



CRR No. 1391 of 2024

110 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 1391 of 2024

Date of Decision: 16.09.2024

Bhima Nath

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Ms. Swati Batra, D.A.G., Punjab.

ANOOP CHITKARA, J.

1. Aggrieved by dismissal of application under Section 319 CrPC, the petitioner has come up before this Court.

2. There is a delay of 653 days in filing the present revision petition. On 30.07.2024, this Court had passed an order that respondents No.5 and 6 are unnecessary parties as such they be deleted from the array of parties, however this Court is of the opinion that there was no necessity to delete their names, as such that portion of the order is re-called. On the same date, this Court had asked the State to supply copy of report under Section 173 CrPC. Today, the State counsel has handed over the police report under Section 173 CrPC and the same is taken on record.

3. To ascertain whether sufficient grounds exist in the delay application and also that if hypothetically the delay is condoned, whether it is a case worth issuing notice, I have heard counsel for the parties and have gone through the pleadings and its analysis would lead to the following outcome. Perusal of the delay application mentions the delay for 653 days only because the petitioner is poor and due to paucity of funds, he could not approach this Court. This reason is inadequate because the petitioner can always have availed the legal aid facility due to paucity of fund, however this aspect is yet to be examined with the merits and allegations so that if the allegations are found to be serious then this Court can still consider the paucity of fund as a circumstance.

4. Petitioner's grievance is that despite his warning, the private respondents had invited some persons and their presence led to the unfortunate incident.



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5. The police report under Section 173 CrPC supplied by the State counsel reads as follows:-

"The brief facts of the case are as follows: On 06-10-2021, INSP along with ASI kamaljit Singh No.05/Barnala, HC Rajwinder Singh No.220/Barnala, SC Lakhwinder Singh No.443/Barnala were patrolling on government vehicle No. PB 19 F 1215 whose driver is CT Gurbhinder Singh No.972/Barnala were present at three cornered point, Bhadaur where night Munsif SC Sandeep Singh No.744/Barnala informed via mobile phone that Pappu Nath son of Vajira Nath resident Bhadaur is admitted at a CHC Bhadaur for treatment due to injuries sustained in altercation. On which I along with police team rushed to CHC Bhadaur where the doctor declared that Pappu Nath has died during the treatment and handed over an MLR number MS/13/BHD/2021 of deceased Pappu Nath in which a total of 05 injuries were recorded and all were kept for KUO. Then I sent a written request to keep the body of deceased Pappu Nath in dead house Civil Hospital Barnala under monitoring of CT Gurbhinder Singh No. 972/Barnala to and the body was sent to dead house CH Barnala. Then Bhima Nath, along with his uncle Jarnail Nath and others, recorded his statement as follows "That I am a resident of the said address and I work as a driver. My father's name is Pappu Nath and is aged about 55 years and mother's name is Swarna, we are 05 brothers and sisters, elder sister Rupinder who is married to Soni alias dumb son Saria Nath r/o grain market Dhanola, younger brother Ganesh Nath who works as a labourer, the sister younger to him is Pinky who is married to Dharamvir Nath son of Billu Nath resident of Bhikhi, the youngest sister is Heena who is married to Vir Nath son of Gurmeh Nath resident of Anaj Mandi Dhanola. That on 05-10-2021 there was a jagran of Kali Mata in our mohalla. It was around 11:00 p.m. that my father Pappu Nath was coming home to after attending the Jagran, then Happy Nath son of Gaggi Nath, Ajay Nath son of Omi Nath both r/o Anaj Mandi Dhanola who came to meet Shonki Nath, Bhaktu Nath both sons of Malkit Nath and Charno wife of Late Jant Nath all residents of Nanaksar Road Bhadaur, stopped my father Pappu Nath on the way and started beating him. The news of which was given to me by my uncle's son Khanna Nath, son of Nimbu Nath, so I ran to my father Pappu Nath, then I went and saw that both the persons forcefully took my father on the roof of house of Salim Nath son of Kadha Nath. That while I was watching, the two persons pushed my father Pappu Nath from the roof of the house and threw him down. When I went and picked up my



