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application under Section 319 Cr.PC filed by him for summoning respondents No.2 to 8 as an additional accused was dismissed.

2. Vide order dated 28.02.2022, petition qua respondents No.7 and 8 was dismissed as not pressed. Furthermore, learned counsel has submitted before the Court that he would also not press the present petition against respondent No.6 Munni and the same may be disposed of as such.

3. **Submissions by learned counsel for the petitioner-complainant**

- (i) That the impugned order dated 13.04.2018 (Annexure P-1) passed by Addl. Sessions Judge, Charkhi Dadri vide which the application moved by the complainant under Section 319 Cr.PC for summoning respondents No.2 to 8, as additional accused, on the face of it, comes across as a flawed order as it is contrary to both the law pertaining to summoning of an additional accused under Section 319 Cr.PC, as well as facts on record;
- (ii) That FIR in question (Annexure P-2) was lodged by the complainant against 15 persons, including respondents No.2 to 8; the FIR not only named all the private respondents but there were specific allegations levelled against all of them including the private respondents that they had actively participated in the occurrence in question by being members of an unlawful assembly, in



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which Jagat Narain (hereinafter referred to as 'deceased') was inflicted fatal injuries by them;

- (iii) That the deceased, as per post-mortem report, sustained 18 injuries which left no manner of doubt that it was a well coordinated and collective attack carried by all the accused including the respondents, who came to the spot armed with lethal weapons in a tractor trolley and thereafter launched an unprovoked attack on the complainant party;
- (iv) That the nature and number of injuries also strongly suggests the involvement of multiple assailants. In support, learned counsel has drawn the attention of this Court to the FIR, which has been annexed as Annexure P-2;
- (v) That despite explicit allegations levelled in the FIR in question, which was lodged promptly, leaving out any chances of fabrication, the investigating agency arbitrarily chose to keep respondents No.2 to 8 in Column No.2 of the chargesheet. This exclusion was done by the investigating agency even though there was *prima facie* ample evidence implicating these private respondents;
- (vi) That the investigating agency while filing the challan and excluding the private respondents from it, had ignored crucial evidence.



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- (vii) That during trial, when the complainant stepped into the witness box as PW-1, he reiterated all the allegations levelled in the FIR in question including the role played by each of the accused including the respondents. In support, attention of the Court has been drawn to the testimony of the complainant, who was also an eyewitness to the occurrence in question, and it has been asserted that it left no manner of doubt that it aligned with the allegations levelled in the FIR;
- (viii) That the trial Court also failed to adequately consider that all the accused including the private respondents, were members of an unlawful assembly and had collectively attacked the deceased, resulting in his death from 18 injuries. Additionally and most pertinently, three other persons, who were present at the place of occurrence i.e. Rajbir, Deepak and Ashwani Kumar also sustained injuries in the alleged occurrence, and they were promptly removed to the hospital for their treatment, further corroborating the involvement of multiple attackers.

A prayer has, therefore, been made by learned counsel that in view of the consistent testimony of the petitioner-complainant, who was an eyewitness to the occurrence in question and who had reiterated all the allegations levelled in FIR in question, without there being any material improvements, the impugned order whereby the Trial Court had



failed to exercise its discretion judicially, under Section 319 Cr.PC, had resulted in grave miscarriage of justice deserved to be set aside and the private respondents summoned as additional accused to face trial.

4. **Submissions by learned counsel for the respondents**

- (i) That the parties have a history of strained relations, which obviously has motivated the complainant to come up with a concocted and highly improbable account of the occurrence in question. The narrative as given out by the complainant, both while lodging the FIR as well as during his testimony, before the trial Court, is a blatant attempt to implicate as many people as possible from the opposite side including women, by assigning roles and injuries to nearly all the alleged assailants.
- (ii) That the investigating agency conducted a thorough investigation after the crime in question was reported to it. It was only following a comprehensive investigation, the challan was presented against those accused, who allegedly participated in the crime in question;
- (iii) That the trial Court while passing the impugned order, correctly observed that the number of injuries sustained indicated that the private respondents could not have inflicted those injuries; had they done so, the number of injuries would have then been significantly higher.
- (iv) Additionally, the presence of the complainant at the scene of the alleged occurrence is also highly doubtful,



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as he did not sustain a single injury on his person. Learned counsel has, thus, prayed for dismissal of the instant petition as the impugned order does not suffer from infirmity and thus, does not warrant any interference.

5. Heard learned counsel for the parties and perused the relevant material available on record including the contents of the FIR (Annexure P-2) as well as deposition of complainant while stepping into the witness box as PW-1.

