

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). OF 2022

(Arising out of Special Leave Petition (Crl.) No.3746 of 2022)

NAVEEN

....APPELLANT(S)

VERSUS

STATE OF HARYANA & OTHERS

....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The instant appeal has been filed assailing correctness of order dated 6th January, 2022 passed by the High Court of Punjab and Haryana at Chandigarh, setting aside order dated 10th February, 2020 passed by the Additional Sessions Judge,

Bhiwani, Haryana, whereby the learned trial Judge rejected the application filed by the complainant under Section 319 CrPC to summon the appellant (accused) to face trial in Sessions Case No.59 of 2018 with reference to FIR No.156 dated 12th March, 2018 registered under Sections 307, 364, 366, 376 read with Section 34 IPC at Police Station City Bhiwani, Haryana.

3. Brief facts of the case culled out from the record are that FIR No.156 dated 12th March, 2018 was registered for offence under Sections 307, 364, 366, 376 read with Section 34 IPC at Police Station City Bhiwani on the basis of the written complaint filed by Kamlesh w/o Balwan, caste Jat, resident of New Bharat Nagar, Bhiwani, Haryana alleging therein that her daughter aged 20 years was taking coaching of SSC from Evermount Coaching Centre, Old Bus Stand, Bhiwani and she disclosed that on 10th March, 2018 at about 9.00 a.m., she went to the coaching centre, but did not return home up to 1.00 p.m. Thereafter, she made enquiries from her friends and acquaintances but could not find her whereabouts.

Later, she came to know that the victim girl was admitted in Sunflag Hospital, Rohtak. When they reached the hospital at 9.00 p.m., they were told that the victim girl was in ICU Ward and two boys, Arjun and Naveen, sons of Balwan Jat, resident of Beri, District Jhajjar, had brought the victim girl to the hospital in unconscious state.

4. She further disclosed that her daughter has been enticed to Rohtak by Arjun, in a pre-planned manner, in collusion with his other friends where she was raped and an attempt was made to eliminate her by hanging. When Arjun and his accomplices felt that the victim girl had died, they shifted her to the hospital in order to save their skin. Accordingly, she prayed that legal action may be taken against the culprits.

5. After registration of the FIR, the investigation swung into motion and on receipt of the Ruqa regarding the death of the victim girl on 13th March, 2018, Section 302 IPC was added and consequent upon verification, allegations against Arjun were found to be true, whereas remaining culprits, i.e. Naveen (brother of the appellant) and Mehar Singh(son of Shardha

Nand) were found innocent and, therefore, the above-named persons were kept in column no.2 and subsequently, accused Arjun was arrested and after completion of investigation, the report under Section 173 Cr.PC was submitted before the Ld. Ilaqa Magistrate on 5th June, 2018 against the accused Arjun. After charge-sheet came to be filed, charges were framed against accused Arjun on 6th August, 2018.

6. An application was filed by the complainant through learned Public Prosecutor under Section 319 CrPC on 29th October, 2018 for summoning of Naveen s/o Balwan and Mehar Singh s/o Shardha Nand, as additional accused along with accused Arjun, on the premise that she had named both these persons(Naveen and Mehar Singh) as accused in her initial version but the police did not challan them in collusion with them and as she now has deposed in the Court naming these persons as accused, hence, these two persons shall also be summoned to face trial along with the main accused Arjun. In support thereof, it was urged that the complainant Kamlesh as PW.10 specifically deposed against the proposed accused

Naveen and Mehar Singh as accomplices of accused Arjun because these two persons were also present in the hospital with the deceased and their presence is established from the CCTV footage of Sunflag Hospital, Rohtak and they should also be summoned to face trial with accused Arjun.

7. In counter, learned counsel for the appellant submitted that the complainant PW.10 has made deliberate improvements in her statement and is trying to involve the innocent persons. It was also submitted that from the statement of PW.6 Mahipal, the Hotel Manager and PW.8 Deepchand, Waiter, it is clear that the deceased used to accompany the accused Arjun voluntarily to their hotel. Even from the deposition of PW.5 Deepak Kumar, Nodal Officer, Idea Cellular Company Limited, Panchkula, it could easily be established that on the date of occurrence, the CCTV footage of the hotel where the alleged fateful incident occurred, proves that the accused Arjun and deceased/ prosecutrix were not accompanied by any other person at the time of their visiting the hotel and as per case of the prosecution, the alleged

occurrence had taken place in the hotel and not in the hospital where the accused had taken the deceased/prosecutrix and if the proposed accused persons had visited the hospital, in no manner, they become accomplices with the respondent/accused who was facing trial.