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father, he was not in senses and his neck was broken, then I and my uncle's son Khanna Nath admitted him for treatment to the Government Hospital, Bhadaur, where the doctor declared my father dead during the treatment. My father's death was caused by Shonki Nath, Bhaktu Nath sons Malkit Nath and Charno wife Late Janta Nath resident of Nanaksar Road Bhadaur by deliberately inviting in their house Happy Nath son of Gaggi Nath. Ajay Nath son of Omi Nath resident near Anaj Mandi Dhanola. The motive behind the occurrence is that my sisters Rupi and Heena who are married at Dhanola were earlier beaten up by Happy Nath, whom we asked to apologize in our panchayat, nursing this grudge Happy Nath son of Gaggi Nab, Ajay Nath son of Omi Nath resident near Anaj Mandi Dhanola in collusion with Shonki Nath, Bhagtu Nath son Malkit Nath and Charno wife Late Jant Nath resident of Nanaksar Road Bhadaur beaten my father and killed him by throwing him from the roof of the house. Today I got recorded my statement to you along with my uncle Jarnail Nath son Vajira Nath in the government hospital, which I have heard and found correct. Action should be taken against these persons." Word by word of the statement is read out to Bhima who after listening believed it to be true and put his left thumb under his statement and Jarnail Nath put his left thumb in attestation of the statement. The statement was verified by INSP. From the perusal of the statement and the MLR prima facie the offense under 302, 341, 120 B IPC is made out. The statement against Happy Nath son of Gaggi Nath, Ajay Nath son of Omi Nath Vasian near Anaj Mandi Dhanola, Soki Nath, Bhaktu Nath. Son Malkit Nath and Charno wife Late Jant Nath resident of Nanaksar Road Bhadur sent through SC Lakhwinder Singh No. 443/Barnala to Bhadaur police station and got the case registered. Then I, along with my fellow officials, arrived at the place of occurrence and prepared a rough site map at the instance of complainant Bhima. Then I recorded separate statements U/s175 Cr.P.C. of Prakash Nath son of Rajha Nath resident of Bhikhi District Mansa, Nimunath son of Vajira Nath resident of Nanaksar Road Bhadur. The dead body of was inspected and Pappu Nath filed Form No. 25, 35 (1) in inquest proceedings.d. Then I prepared the documents and handed it over to CT Gurbhinder Singh No. 972/Barnala and after post-mortem dead body was handed over to relatives. Then CT Gurbhinder Singh No. 972/Barnala after conducting the postmortem, produced before me a parcel of visra of the said deceased Pappu Nath which is duly sealed with 16 seal bearing impression LG with along with sample seal slip and a sealed envelope duly sealed with 6 seal bearing LG addressed To the



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office of chemical examiner Punjab Govt. Kharar Containing 1. Copy of police papers (1-38) 2. Copy of MLR, 3. Sample seal, 4. Requisition Form written on the same and the parcel containing deceased Pappu Nath's clothes duly sealed with seals bearing impression LG along with Sample seal slip and computerised copy of post-mortem report bearing no.LG/KC/DM/1/2021CH BNL receipt of dead body were produced before me which was taken into possession by a separate memo on which CT Gurbhinder Singh No. 972/Barnala put his signatures in token of producing the same and HC Rajwinder Singh attested the same. Then statement of witnesses under Section 161 Cr.P.C were recorded. Then on return to the police station case property as per memo was got deposited with M.H.C Harpreet Singh No. 582/Barnala in the Malkhana of police station. Then on 07-10-2021 1 including ASI Bhola Singh No. 502/Barnala, HC Rajwinder Singh No. 220/Barnala, Lady SC Kamaljit Kaur 921/Barnala on an official vehicle bearing No. PB 19 F 1215 which was driven by CT Iqbal Singh No. 83/Bnl in search of accused and investigation was present at three cornered spot, Bhadaur where a secret informer informed me that the two accused whom you are looking namely Happy Nath son of Gaggi Nath who was wearing a black t-shirt and black jeans and Ajay Nath son Omi Nath wearing orange lower and pink T-shirt of r/o Anaj Mandi Dhanaula who are going on foot from Nainewal village to Sandhu Kala village. That on which two persons with the same demeanor as reported by the informant were apprehended by me with the help of police party. On inquiring about their particulars the person in the black T-shirt gave his name as Happy Nath son of Gadi Nath rio near Anaj Mandi Dhanaula, and the person in the pink T-shirt gave his name as Ajay Nath, son of Omi Nath resident of Anaj Mandi Dhanaula. Then I informed above stated accused about the nature of allegations against them and arrested them. On personal search of the accused no cash or valuables were recovered. As per the wish of the accused the intimation of their arrest was given to one namely Vicky ro Dhanola on his mobile number 94175-06095. A separate memo Arrest, personal search memo and arrest Intimation memo were prepared which were signed by accused Happy Nath in Punjabi and accused Ajay Nath put his left thumb impression and was duly attested by ASI Bhola Singh No. 502/Barnala and HC Rajwinder Singh. No. 220/Barnala. Then on return to Bhadaur police stations, accused were confined in police lock up. Then on 08-10-2021, accused Happy Nath and Ajay Nath were produced in the Ld. Court and 03 days police remand was obtained. That on dated 08-10-2021 MHC Harpreet