6. Before proceeding further, it needs to be reiterated that Section 319 Cr.PC is rooted in the doctrine “*Judex Damnatur Cum Nocens Absolvitur*”. Hon’ble the Supreme Court in ***Hardeep Singh vs. State of Punjab, 2014(3) SCC 92*** while underscoring the object behind Section 319 Cr.PC ruled that for application of Section 319 Cr.PC, there must be evidence stronger than mere probability against the new accused, yet not necessarily so conclusive as to guarantee conviction. This Section ensures a balance between the rights of the accused and the necessity of punishing the guilty. Hon’ble the Supreme Court also emphasised that since the power under Section 319 Cr.PC is both extraordinary and discretionary, therefore, it must be exercised sparingly.

7. Adverting to the present case, it would be apposite to reproduce the contents of the FIR in question, which are as under:

“Statement of Arun Kumar s/o Roshan Lal, caste Brahman resident of Ghasola, aged about 32 years, education +2, M – 9812498121 stated that I am resident of abovesaid address and I am an agriculturist.



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Today, on 10.06.2017, I and Jagat Narain s/o Sewa Ram, Deepak s/o Sewa Ram, Ashwani s/o Manphool Chand and Rajbir s/o Manphool Chand, caste Brahamn, residents of Ghasola, we had gone to our fields. I was irrigating the fields. Deepak, Jagat Narain, Ashwani and Rajbir were harvesting the jawar crop in the field, time about 9.30 am, Tek Ram s/o Chiman Lal, Raghubir s/o Chiman Lal, Vinod s/o Raghubir Singh, Surender s/o Chiman Lal, **Baljit** s/o Rattan Singh, **Sahil** s/o Baljit, Sujit s/o Randhir, Sumit s/o Randhir, **Mange Ram** s/o Hari Singh, Ramesh s/o Chiman Lal, **Kapil** s/o Ramesh, Munni wife of Tek Ram, Jarmani w/o Raghbir, wife of Vinod, Sunita w/o Surender, caste Jat resident of Ghasola entered into our fields in a tractor trolley, tractor Mark 265 Mahindera and they were having axe, rapri, jelli and dandas in their hands, in connivance with each other they have attacked upon with axe, rapri, jelli and dandas. Tek Ram s/o Chiman Lal, Munni w/o Tek Ram, Raghbir s/o Tek Ram, Raghubir s/o Chiman Lal, Vinod s/o Raghbir, Surender s/o Chiman made circle around Jagat Narain, Tek Ram gave axe blow in the head of Jagat Narain, Munni w/o Tek Ram hit a rapri in the head of Jagat Narain, Raghbir gave axe blow to Jagat Narain. Vinod s/o Raghubir was having an axe in his hands, he also gave axe blow to Jagat Narain, Surender was also having axe, who also gave injuries to Jagat Narain, we started rescue then Baljit s/o Rattan Singh, Sahil Singh s/o Baljit, Sumit s/o Randhir, Sujit s/o Randhir, Mange s/o Hari Singh, Ramesh s/o Chaman Lal, Kapil s/o Ramesh, who were having jelli, dandas and axe in their hands gave injuries to Deepak s/o Sewa Ram, Ashwani s/o Manphool Chand and Rajbir s/o Manphool Chand. Jarmani w/o Raghbir, who was having rapri, gave



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injuries to Jagat Narain, Sunita w/o Surrender and the wife of Vinod were also having rapri, who also gave injuries. Deepak, Ashwani and Rajbir can told about the fact that who have given injuries to them and by which weapon. We save our life by running from there and Jagat Narain fell and was found in the pool of blood in the fields. Thereafter, all the accused persons left the spot along with their respective weapons after giving threat to kill us, therefore, I managed a vehicle and took all of the abovesaid persons to Govt. Hospital, Charkhi Dadri and got them admitted there. Doctor had referred Jagat Narain and Ashwani to PGIMS, Rohtak and Rajbir and Deepak were referred to Govt. Hospital, Bhiwani. I along with my family members brought Jagat Narain at PGIMS, Rohtak where doctor had declared Jagat Narain dead and Ashwani is being treated at PGIMS, Rohtak.”

8. It would also be apposite to reproduce the contents of the deposition of complainant while stepping into the witness box as PW-1, which are as under:

*“Stated that on 10.06.2017, at about 9.30 am, I along with Deepak s/o Sewa Ram, Jagat Narain s/o Sewa Ram, Rajbir s/o Manphool Chand and Ashwani s/o Manphool Chand were present in our field in village Ghasola. I was irrigating the fields and remaining person accompanied with me were harvesting the jawar crop. At that time, Tek Ram s/o Chiman Lal, Raghubir s/o Chiman Lal, Surrender s/o Chiman Lal, Ramesh s/o Chiman Lal, Vinod s/o Raghubir Singh, **Baljit** s/o Rattan Singh, **Sahil** s/o Baljit, Kapil s/o Ramesh, Sujit s/o Randhir, Sumit s/o Randhir, Mange*



