

Balbir Kaur Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Jan-09-2012

Judge : Rakesh Kumar Garg

Appeal No. : Crl. Revision No. 62 of 2012 (O&M)

Appellant : Balbir Kaur

Respondent : State of Punjab

Judgement :

Rakesh Kumar Garg, J.-

The petitioner who has been summoned as additional accused under Section 319 Cr.P.C. to stand trial in FIR No.165 dated 20.10.2010 under Section 306 IPC, P.S. Model Town, Hoshiarpur has filed the instant petition challenging the impugned order dated 16.8.2011 passed by the Additional Sessions Judge, (Ad hoc), Fast Track Court, Hoshiarpur.

2. According to the averments made in this petition, the son of the petitioner namely Hardeep Kumar was married to Navjot Kaur on 11.10.2009 and after the marriage, her son and daughter-in-law were residing separately from her in Railway quarters L-II at Pathankot. On 19.10.2010, a minor dispute took place between Hardeep Kumar and her daughter-in-law namely Navjot Kaur over meals and when Hardeep Kumar came back from his duty, he found that Navjot Kaur had hanged herself with a dupatta with the roof of the verandah. Hardeep Kumar

without wasting any time, took Navjot Kaur to Civil Hospital, where doctors declared her dead. In the inquiry, the Inquiry Officer mentioned that except the husband and wife, nobody was residing in the house.

3. After the death of Navjot Kaur, her father Gurmukh Ram registered FIR No.165 dated 20.10.2010 under Section 306 IPC, P.S. Model Town, Hoshiarpur, which reads thus:-

"Sh. Gurmukh Ram s/o Sh. Guljari Ram, Caste Addharmi, R/o Village Mazari, PS Sadar Banga, District Nawanshahar, aged 54 years has stated that I am resident of above said address and working as a teacher in Government Primary School, Bahatrowal. I have three children, elder son Satish Kumar and younger daughter from him Navjot Kaur aged 26 years and on third place is Harish Kumar. My daughter Navjot Kaur got married on 11.10.2009 with Hardeep Kumar s/o Gurdial Chand, Caste Ad-dharma, r/o Village Burj Tehal Dass, PS Mukandpur, at present New Teacher Colony back side sugar Mill, Nawanshahar. Yesterday on dated 19.10.10 I received information from my daughter's Navjot Kaur Mobile Phone No.94170-86161 on my phone at 3.54 P.M. By the police employee that his daughter has hanged herself and thereafter I alongwith my wife Santosh Kumari, Sons Satish Kumar and Harish Kumar and other respectable persons came to Hoshiarpur. On the spot the dead body of the girl has been seen in the dead house of Civil Hospital, Hoshiarpur and its look like that our daughter Navjot Kaur has been hanged with roof in the verandah after killing by her husband Hardeep Kumar and thereafter he had taken her firstly to Modern Hospital and then to Civil Hospital, Hoshiarpur, where the dead body of my daughter is lying in the dead house at this time. Near about 7 months ago the matrimonial life of them remained good and her mother in law started harassing her and she had made my daughter sat in the Pathankot bound bus one day. At that time Hardeep Kumar was serving at Pathankot and at this time at Railway Station, Hoshiarpur. On 19.10.2010 my wife Santosh Kumari had called Navjot Kaur in the morning at about 9.15 A.M. To know her well being. She had replied her well being in a low voice. After some time my daughter called again on telephone fromwhere it was felt that girl was frightened. Then the girl said to come and take her. The girl was talking but in the main time meanwhile he had taken phone from her and said to not to come today

as I myself is coming to drop her. Thereafter, Hardeep Kumar had disconnected the phone. These all talks were made on home telephone number 01823- 264817 and after that it was informed that the girl has hanged her self. This incident has happened at Railway quarter L-II where my daughter was residing. I alongwith my son Satish Kumar has come to you for action. Action be taken. SD/- Gurmukh Ram, Satish Kumar verified. Vijay Singh SI, PS Model Town, Hoshiarpur 20.10.10."

4. After completion of investigation, challan was presented only against Hardeep Kumar, as the petitioner was found innocent during the inquiry proceedings vide inquiry report dated 21.11.2010. Statement of the complainant Gurmukh Ram was recorded on 16.8.2011 as PW-1.