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Singh No. 582/Barnala handed over an envelope duly sealed with 6 seal bearing impression LG addressed to the office of chemical examiner Punjab Govt. Kharar Containing 1. Copy of police papers (1-38) 2. Copy of MLR 3. Sample seal 4. Requisition Form written on the same, to CT Gurbhinder Singh No. Vide road number 218 dated 08-10-2021 to be deposited for analysis in the office of chemical examiner Kharar. Then on 09-10-2021 1 including HC Rajwinder Singh No. 220/Barnala, SC Simarjit Singh No. 198/Barnala, SC Lakhwinder Singh 443/Barnal and LSC Kamaljit Kaur 921/Barnala on Government vehicle No. PB 19 F 1215 driven by CT Gurbhinder Singh No. 972/Barnala was present in connection with search of accused at three cornered point, Bhadaur where on a secret information I with the help of fellow police party apprehended a woman and two persons near Miri Piri college, Bhadaur On enquiring the woman gave her name as Charno wife Late Jant Nath resident of Nanaksar Road Bhadaur and the first person without headgear gave his name as Ashoki Nath alias Shonki Nath son of late Malkit Nath and the second one as Bhaktu Nath son of Malkit Nath resident of Nanaksar Road Bhadur. Then on investigation accused Charno was arrested in the case and keeping in view her modesty her personal search was conducted through L/SC Kamaljit Kaur No. 921/Barnala from whom no cash or valuables were recovered. According to her wish, her arrest notice was given to Jasvir Singh Dhammi son of Gurnam Singh, a resident of Bhadaur, on his mobile number 98761-06507. A separate memo Arrest, personal search memo and arrest intimation memo was prepared, accused Charno put her right thumb impression and was duly attested by LSC Kamaljit Kaur No.921/Barnala and HC Rajwinder Singh. No. 220/Barnala. Then on investigation accused Ashok Nath Shouunki and Bhagtu Nath were arrested in the case and were personally searched from whom no cash or valuables were recovered. According to their wish, intimation of their arrest was given to Jasvir Singh Dhammi son of Gurnam Singh, a resident of Bhadaur, on his mobile number 98761-06507, Arrest memo, personal search memo and arrest intimation memo was prepared, which was duly signed by accused Ashoki Nath in English and by accused Bhagtu Nath in Puniabi and were duly attested by L/SC Kamaljit Kaur No.921/Barnala and HC Rajwinder Singh. No. 220/Barnala. Statements of witnesses were recorded. Then on return to the police station accused were confined in police lockup. Then on 10-10-2021, accused Charno, Bhagtu Nath and Asoki Nath were produced in the Ld.Court and 03 days police remand was obtained. Then on 11-10-2021, accused Ajay Nath and Happy



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Nath were produced in the Ld. Court and in compliance with orders of Ld. Court they were confined in District Sangrur. Then on 12-11-2021 an application No. 2864/VP dated 09-10-2021 moved by Raj Rani to worthy SSP Barnala regarding declaring her sons Ashok Nath, Bhaktu both sons of Malkit Nath r/o Bhadaur. In FIR No. 81 dated 06-10-2021 u/s 302, 341, 120-B IPC registered at PS Bhadaur Police Station and an application No. 48/LPC/DST dated 11-10-2021 moved by Amar Nath son of Major Nath resident of Bhador regarding declaring her aunt Charno wife late Jant Nath, a resident of Nanaksar Road, Bhadur, in the above case to the worthy DSP S.D. Tapa was received for investigation, which were investigated while carrying out the investigation of the case, statements of Raj Nath, son of Sadh Nath, Nanaksar Road, Bhadaur, Buntty son of Birbal Nath resident of Ward No. 03 Bhadaur, Didar Nath son of Mangatu Nath resident of Bhadaur, Shonki Nath son of Buta Nath resident of Nanaksar Road Bhadur, Sath Nath son of Banda Nath resident of Nanaksar Road Bhadaur, Amar Nath son of Major Nath resident of Nanaksar Road Bhadaur, Bikar Nath son of Sadh Nath resident of Nanaksar Road Bhadaur, Jagan Nath son of Banda Nath resident of Nanaksar Road Bhadaur, Major Nath son of Kurshed Nath resident of Nanaksar Road Bhadaur, Manish Kumar Garg President Municipal Council, Bhadaur, Gurdeep Kumar son of Suraj Bhan President Chamber of Commerce Bhadaur, Sukhcharan Singh MC Ward No. 11 Son of Bant Singh Resident of Mohalla Nainewal Bhadaur, Vakil Singh MC Ward No. 10 Resident Near Peerkhana Visakhi Road Bhadaur, Gurpal Singh MC Ward No. 06 Son of Gurdev Singh Resident of Maljuke Rond Bhadur. Lath Singh MC Ward No. 02 Resident of Gurdev Singh Talwandi Rond Ithadanir. Amarjit Singh son of Gurdev Singh resident of Gharuye Da Vihara Bhadaur, halveer Singh son of Ujagar Singh resident of Mohalla Naineswal Bhadaur, Nahar Singh MC Ward No. 12 son of Nikka Singh rio Mohalla Godara Bhadaur, Sanjeev Kumar son of Tarsem Kala, incumbent business Board Bhadaur, Makhan Singh son of Kartar Singh, resident of Bhadaor and Prakash Singh son of Sukhdev Singh President Bhagat Ravidas Welfare Committee, Bhadaur were involved in the present case and their statements under Section 161 Cr.P.C were recorded separately and on the basis of technical evidence and other evidence on record accused Charno, Asoki Nath and Bhagtu Nath were not found to be included in the offence. A separate report was prepared regarding the said application and sent to the senior officers. Then on 13-11-2021, I produced Charno, Asoki Nath and Bhagtu



