

**CRR-1287-2018 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH****CRR-1287-2018 (O&M)**  
**Date of decision: 02.09.2024**  
... Petitioner

Ram Dayal

**V/s**

State of Haryana and others ... Respondents

**CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Ajit Singh Lamba, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

Mr. Ashwani Bhardwaj, Advocate  
for respondents No.2 to 4.

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**SUMEET GOEL, J.**

1. Present criminal revision petition has been filed against the order dated 12.03.2018 passed by Additional District & Sessions Judge, Fatehabad, in Sessions Case No.62 of 2017. Vide impugned order application filed by the prosecution under Section 319 of the Code of Criminal Procedure seeking summoning of the private respondents as accused in the above-mentioned sessions case pending adjudication before the Additional Sessions Judge, Fatehabad.

2. Facts of the case are that the daughter of the petitioner got married on 21.07.2013 to respondent No.4. Thereafter, the daughter of the complainant namely Devki, died an unnatural death on 21.11.2016. The complainant being the father of the deceased lodged an FIR No.364 dated 22.11.2016 at Police Station Bhattu Kalan, District Fatehabad, that his daughter was being harassed by

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her husband, father-in-law and mother-in-law in connection with the demand of dowry and due to non-fulfilment of their demands, they killed his daughter. After the lodging of the FIR against three persons under Sections 498-A, 406, 304-B of IPC, against three persons i.e. husband, father-in-law and mother-in-law of the deceased, the police investigated the case. In the final report filed by the police before the Court, only the husband of the deceased was forwarded as accused to face the trial in the case, and the parents-in-law of the deceased were declared innocent by the police in their final investigation report.

3. Prosecution, during the course of the examination of its witnesses in the case, examined the complainant, being the father of the deceased as PW-5 in the case. His Examination-in-Chief, was recorded by the Court on 06.03.2018. In his Examination-in-Chief the complainant reiterated his averments in the FIR. He stated that the accused husband, father-in-law and mother-in-law of his daughter were living together in a joint family. All the accused being dissatisfied with the dowry given to the deceased, used to harass and beat the deceased. He stated that the deceased's husband demanded a car, the father-in-law demanded Rs.2,00,000/- and the mother-in-law demanded a gold necklace. It is stated that in a panchayat so convened, Rs.50,000/- was paid by him to the accused with a request not to harass his daughter. He received a telephonic call from his daughter on 20.11.2016 that she should be taken from her in-law's house as she apprehended her death at the hands of the accused

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persons. On that day he was away and when he returned back to his home, the next day and was preparing to fetch his daughter from her in-law's house, his brother received a telephonic call from the father-in-law of her daughter, that they had done away with her daughter.

4. At the stage of recording of complainant's (petitioner herein) Examination-in-Chief, the prosecution moved an application under Section 319 of the Code of Criminal Procedure for summoning the father-in-law and mother-in-law of the deceased Devki as additional accused in the case.

5. While dismissing the said application, the trial Court primarily relied upon two aspects i.e. the father-in-law and mother-in-law were since residing separately from the deceased and her husband in a separate accommodation, therefore, the allegations against them make out no case against them. The trial Court while holding so based its findings on the rough site plan made by the investing agency, of the house of the accused, during the investigation of the case. The other aspect relied upon by the trial Court in its findings is that in such cases, there is a general tendency to involve all the relatives of the husband.

6. It is argued on behalf of the petitioner that the impugned order based on extraneous material in the shape of rough site plans is not sustainable. It is further submitted that the general finding given by the trial Court with regard to the tendency on the part of the complainant to rope in all the family members of the husband is not sustainable in view of the peculiar facts of the present case. It is

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submitted that the findings of the trial Court while dismissing the application under Section 319 of the Cr.P.C. are not based upon any tangible material collected by the police during the investigation of the case in favour of the accused and are based upon mere surmises and conjectures.

7. *Per contra* it is argued on behalf of the private respondents that the findings returned by the trial Court are well-reasoned and based upon the relevant material collected by the police during the investigation of the case. It is submitted that the police on the strength of the statements of persons aware of the facts of the case, under Section 161 of the Cr.P.C. have validly and legally exonerated respondents No.2 and 3 in the case as being innocent. It is submitted that the site plan Annexure P-2 having been prepared by the police in the presence of the Duty Magistrate, at the time of inquest proceedings under Section 174 of the Cr.P.C., as compared to the rough site plan prepared by the Investigating Officer of the case, in Annexure P-3, depicts the correct the true picture of the premises.