5. Thereafter, the application dated 16.8.2011 under Section 319 Cr.P.C. was submitted by the prosecution for summoning the petitioner as an additional accused to face the trial and vide impugned order, the petitioner has been summoned to stand trial under Section 306 IPC as additional accused on the ground that the complainant has mentioned in his statement that the petitioner was harassing and taunting the deceased on account of bringing less dowry.

6. Challenging the aforesaid order, learned counsel appearing on behalf of the petitioner has vehemently argued that after lodging of the FIR, the matter was investigated upon and the police found the petitioner innocent, as she was not living with her son and daughter-in-law. She is living with her husband and there is no question of abetment or instigation. There is also no allegation in the FIR to the extent that she had demanded any such dowry. There is also no complaint against the petitioner that she has harassed the deceased. Gurmukh Ram has improved upon the version of the FIR, because in the FIR, no demand of dowry is mentioned, but in the statement made before the trial Court, it has been stated that the deceased was being harassed for the sake of dowry. According to the petitioner, PW-1 Gurmukh Ram while appearing before the trial Court had intentionally changed his statement mentioned in the FIR and added further that his daughter was being harassed for bringing less dowry, whereas in the FIR, the allegation against the petitioner was that she had made her sit in the Pathankot

bound bus one day and there was no allegation that she had ever harassed the deceased Navjot Kaur for bringing less dowry. Reliance was placed on Rajasthan High Court judgment in the case of ***Subhash Chandra and etc. v. State of Rajasthan 2011(4) RCR (Criminal) 674*** to contend that the Hon'ble Apex Court as well as this Hon'ble Court in its various judgments have held that whenever a Court exercises its discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at the satisfaction that there exists a possibilities that the accused so summoned is in all likelihood would be convicted. According to the learned counsel for the petitioner, in the present case, it is very much clear from the prosecution evidence that no harassment was every given to Navjot Kaur at any point of time. There is no evidence on the record to this effect that the petitioner has ever abetted the daughter of the complainant to commit suicide. Rather it is a case of prosecution that the deceased Navjot Kaur was residing separately with her husband at Railway quarter, Pathankot, which means the daughter of the complainant was not residing with the petitioner and thus, there exists no possibility of the accused being convicted on such evidence.

7. I have heard learned counsel for the petitioner and perused the impugned order as well as the averments made in this petition and the documents placed before this Court.

8. It is useful to refer to the statement of PW-1 Gurmukh Ram recorded by the trial Court which reads thus:-

"That I am posted as teacher. I have three children oldest son namely Satish Kumar, younger to him daughter namely Navjot Kaur and youngest of all namely Harish Kumar. The marriage of Navjot Kaur my daughter was performed with Hardeep Kumar son of Gurdial Chand of Village Buraj Narang Dass PS Mukandpur at present resident of new Teacher Colony Back side Sraha village Nawan Shahar on 11.10.2009. On 19.10.2010, the complainant received a telephonic call from the mobile of his daughter bearing no.9417086161 that his daughter had strangulated her on which I alongwith my wife Santosh Kumari and respectables came to Hoshiarpur and found that the dead body of Navjot Kaur was lying in the dead house of civil hospital Hoshiarpur. I felt that my daughter

Navjot Kaur had been killed by Hardeep Kumar and thereafter her body was hanged from the roof of the verandah of the house. I came to know that Hardeep Kumar took her to Modern hospital from where she was taken civil Hospital Hoshiarpur. The matrimonial relationship between my daughter and accused party remained cordial for seven months after the marriage and thereafter Balbir Kaur mother in law of my daughter started harassing her and once she forced my daughter to board bus for Pathankot and at that time Hardeep Kumar was posted at Pathankot. The mother in law of my daughter told that my daughter is not related to them and to accompany Hardeep Kumar. On 19.10.2009 my wife Santosh Kumar contacted Navjot Kaur telephonically at about 9:15 AM whom respondent in low volume from which it sounded as if she was perplexed and my daughter told her that she should be taken to the parents house. Meantime Hardeep Kumar took the receiver and told us not to come to bring her and he will leave her to the parents house himself and the phone was disconnected. This conversation took place on the landline no. bearing 01823 264817. Later on I was informed that my daughter has strangled her. The incidence has taken place in railway quarter L-11 where my daughter was keeping her residence. I suffered statement to the police after admitting its contents to be true. I affixed my signatures in Punjabi and my statement is Ex.PA. Accused Hardeep Kumar and Balbir Kaur wife of Gurdial Chand resident of Village Burj Tehal Dass PS Mukandpur District Nawanshahar at present resident of New Teacher Colony back side Sugar Mill Nawanshahar harassed and maltreated my daughter Navjot Kaur on account of bringing less dowry and demand of dowry. At this stage the learned APP for the State wants to move an application under Section 319 Cr.P.C. for summoning accused Balbir Kaur and further examination of the witness may be deferred. The request allowed.

