
(2013) 07 P&H CK 0235
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 2308 of 2013

Shahabudeen

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 319
Penal Code, 1860 (IPC) — Section 148, 149, 302, 312, 323

Citation : (2013) 07 P&H CK 0235

Hon'ble Judges : Naresh Kumar Sanghi, J

Bench : Single Bench

Advocate : Ramesh Chahal, for the Appellant;

Final Decision : Dismissed

Judgement

Naresh Kumar Sanghi, J.—Challenge in this Criminal Revision Petition is to the order dated 30.05.2013 passed by learned Additional Sessions Judge, Palwal, whereby the application u/s 319, Cr.P.C. for summoning of the additional accused Yakub, Azharuddin, Harun, Kamrudin, Fakruddin, Jafrudin for having committed the offences punishable under Sections 148, 302, 312, 323, 506 read with Section 149 of the Indian Penal Code in a case arising out of FIR No. 17 dated 18.01.2011, registered at Police Station Hathin, District Palwal, was dismissed. Brief facts of the case as culled out from the statement of Mushtaq are that he was a student of XI Class at Jiwan Jyoti School, Palwal. He had a married sister Shahida Khan. Occasionally, he used to stay at the matrimonial house of his sister at village Gopur. On 17.01.2011, he stayed at the house of Shahida Khan. After leaving his school bag at the house of his sister, he went to play with the children of village Gopur. There was exchange of hot words between Shahid, Wahid and Mushtaq (PW6). Wasim Akram who was present there intervened and resolved the matter and, thereafter, Mushtaq went to the house of his sister. At about 9.30/10.00 P.M., Yakub, Deen Mohammad, Idrish, Harun, Kamrudin, Fakrudin, Jafrudin, Arjudin, Tahir, Rafik, Shahid, Wahid, Warish, Majahid reached

there, opened door and forcibly entered into the house of Shahida Khan. Fakrudin gagged the mouth of Mushtaq and started beating him and forcibly took him away to the house of Idrish and confined him in a room. They also gave beatings to him. They forced Mushtaq to telephonically call Wasim Akram and asked him to come near the pond of the village. The said persons also compelled Mushtaq to say that Jafru, Fakru, Arjudin etc. were coming there and Wasim Akram should accompany to the house of Idrish. Wasim arrived there. After pushing them in a room and putting off their clothes, they started beating them by means of lathis, dandas, belt, iron rod and also gave kick and fist blows. Thereafter, Mushtaq was thrown on the way leading to village Guraksar. At about 3.00/4.00 A.M., one person arrived there and took Mushtaq to his house at village Guraksar. After some time, family members of Mushtaq arrived there and took him to hospital and got him admitted there. Mushtaq was referred to the hospital at Palwal. But seeing his condition to be critical, he was referred to Safdarjung Hospital, Delhi, for further treatment. Wasim Akram succumbed to the injuries received at the hands of the accused.

2. It is apposite to mention here that the FIR in the present case was registered on the statement of Shahabudeen petitioner. He had named the accused including respondents No. 2 to 7 as assailants. According to the petitioner, Wasim Akram (deceased) was his nephew and Mushtaq (PW6) was his relative. Two months prior to the occurrence, Shahabudeen etc had a quarrel with the accused persons but the matter was compromised due to the intervention of the villagers. Due to said grudge, Fakruddin son of Idrish took Wasim Akram and Mushtaq in his house and Yakub, Deen Mohammad, Idrish, Harun, Kamrudin, Fakrudin, Jafrudin, Arjudin, Tahir, Rafik, Shahid, Wahid, Warish, Majahid who were armed with lathis and dandas were already present there. They caused injuries to Wasim Akram and Mushtaq. Resultantly, Wasim Akram died on the spot and Mushtaq received a lot of injuries. Mushtaq was admitted in Government Hospital, Hathin.

3. After thorough investigation, respondents No. 2 to 7 were found innocent, therefore, the charge sheet was not filed against them.

4. The case was committed to the court of Session by the learned Area Judicial Magistrate for prosecution of the accused named in the charge-sheet (report u/s 173, Cr.P.C.). The charges were framed and, thereafter, prosecution started leading its evidence. After completion of the statements of few witnesses, Mushtaq appeared as PW-6 and after his examination-in-chief and little cross-examination, an application was presented in terms of Section 319, Cr.P.C. for summoning of respondents No. 2 to 7 as additional accused to face trial with the principal accused and the same was dismissed; hence the present revision petition.

5. Learned counsel for the petitioner submitted that from deposition of PW-6 the involvement of respondents No. 2 to 7 is clearly made out and, therefore, they (respondents No. 2 to 7) be ordered to be summoned to face trial along with

their co-accused.

6. I have heard learned counsel for the petitioner and gone through the material available on record.

7. From the perusal of the file, it transpires that Wasim Akram succumbed to the injuries allegedly caused by the accused. It is also prima facie made out that Mushtaq (PW6) had also received injuries in the same incident but the question is regarding the involvement of respondents No. 2 to 7 in the said incident. Mere naming so many persons by a witness in the court would by itself be not sufficient to order their summoning to face trial in such a grave offence of murder. The court has to satisfy itself that from the evidence, it is prima facie made out that if it remains un-rebutted, the proposed persons to be summoned to face trial can be convicted. After thorough investigation, the investigating agency had already filed the charge-sheet for prosecution of several persons. Finding a prima facie case, the charges were framed against them. During investigation, it was the duty of the investigating agency to find out the involvement of every individual named by the complainant and the witnesses. The investigating agency after scanning the whole material had arrived at a conclusion that there was no material connecting respondents No. 2 to 7 with the alleged offences, therefore, the charge-sheet was not presented qua them. At this stage, merely on the statement of Mushtaq, six more persons cannot be ordered to be summoned particularly when no specific role has been assigned to them. The petitioner has prima facie failed to substantiate that on the basis of the material in the shape of evidence, the proposed accused would be convicted.

8. After scanning the facts and the law on the subject, learned trial court has rightly rejected the application u/s 319, Cr.P.C. vide impugned order dated 30.05.2013. Therefore, in view of the aforesaid observations, this court is of the considered opinion that the present petition sans merit and is hereby dismissed.