8. I have heard the learned counsel for the parties and perused the record of the case carefully.

9. Perusal of the rough site plan prepared by the investigating agency, as available in (Annexure P-3), page 40 of the paper book of the criminal revision petition makes it clear as crystal that the findings given by the trial Court regarding the separate residence of respondents No.2 and 3 (parents-in-law) from the respondent No.4 (husband) are wholly ill-founded and based on a

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misconception of the actual position as shown in the rough site plan. Bare perusal of the said rough site plan shows that the premises shown as separate residences of respondents No.1 & 2 vis-à-vis respondent No.3, comprise one common premises, having one common outer gate to their compound. From the outer gate firstly the entry to the portion allegedly occupied by the husband of the deceased is shown. Then further from the portion occupied by the husband of the deceased, the entry to the portion occupied by the parents-in-law of deceased is shown. It is pertinent that the entry to the portion occupied by the parents-in-law has an internal entry from the portion of the husband only. The entire premises comprise of one common Toilet and bathroom. No separate kitchens are shown in the said rough site plan. As such, the findings returned by the trial Court, that the respondents No.2 and 3 were having separate residence, as being result of complete mis-reading of the relevant material relied upon, are not sustainable in the facts and circumstances of the case. It is pertinent to mention that the above-mentioned rough site plan (Annexure P-3) made during the investigation of the case is materially different from another rough site plan prepared by the investigating agency and made part of the record of the case as available in (Annexure P-2) (page 38 of the present criminal revision petition). In this rough site plan two separate outer gates have been shown to the respective portions of respondents No.2 & 3 vis-à-vis respondent No.4. In this rough site-plan a partition wall is shown to be existing between the respective portions of the house occupied by

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them. However, a bare perusal of this rough site plan does not inspire confidence regarding its veracity as in the portion of the husband of deceased only 1 room (where the dead body of the deceased was recovered), besides a store for fodder and open space to tie the cattle is shown; whereas, in the portion falling to the share of parents-in-law of the deceased 5 rooms, a Courtyard, separate covered courtyard and kitchen are shown. Therefore, the portion of the premises shown to be as separate accommodation of the deceased with her husband does not withstand the scrutiny of plausibility and common prudence. Apart from this the rough site plan of the place of occurrence, submitted by the police, not being substantive evidence cannot be made basis to oust the contentions and allegations put forth on behalf of the complainant in his testimony made on oath in the Court.

10. Perusal of the impugned order further shows that a positive argument was raised before the trial Court that various witnesses namely Ram Singh, Dhara, Roshan, Krishan and Sharwan, whose statements were recorded by the police, specifically named the parents-in-law of the deceased as accused in the case with specific and clear allegations that they were responsible for the death of the deceased. Their statements were outweighed by the trial Court with the findings that Heera, Sunil Kumar, Duni Ram and Baldev in their statements to the police under Section 161 of Cr.P.C. have stated that the parents-in-law of the deceased had separate residence than the husband of the deceased. This novel finding returned by the trial Court, being absurd, is liable to be outrightly rejected. The trial

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Court at the stage of deciding the application under Section 319 of the Cr.P.C. cannot enjoin upon itself the task of conducting the mini-trial on the basis of statements made before the police under Section 161 of the Cr.P.C. which cannot even be categorized as “evidence” in a case, within the definition as given under Section 3 of the Indian Evidence Act, 1872.

11. The findings returned by the trial Court, that in such cases, there is a general tendency to involve all the relatives of the husband, being sweeping observations not based upon any relevant case material, rather being in stark contravention to the testimony of PW-5 made on oath, are simply not sustainable and are liable to be rejected. The obscure general tendency referred to by the Court is to be inferred in appropriate cases, necessarily from the attending circumstances of the case culled out from the admissible evidence, and not from some vague speculative statements and inadmissible material relied upon by the accused.

12. The plea of separate residence as taken up by respondents No.2 & 3, being a plea in the nature of alibi is to be substantiated on the strength of positive evidence in that regard during the trial. The Court cannot assume the said material fact in favour of the persons sought to be summoned as additional accused, merely based on bald assertions made before the police in that regard. It is an onus cast upon the accused to discharge the burden of their alleged plea of alibi by leading evidence in that regard during the trial. Especially, in view of my above findings wherein it is

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elaborated how two materially contrasting and contradictory rough site-plans of the place of occurrence have been prepared and relied upon by the police to exonerate respondents No.2 and 3 from the case. The police have not collected any other clinching document of sterling quality in the shape of separate electricity connection, ration card etc., to prove the factum of separate residence of respondents No. 2 & 3 from respondent No.4.

13. In view of the above findings a clear higher than prima facie case is made out for the summoning of the respondents No.1 and 2 in the case as additional accused to face the trial. Accordingly, the impugned order passed by the trial Court rejecting the application filed by the prosecution under Section 319 of the Cr.P.C. is set aside. Respondents No.2 & 3 are directed to be summoned as additional accused to face the trial in the above-mentioned sessions case.

14. Pending application(s), if any, shall also stand disposed of.

**(SUMEET GOEL)**  
**JUDGE**

September 02, 2024  
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No