9. It is also useful to refer to the provisions of Section 319 Cr.P.C. which read thus:-

"319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for

which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the court although not under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the court proceeds against any person under sub-section (1) then-

(a) The proceedings in respect of such person shall be commenced afresh, and witnesses reheard.

(b) Subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced."

10. Thus, Section 319 Cr.P.C. empowers a Court to proceed against any person if it appears from any evidence that such person has also committed an offence for which he can be tried together with other accused. Section 319 Cr.P.C. has been interpreted by the Hon'ble Supreme Court in a catena of judgments in different contexts. Some of the judgments are referred hereinafter for elaborating the point in issue.

11. In ***Joginder Singh v. State of Punjab (1979) 1 SCC 345***, it was held that the Court could add any person, not accused before it, as accused and direct him to be tried along with the other accused for the offence or offences the added accused appears to have committed. In ***MCD v. Ram Kishan Rohtagi (1983) 1 SCC 1***, the question before the Hon'ble Supreme Court was whether Section 319 Cr.P.C. could be invoked, once criminal proceedings against a person were quashed. Replying to the question in affirmative and quoting with approval, the observations in Joginder Singh's case (supra), the Hon'ble Supreme Court held that if it appears to the Court that any person not accused before it, but against

whom there appears, during trial, sufficient evidence indicating his involvement in the offence, he can be summoned. The Court, however, was conscious of the extraordinary nature of the power under Section 319 Cr.P.C. and observed thus:-

"19. . we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the court concerned so that it may act according to law." (emphasis supplied)

In ***Michael Machado and Anr. v. CBI and Anr. 2000(3) SCC 262***, considering the basic requirements of Section 319 Cr.P.C., the Hon'ble Supreme Court observed as under:-

"11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

In *Michael Machado and Anr. (supra)*, itself highlighting the underlying object of the provision, the Court proceeded to state:-

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words 'the court may proceed against such person'. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the

stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons."

13. In ***Mohd. Shafi v. Mohd. Rafiq (2007) 14 SCC 544***, it was held that such order cannot be passed under Section 319 Cr.P.C. unless cross-examination of the witness is complete. It was further held that jurisdiction under Section 319 Cr.P.C. can be exercised only if the Court is satisfied that the accused summoned in all likelihood would be convicted. However, in ***Rakesh Kumar v. State of Haryana (2001) 6 SCC 248***, the question before the Court was, whether the statement of a prosecution witness without the said witness having been cross-examined constitute evidence within the meaning of Section 319 Cr.P.C. and the Hon'ble Apex Court observed as under:-

"Hence, it is difficult to accept the contention of the learned counsel for the appellants that the term 'evidence' as used in Section 319 Criminal Procedure Code would mean evidence which is tested by cross examination. The question of testing the evidence by cross-examination would arise only after addition of the accused. There is no question of cross-examining the witness prior to adding such person as accused. Section does not contemplate an additional stage of first summoning the person and giving him an opportunity of cross-examining the witness who has deposed against him and thereafter deciding whether such person is to be added as accused or not. Word "evidence" occurring in sub-section is used in comprehensive and broad sense which would also include the material collected by the investigating officer and the material or evidence which comes before the Court and from which the Court can prima facie conclude that person not arraigned before it is involved in the commission of the crime.

14. In ***Hardeep Singh v. State of Punjab (2010) 2 SCC (Crl.) 355***, the Hon'ble Supreme Court observed as under:-

"When an examination-in-chief of a witness is over, there being no cross-examination, it would be merely prima facie material. But it would enable the trial court to decide whether powers under Section 319 Cr PC should be exercised or

not. Once the trial court records a statement of a witness, it becomes a part of evidence. It is true that finally at the time of trial, the accused must be given an opportunity to cross-examine the witness to test the truthfulness of such statement. But that stage would come only after the person is added as an accused."

