Satbir Singh vs Rajesh Kumar on 1 April, 2025

Author: Dipankar Datta

Bench: Dipankar Datta

REPORTABL

2025 INSC 416 IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1487 OF 2025

SATBIR SINGH ...APPELLANT

VERSUS

RAJESH KUMAR AND OTHERS ...RESPONDENTS

JUDGMENT

DIPANKAR DATTA, J.

1. This criminal appeal arises out of Special Leave Petition (Criminal) No. 10653 of 2024, which is at the instance of Satbir Singh1. Under challenge therein is the judgment and order dated 7th March, 20242 passed by a learned Judge of the High Court of Punjab and Haryana at Chandigarh. Vide the impugned order, while allowing a revisional application3 filed by Rajesh Kumar, Sagar @ Bittoo, Niraj and Ankit (respondents in the said special leave petition), the High Court set aside an order dated 13th September, 2021 passed by the Additional Sessions Judge, Karnal4. The Sessions Judge, by the order impugned in the revisional application, had allowed an the appellant impugned order CRR-1357-2021 (O&M) Sessions Judge 1 of 10 application under Section 319 of the Code of Criminal Procedure, 19735 filed by the appellant, seeking to summon Rajesh Kumar, Sagar @ Bittoo, Niraj and Ankit as additional accused for facing trial along with the principal accused6, for commission of offences punishable under Sections 323, 324, 307 and 506 of the Indian Penal Code, 18607 read with Section 34 thereof as well as Section 25 of the Arms Act.

2. Notice on the said special leave petition was issued on 13th August, 2024, limited to the respondents 1 and 3 (Rajesh Kumar and Neeraj, respectively). For the reasons recorded in such order, the special leave petition against the respondents 2 and 4 (Sagar @ Bittoo and Ankit, respectively) stood dismissed.

3. The appellant has since obtained special leave to appeal. He questions the legality and correctness

of the impugned order.

4. Service of notice on Rajesh Kumar and Neeraj having been effected, they entered appearance and are represented by Mr Gagan Gupta, senior learned counsel. The appellant is represented by Mr. Neeraj Kumar Jain, learned senior counsel. We have heard both of them and perused the materials on record.

5. We have also heard learned counsel appearing for the respondent no. 5- State of Haryana and perused the counter affidavit filed on its behalf.

6. Briefly put, the facts of the case are that on 09.02.2020 an information was received in P.S. Sadar, Karnal that accused Mukesh and the appellant, residents of village Rasulpur Khurd, District Karnal, were admitted in Civil Cr. PC Mukesh IPC 2 of 10 Hospital, Karnal and Ram Chander Memorial Hospital, Karnal, respectively, due to injuries received in an assault. The police officials of P.S. Sadar, Karnal made abortive attempts to record the statements of the injured on 09.02.2020 and 10.02.2020, since the injured were not in a position to give statements. On 12.02.2020, Mukesh stood discharged, whereas the appellant continued to be unfit. The Investigating Officer recorded the statement of Mukesh. Based on Mukesh's statement, a First Information Report came to be registered. During the course of investigation, X-Ray report relating to injuries of Mukesh was obtained, in which a fracture was reported. Medical opinion was also obtained, which did not rule out the possibility of such injuries being self-suffered. The Investigating Officer reached a conclusion that the allegations of Mukesh against the appellant were not substantiated and, ultimately, submitted a closure report.

7. The appellant having regained consciousness on 14.02.2020 and certified by the attending doctor to be fit, his statement was recorded. The appellant disclosed that he was serving in the Indian Army and had come to his village on leave. On 09.02.2020 at about 2.30 p.m., while playing volleyball, an altercation had taken place with Mukesh who was playing for the opposite team. Mukesh started slapping the appellant. Team members pacified and separated them. However, Mukesh left threatening that the appellant would be taught a lesson. After 15 minutes, Mukesh came armed with a knife, accompanied by Neeraj, Sagar @ Bittoo, and Ankit armed with lathi, danda, etc. Neeraj caught hold of the appellant and Mukesh gave a knife blow in the waist of the appellant followed by another knife blow near his heart, which penetrated up to the lungs. Sagar and Ankit had beaten the appellant 3 of 10 with lathi and danda. The appellant further alleged that he was threatened by Rajesh who exhorted that although the appellant had been taught a lesson, he would be killed if he came back to the village again. Further, in his statement, the appellant alleged that due to bleeding, he became unconscious and came to know that he was brought to the hospital by Amarjeet and Jai Singh. As per MLR of the appellant, he had two injuries caused with sharp weapons. The Investigating Officer obtained the discharge summary of the appellant on 20.02.2020 as well as medical opinion, vide which injury no.1 pertaining to chest was reported as dangerous to life. As such, a cross-case under Section 323, 324, 307, 506/34 IPC was registered against Mukesh and Rajesh, Neeraj, Sagar @ Bittoo, and Ankit. On 28.02.2020, the knife used in the crime by Mukesh was recovered in pursuance of his disclosure statement.