8. Taking into consideration the overall material available during the course of trial, the learned trial Judge was satisfied that it was not a case to invoke Section 319 CrPC and returned a finding that the evidence of summoning an additional accused should be of such nature from which it can be seen that if the evidence recorded during the course of trial remain unrebutted, there are chances of conviction of the proposed accused persons and mere prime facie evidence is not sufficient to summon the additional accused and accordingly dismissed application by order dated 10th February, 2020.

9. We have heard learned counsel for the parties and with their assistance perused the material on record.

10. It is worthy to note that trial of accused Arjun, case bearing No.SC/59/2018, titled as “State Versus Arjun” was concluded and he was held guilty and convicted for offence under Section 302 IPC with imprisonment for life by judgment dated 28th July, 2022.

11. The scope and ambit of Section 319 CrPC has been well-settled by the Constitution Bench of this Court in **Hardeep Singh v. State of Punjab and others**¹ and paras 105 and 106 which are relevant for the purpose are reproduced hereunder:

“**105.** Power under Section 319 CrPC is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that 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. In

1 (2014) 3 SCC 92

the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “*for which such person could be tried together with the accused*”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.”

12. The Constitution Bench has given a caution that power under Section 319 CrPC 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 unrebutted, would lead to conviction.

13. While applying the afore-stated principle, we may examine the facts of the instant case. It will manifest that the present incident is based on circumstantial evidence. As per the prosecution case, the alleged occurrence has taken place in the hotel and not in the hospital. In hospital, the appellant had taken the deceased/prosecutrix and if the appellant as

proposed, visited the hospital, that in no manner could make him an accomplice with the accused Arjun and apart from the evidence of the complainant PW.10, the statement of other prosecution witnesses, PW.6 Mahipal, the Hotel Manager and PW.8 Deepchand, Waiter, no one has accompanied the deceased other than accused Arjun. The CCTV footage of the hotel where the alleged occurrence has taken place which came on record during the course of trial indicates that no other person had visited the hotel except Arjun who was made accused and faced trial.

14. So far as Mehar Singh is concerned, it may be noticed that it was conceded before the High Court that the name of Mehar Singh does not figure anywhere during the investigation and there is no evidence against him to deny him from facing prosecution. That apart, it was recorded by the High Court that the hotel staff and of the hospital staff showed presence of two boys and that corroborates the initial stand of the complainant that two boys were there at the time of occurrence but that appears to be factually incorrect. The

presence of two boys was in the hospital and not in the hotel as per the case of the prosecution and this what was deposed by the prosecution witnesses whose statements were recorded during the course of trial as PW.6 and PW.8 and also the record of the CCTV footage of the hotel as a part of evidence relied upon by the prosecution.

15. After we have examined the material on record, in our considered view, the evidence recorded during the course of prosecution, if remains unrebutted, will not be sufficient to lead the conviction so far as the present appellant is concerned and accordingly the order passed by the High Court dated 6th January, 2022 is not sustainable in law and deserves to be set aside.

16. Before parting with, we make it clear that what has been observed by this Court is only for the purpose of disposal of the present appeal in reference to the power invoked under Section 319 CrPC by the High Court to summon the present appellant for facing trial with reference to FIR No.156 dated

12th March, 2018 registered under Sections 302, 307, 364, 366, 376 read with Section 34 IPC at Police Station City Bhiwani where by judgment dated 28th July, 2022 accused Arjun has been held guilty and convicted for offence under Section 302 IPC and sentenced to life imprisonment against which the appeal has been filed in the High Court at the instance of accused Arjun that may be decided uninfluenced by the observations made on its own merits in accordance with law.

17. Consequently, the appeal stands allowed and the order impugned dated 6th January, 2022 passed by the High Court is set aside.

18. Pending application(s), if any, stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(C.T. RAVIKUMAR)

NEW DELHI
NOVEMBER 01, 2022.