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*Ram s/o Hari Singh, Munni w/o Tek Ram, Jarmani w/o Raghubir, Priyanka w/o Vinod, Sunita w/o Surender, all residents of village Ghasola came in our fields in the tractor trolley. All were armed with weapons. Tek Ram, Raghubir, Vinod and Surender were armed with kulhari, Jarmani, Munni, Sunita and Priyanka were armed with rapri (cutting instruments). **Baljeet, Mange Ram, Sujeet, Ramesh** were armed with jelli. **Kapil, Sahil and Sumit** were armed with dandas. Accused encircled Jagat Narain from all sides. Tek Ram gave a kulhari blow on the head of Jagat Narain. Thereafter, all accused mentioned above caused injuries to Jagat Narain (since deceased) on all parts of his body with their respective weapons. When we intervened, then all the accused caused injuries to Rajbir, Deepak and Ashwani with their weapons. Thereafter, all accused fled away from the spot along with their weapons while giving threat to kill us. Thereafter, I arranged the conveyance and took all the injured to Govt. Hospital, Bhiwani. Jagat Narain and Ashwani were referred to PGIMS, Rohtak. On reaching PGIMS, Rohtak, Jagat Narain was declared dead by the doctor. Thereafter, police came in PGIMS, Rohtak at about 3.00/3.30 pm and recorded my statement which is Ex.P1, which bears my signature at Point-A. Due to the injuries received in the above said occurrence, Jagat Narain has died. The reason of enmity is that there is a land dispute with all the above said accused persons."*

9. A perusal of the contents of both FIR as well as deposition of the complainant leaves no manner of doubt that the case of the persons i.e. private respondents, who were placed in Column No.2, is



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indistinguishable from those who have been charged and are presently facing trial. All of these accused including the private respondents were explicitly named in the FIR, which was promptly lodged attributing specific roles to them in the occurrence in question. According to the allegations in the FIR, all the accused persons including the private respondents were members of an unlawful assembly, who arrived at the scene of crime in tractor trolley, armed with lethal weapons and *prima facie* sharing a common objective.

10. The trial Court's observations while passing the impugned order are fundamentally flawed and perverse. The conclusions drawn by the trial Court while deciding the application under Section 319 Cr.PC – that the injuries sustained by the deceased and the three injured witnesses were solely attributed to the already challaned accused, and that some of the accused, despite being armed did not inflict any injury, thus, rendering their involvement in the crime improbable - are erroneous to say the least. Additionally, the trial Court's observations that the absence of any injuries on the complainant, who allegedly witnessed the crime, diminishes the credibility of the accusations is also misguided.

11. It is imperative to emphasise that to attract the mischief of an offence under Section 149 IPC, two essential elements must be present. Firstly, *prima facie* all the accused individuals shared a common objective and were a part of an unlawful assembly, demonstrating that the group had a unified illegal purpose and that all accused were active participants in this group. Secondly, that these individuals were aware that committing



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certain offences was a probable consequence of achieving this common objective.

12. Under Section 149 IPC, if any member of an unlawful assembly commits an offence in furtherance of the common objective of the group, all individuals present as member of the assembly at the time of the offence are equally liable, regardless of whether they directly committed the offence or inflicted any injury or not. Hon'ble the Supreme Court in ***Yunis vs. State of Madhya Pradesh, 2003 (1) SCC 425*** has unequivocally held that an individual can be held liable under Section 149 IPC even without committing any overt act. This principle underscores the collective responsibility of the members of an unlawful assembly and the importance of their shared common objective in establishing liability.

13. *Prima facie*, based on the contents of the FIR and the testimony of the complainant, who not only claimed to have witnessed the occurrence but also authored the FIR, the impugned order warrants being set aside. The petitioner during his testimony reaffirmed the contents of the FIR without any alterations and explicitly mentioned the presence of the private respondents at the time of the alleged crime. This consistent and corroborative evidence at this stage while deciding an application under Section 319 Cr.PC does indeed strengthen the case of the prosecution against the private respondents, thereby justifying the setting aside of the impugned order.

14. Accordingly, the instant petition is allowed qua respondents No.2 to 5 and the impugned order dated 13.04.2018 passed by Addl. Sessions judge, Charkhi Dadri is hereby set aside. Respondents No.2 to



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5 are ordered to be summoned as additional accused to face trial in FIR No.275 dated 10.06.2017 registered under Sections 147, 148, 149, 302, 323 and 506 IPC at Police Station Sadar Dadri, Charkhi Dadri.

15. Disposed of accordingly.
16. It is clarified that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

22.05.2024
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No