8. Further, during the course of investigation, the Investigating Officer did not find the involvement of Rajesh and Ankit and the same was verified by the Station House Officer, P.S. Sadar, Karnal8. Subsequent separate enquiries conducted by the Deputy Superintendent of Police, Karnal, Deputy Superintendent of Police, HQ, Karnal, and Deputy Superintendent of Police, Karnal-II led to filing of reports where, too, involvement of Rajesh, Neeraj, Sagar @ Bittoo and Ankit was found lacking.

9. Mukesh was arrested in the present case on 28.02.2020 and after completion of investigation, the SHO submitted report under section 173(2), Cr. PC under Sections 307, 323, 324, 506/34 IPC against Mukesh SHO 4 of 10 before the Illaqa Magistrate. Thereafter, the case was committed to the court of the Sessions Judge for trial.

10. Charges under Section 324, 307 and 506, IPC and Section 25 of the Arms Act were framed against Mukesh vide order dated 04.03.2021, whereafter trial commenced. It is proposed by the prosecution to examine 14 (fourteen) witnesses in support of its case, of whom the appellant as PW-1 was examined on 27.04.2021. He reiterated the allegations against Mukesh as also against Rajesh, Neeraj, Sagar @ Bittoo, and Ankit in his examination-in-chief. He also submitted an application under Section 319, Cr. PC for summoning Rajesh, Neeraj, Sagar @ Bittoo, and Ankit to face trial.

11. It is this application that succeeded before the Sessions Judge, whereupon Rajesh, Sagar @ Bittoo, Neeraj and Ankit approached the High Court. The impugned order dated 13.09.2021 of the Sessions Judge was thereafter set aside on contest.

12. The High Court proceeded to record as follows:

> "12. From a perusal of the aforementioned both injuries, it is apparent that Satbir had suffered only two injuries in the present case and both injuries were caused with a knife by Mukesh Kumar. The complainant in his testimony (Annexure PW-4) stated that all the accused were carrying dandas and handles of spade in their hands. Neeraj had caught hold of him, whereas, Sagar @ Bittoo, petitioner No. 2 and Ankit, petitioner No. 4 gave blows with handles of spade on his back and on his legs. However, the injuries caused by the petitioners No. 2 and 4 are clearly missing in the medical reports. In fact, as per PW-1, Satbir Singh, all the petitioners had come prepared and were duly armed to cause injuries to him, but the injuries, which were allegedly caused by them were not corroborated by medical evidence.

13. Apart from that, it is apparent from the record that repeated applications were moved by both the sides to the local police and the matter was investigated by 03 different DSPs of Karnal police and the facts were finally verified by SP, Karnal at his own level. However, during all the investigations, it was found that all the petitioners had not 5 of 10 participated in the present case and their presence at the place of occurrence could not be established. No doubt, the Court is obliged to look into the evidence only, at this stage, however, the conclusions recorded by the police and the supporting material collected during the course of investigation also cannot be overlooked by the Court, while deciding the application under Section 319 Cr. P.C, even though the evidence led

by the prosecution is the main basis for disposal of the application. Still further, from the evidence led by the prosecution, it appears that the fight in the present case had taken place at the spur of the moment over a minor issue of counting the points in a Volley Ball game. Even otherwise, admittedly, there was no enmity between the parties and the petitioners had no reason to participate in the present occurrence. Still further, it is also apparent that Mukesh Kumar and Satbir Singh were members of opposite teams, while playing the Volley Ball and the occurrence had taken place at the spur of the moment and injuries were caused by both the sides. Apart from that, in the present case, this Court has no hesitation to hold that there was not sufficient material on record, which could serve as a ground for summoning the petitioners to face trial along with Mukesh Kumar, who had already been arrayed as an accused in the present case."

