitution Bench in the case of '**Hardeep Singh vs. State of Punjab**', **2014(3) SCC 92** holding that the test is of more than a *prima facie* case and further that the power under Section 319 Cr.P.C. has to be exercised with extreme caution. The observations made in Hardeep Singh's case supra were further reiterated by Apex Court in the case of **Sagar Vs. State of Uttar Pradesh & anr. (2022) 6 SCC 389** to hold as under :-

“9. The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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.”

10. Further Para 80 of the judgment passed in **Hardeep Singh's** case (supra) lays down that the evidence as enumerated under Section 319 Cr.P.C. means that the evidence which has come before the Trial Court. In the present case Deputy Superintendent of Police has given clean chit to the petitioner on the basis of the statements made by local residents. The complainant right from the very inception is specific and consistent in her version and has reiterated the allegations in the FIR when she appeared before the Trial Court. Her version w.r.t. suffering of head injury of the deceased by axe blow stands corroborated by the medical evidence.

11. In these circumstances, this Court finds that no fault can be found with the orders passed by the Trial Court invoking Section 319 of the Code summoning the petitioner as additional accused. Resultantly, the revision petition is dismissed.

November 30, 2023
Dpr

(Pankaj Jain)
Judge

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