15. In *Hardeep Singh* (supra), it was further observed:-

"Even in *Rakesh* case, (2001) 6 SCC 248 it was ruled that an application under Section 319 Cr PC is maintainable even without completion of cross-examination of a witness. If the court is satisfied on the basis of examination-in-chief of a witness that a person not shown to be an accused appears to have committed an offence, it can exercise the power under Section 319 Cr PC. However, in *Mohd. Shafi* case, (2007) 14 SCC 544 it was held that no such order can be passed by a court under Section 319 unless the cross-examination of the witness is complete. In *Mohd. Shafi* case it was also held that the jurisdiction under Section 319 Cr PC can be exercised only if the court is satisfied that the accused summoned in all likelihood would be convicted. The said observations do not appear to be in consonance with the statutory provisions or previous decisions of the Supreme Court. The test formulated in *Mohd. Shafi* case substantially curtails discretionary power of the court under Section 319(1) Cr PC."

16. It is also useful to refer to a recent judgment of the Hon'ble Supreme Court in the case of ***Sarojben Ashwinkumar Shah etc. v. State of Gujarat and Anr. (Crl. Appeal Nos. 1554-1557 of 2011) delivered on 10.8.2011***, wherein after discussing a catena of judgments, the Hon'ble Apex Court held as under:-

"16. The legal position that can be culled out from the material provisions of Section 319 of the Code and the decided cases of this Court is this :

(i) The Court can exercise the power conferred on it under Section 319 of the Code suo motu or on an application by someone.

(ii) The power conferred under Section 319(1) applies to all courts including the Sessions Court.

(iii) The phrase "any person not being the accused" occurring in Section 319 does not exclude from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the charge-sheet. In other words, the said expression covers any person who is not being tried already by the court and would include person or persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the court.

(iv) The power to proceed against any person, not being the accused before the court, must be exercised only where there appears during inquiry or trial sufficient evidence indicating his involvement in the offence as an accused and not otherwise. The word 'evidence' in Section 319 contemplates the evidence of witnesses given in court in the inquiry or trial. The court cannot add persons as accused on the basis of materials available in the charge-sheet or the case diary but must be based on the evidence adduced before it. In other words, the court must be satisfied that a case for addition of persons as accused, not being the accused before it, has been made out on the additional evidence let in before it.

(v) The power conferred upon the court is although discretionary but is not to be exercised in a routine manner. In a sense, it is an extraordinary power which should be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person has committed an offence. A mere doubt about involvement of the other person on the basis of the evidence let in before the court is not enough. The Court must also be satisfied that circumstances justify and warrant that other person be tried with the already arraigned accused.

(vi) The court while exercising its power under Section 319 of the Code must keep in view full conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then.

(vii) Regard must also be had by the court to the constraints imposed in Section 319 (4) that proceedings in respect of newly - added persons shall be commenced afresh from the beginning of the trial.

(viii) The court must, therefore, appropriately consider the above aspects and then exercise its judicial discretion."

17. Thus, from all the judgments, as referred to above, it is clearly established that before proceeding against a person, a Court must be satisfied that a case for addition of persons as accused, not being an accused before it, has been made out on the additional evidence led before it.

18. In the instant case, the very basis of the case is the statement Ex.PA suffered by PW-1 Gurmukh Ram to the police that his daughter Navjot Kaur has been harassed by her husband Hardeep Kumar and mother-in-law Balbir Kaur (petitioner). PW-1 Gurmukh Ram while suffering his statement in Court also on oath, stated that Balbir Kaur, mother-in-law of his daughter, had been harassing and taunting her on account of bringing less dowry. In view of the aforesaid fact alone, it cannot be argued on behalf of the petitioner that the witness has improved upon his version of the FIR. A bare perusal of the FIR, as reproduced above in the foregoing paragraph, clearly shows that the complainant has clearly stated that the matrimonial life of the son of the petitioner and his wife Navjot Kaur remained good for nearly about seven months and thereafter, her mother-in-law started harassing her.

19. Now, in the instant case, since the proceedings in respect of the petitioner shall be commenced afresh and witnesses reheard, as per provisions of Section 319 (4) Cr.P.C., the petitioner will have an opportunity to defend himself as that stage of cross-examination is yet to come and the petitioner has so far not availed the said opportunity and that stage would come after the petitioner is added as an accused.

20. In view of the aforesaid, this Court finds no merit in this revision petition and the same is hereby dismissed.

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