13. The law on the point of summoning additional accused in exercise of power conferred by Section 319, Cr. PC is well settled. One may profitably refer to and rely on the Constitution Bench decision of this Court in Hardeep Singh v. State of Punjab9, where law has been authoritatively declared. We consider it proper to quote the conclusions reached by this Court qua the questions arising for decision, hereunder:

> "117. We accordingly sum up our conclusions as follows:
>
> Questions (i) and (iii) — What is the stage at which power under Section 319 CrPC can be exercised?
>
> AND — Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?
>
> Answer 117.1. In Dharam Pal case [(2014) 3 SCC 306], the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after (2014) 3 SCC 92 6 of 10 completion of the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

117.2. Section 319 CrPC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word "evidence" in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii)—Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross- examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned? Answer 117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv)—What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer 117.5. Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge10. The difference in the degree of satisfaction for summoning the original accused and a subsequent In paragraph 106, the Court held "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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC." 7 of 10 accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v)—Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer 117.6. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh."

14. Quite recently, a coordinate Bench of this Court in Jitendra Nath Mishra v. State of Uttar Pradesh & Another11, upon considering Hardeep Singh (supra), had the occasion to observe as follows:

> "10. Section 319 CrPC, which envisages a discretionary power, empowers the court holding a trial to proceed against any person not shown or mentioned as an accused if it appears from the evidence that such person has committed a crime for which he

> ought to be tried together with the accused who is facing trial. Such power can be exercised by the court qua a person who is not named in the FIR, or named in the FIR but not shown as an accused in the charge-sheet. Therefore, what is essential for exercise of the power under Section 319 CrPC is that the evidence on record must show the involvement of a person in the commission of a crime and that the said person, who has not been arraigned as an accused, should face trial together with the accused already arraigned. However, the court holding a trial, if it intends to exercise power conferred by Section 319 CrPC, must not act mechanically merely on the ground that some evidence has come on record implicating the person sought to be summoned; its satisfaction preceding the order thereunder must be more than prima facie as formed at the stage of a charge being framed and short of satisfaction to an extent that the evidence, if unrebutted, would lead to conviction."

15. It is in the light of such settled law that we need to examine the impugned order of the High Court. However, we must exercise caution lest any observation has the effect of influencing the trial. (2023) 7 SCC 344 8 of 10

16. Neeraj happens to be the sibling of Mukesh. The initial statement of the appellant referred to the fact that Neeraj had held him facilitating stabbing by Mukesh, who gave a knife blow in the waist followed by another blow near his heart which penetrated up to his lungs. Insofar as Rajesh is concerned, it was alleged that he had threatened the appellant by saying "Chaaku maar ke tassali kar di, agar dobaara zinda gaon me ayega to mai goli se uda dunga". Although, the Sessions Judge formed the requisite satisfaction bearing in mind the decision in Hardeep Singh (supra) and held that the tests laid down therein were squarely met, reading the impugned order in its entirety, we are of the considered opinion that the High Court failed to consider the matter from the proper perspective and arrived at an entirely wrong conclusion.

17. Mr. Gupta has assiduously attempted to impress upon us that involvement of Rajesh and Neeraj were not found in the several reports of the Deputy Superintendents of Police, attached to Karnal district, and such reports should be given credence. We are, however, of the opinion that no conclusive finding can be given that Rajesh and Neeraj were not involved merely on the basis of such reports. Having regard to the version of the appellant in course of examination-in-chief, the Sessions Judge formed a satisfaction higher than a prima facie satisfaction of the alleged involvement of Rajesh and Neeraj and that their complicity in the crime has to be examined and tested on evidence being led at the trial. To ascertain whether the Sessions Judge in allowing the application under Section 319, Cr. PC had acted mechanically or in a manner not authorised by law or in derogation of the law declared in Hardeep Singh (supra), the High Court 9 of 10 was well within its competence to adopt an 'eyes on' approach, considering the nature of power conferred on the High Court by the Cr. PC as the revisional court, but regard being had to the facts and circumstances, a 'hands off' approach would have been advisable and the correct approach.

18. We have no hesitation to hold that the conclusion of the Sessions Judge was a plausible conclusion and not an absurd one so as to warrant interference by the High Court in the exercise of its revisional jurisdiction.

19. For the foregoing reasons, the impugned order of the High Court stands set aside and that of the Sessions Judge is restored. The appeal is, accordingly, allowed.

20. We clarify, no observation made hereinbefore shall be construed as an expression of opinion as regards the involvement of Rajesh and Neeraj in the crime and whatever we have said is solely for the purpose of disposal of this appeal.

21. The Sessions Judge is encouraged to take the trial to its logical conclusion, in accordance with law, as expeditiously as possible.

22. Pending applications, if any, shall stand disposed of.

..... J.

(DIPANKAR DATTA) ..... J.

(MANMOHAN) NEW DELHI;

APRIL 01, 2025.

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