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Nath in the Ld. Court and obtained 02 days police remand. Then on 15-11-2021 worthy SSP Sahib agreed to the report of DSP Sahib regarding both the above stated applications as such accused Charno, Asoki Nath and Bhagtu Nath were declared innocent and offence U/s 120-B IPC was reduced and offence U/s 34 IPC was enhanced. Accused Charno, Asoki Nath and Bhagtu Nath Uttan were produced in the Ld. Court and got released from the custody. Then on 23-11-2021 a scaled site plan of the house of Salim Nath was got prepared from the concerned patwari of the area and attached with the record. His statement under Section 161 Cr.P.C was recorded. Salim Nath was joined investigated his separate statement under Section 161 Cr.P.C. That the case property which was deposited in the office of Chemical examiner vide Road No. 218 dated 08-10-2021 through CT Gurbhinder Singh No. 972/Barnala the result report of the same has been received as per which "No Poison detected in the content of exhibit I, II, III, IV & V". Regarding the same opinion was sought from the concerned doctor who opined, "The cause of death in this case is spinal cord Injury at the level of Cervical which is sufficient to cause death in its ordinary course of Nature". The copy of which is attached. That the investigation is completed qua accused Happy Nath son of Gaggi Nath, Ajay Nath son of Omi Nath both r/o near BHADAUR Anaj Mandi Dhanaula, and the evidence to substantiate charges U/s 302, 34 IPC are present on record. Report in the form of U/s 173 Cr.P.C, is presented in the Ld. Court and is requested that against accused Happy Nath son of Gaggi Nath, Ajay Nath son of Omi Nath, r/o Anaj Mandi Dhanola witnesses in the coloum no. 6 as per the list attached. Are bound to give evidence, who can be summoned and from their evidence appropriated sentence may pronounced against accused Happy Nath son of Gaggi Nath, Ajay Nath son of Omi Nath both r/o near Anaj Mandi Dhanaula."

6. An analysis of the report under Section 173 CrPC clearly mentions that the DySP had given a detailed report regarding lack of evidence against Charno, Shoki Nath and Bhagtu Nath who were declared innocent and the said report was accepted by the concerned SSP. Subsequently, all these three persons were released from the custody. During the trial, complainant appeared as PW6 and made statement again involving them. The relevant portion of the statement reads as follows:-

"On 3.10.2021, there was meeting at Kali Mata Temple at Bhadaur of our Jogi Nath Baradari regarding Jagran of Mata. I and my father asked to Shoki Nath, Bhagtu Nath and Charno in



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the presence of Ganesh Nath, Malta Nath, Kamla Rani, Jarnail Nath not to invite Happy Nath and Ajay Nath in the Jagrata. Shoki Nath and Charno and Bhagtu Nath told that Happy Nath and Ajay Nath would definitely come in the Jagrata even though murder of any person be committed. Today I identify Happy Nath and Ajay Nath through video conference.”

7. Based on this portion of the statement, petitioner had filed an application under Section 319 CrPC which was dismissed vide the impugned order dated 02.08.2022. The Sessions Judge while dismissing the said application referred to the statement of PW6 and did not issue summons against the proposed accused persons because the eye witnesses as well as the complainant were duly investigated and only Happy Nath and Ajay Nath were found to be involved as per the Sessions Judge. The concerned Sessions Judge was also of the opinion that no new material was brought on record to point out towards any subsequent development implicating the absolved accused and it was opined that the material collected was not adequate to connect the accused who were sought to be summoned. I have independently gone through the report, FIR and statement of PW6. Even if Charno, Asoki Nath (Shoki) and Bhagtu Nath had insisted on calling Happy Nath and Ajay Nath and murder was committed, it would not mean that they actually intended to cause murder. In such community functions sometimes because of the inflated ego or biases of group the temperament do run high and people make such statement. The investigation did not find any involvement or criminal conspiracy of these three people and inquiry conducted by senior officer/gazetted police officer i.e. DySP absolved all three of them. The said report have been perused by Superintendent of Police.

8. Given above, it is not a petition worth calling for the reply or issuing notice to the accused.

9. Petition stands dismissed. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

16.09.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.