

2025 LiveLaw (SC) 543

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
VIKRAM NATH; J., K.V. VISWANATHAN; J.
SLP (CRIMINAL) NO. 1891 OF 2024; MAY 06, 2025
HARJINDER SINGH *versus* THE STATE OF PUNJAB & ANR.**

Code of Criminal Procedure, 1973; Section 319 - Summoning of additional accused - *Prima facie* evidence sufficient – Held, a summoning order under Section 319 CrPC, cannot be quashed based on *alibi* evidence presented by the additional accused at the summoning stage. The threshold for summoning an additional accused is the existence of *prima facie* evidence indicating involvement in the offence, not proof beyond reasonable doubt. The plea of *alibi* is a matter of defence to be established during trial, not at the stage of summoning. The Court set aside the High Court’s decision to quash the trial court’s summoning order, emphasizing that untested documentary evidence (e.g., parking chit, chemist’s receipt, OPD card, CCTV clip) cannot be treated as conclusive at the summoning stage. The trial court’s order summoning the additional accused was restored. (Para 11, 13)

For Petitioner(s): Ms. Pallavi Singh, Adv. Mr. G. Balaji, AOR

For Respondent(s): Mr. Vivek Jain, D.A.G. Mr. Siddhant Sharma, AOR Mr. Chritarth Palli, AOR

J U D G M E N T

VIKRAM NATH, J.

- 1.** Leave granted.
- 2.** The present appeal, preferred by the complainant-father (“the appellant”) of the deceased Dharminder Singh, assails the judgment dated 21 November 2023 of the High Court of Punjab and Haryana at Chandigarh (“the High Court”) allowing Criminal Miscellaneous Petition No. 31120 of 2022 under Section 482 of the Code of Criminal Procedure, 1973 (“CrPC”). By the impugned judgment the High Court set aside an order dated 04 July 2022 passed by the Additional Sessions Judge, Sangrur (“the Trial Court”) summoning Varinder Singh (hereinafter “respondent no. 2”) to face trial under Section 306 read with Section 34 of the Indian Penal Code, 1860 (“IPC”) in First Information Report No. 51 of 2016 registered at Police Station Amargarh, District Sangrur, Punjab.
- 3.** The facts giving rise to the present appeal are as follows:
 - 3.1** On 13 March 2016 an acid attack was allegedly committed upon Dharminder Singh by ten persons. That occurrence was recorded as FIR No. 30 of 2016 under Sections 323, 324, 341, 506, 148, 149 and 326-A IPC; respondent no.2 was not named therein.
 - 3.2** On 10 May 2016 at around 8.30 am in the morning, Dharminder Singh and his paternal uncle Jagdev Singh were standing near their abadi land on Jagowal Road when Gurmail Singh, respondent no. 2, Santokh Singh and Iqbal Singh, accompanied by an unidentified person, allegedly stopped their white car and taunted the deceased, stating that he and his family “should die of shame” for not having taken action against the acid-attack assailants.
 - 3.3** The deceased returned home in distress, locked himself in a room, and left the house alone at about 04:00 p.m. When he did not return by evening, a search party found his bicycle, clothing and footwear near the Hussainpur canal. On 13 May 2016 his body was recovered from the canal head at village Salar. The appellant lodged a complaint the

same day; FIR No. 51 of 2016 (“the FIR in question”) was registered under Sections 306/34 IPC, naming, inter alia, respondent no. 2.

3.4 During investigation the police accepted the plea of alibi advanced by respondent no. 2, who produced, among other things, a parking-lot slip, outpatient records, a medicine bill and CCTV footage from PGI Chandigarh timed 06:30 a.m. onward on 10 May 2016. Endorsing these materials, the investigating officer filed a report under Section 173 (2) CrPC on 02 August 2016 classifying respondent no. 2 as “innocent”. Consequently, only the remaining accused were committed to the Court of Session.

3.5 On an application by the Public Prosecutor the Trial Court, by order dated 20 January 2017, summoned respondent no. 2 under Section 193 of CrPC. Therefore, Respondent no. 2 successfully challenged that order before the High Court. By the impugned order dated 24 November 2021 the High Court quashed the summoning on the ground that there had been no committal order qua respondent no. 2, while granting liberty to invoke Section 319 CrPC if credible evidence emerged during trial.

3.6 During the trial, on 08 March 2022 the appellant testified as PW-1, narrating the confrontation of 10th May 2016 and hence attributing direct participation to respondent no. 2. The Public Prosecutor relying on the statement of PW-1 as well as on the statement of Jagdev Singh recorded under Section 161 CrPC moved an application under Section 319 CrPC to summon respondent no. 2.

3.7 By order dated 04 July 2022 the Trial Court allowed the application, observing that PW-1’s sworn testimony, corroborated by Jagdev Singh’s statement, disclosed a prima-facie case and that the plea of alibi was a matter for trial. Respondent no. 2 was directed to appear on 02 August 2022 to stand trial alongside the existing accused for the offence under Section 306 IPC.

3.8 Respondent no. 2 approached the High Court under Section 482 CrPC, asserting that the Trial Court had disregarded what he described as “scientific and documentary proof” of his whereabouts in Chandigarh at the relevant time and insisting that only substantially stronger evidence could justify his addition to the array of accused. The High Court, persuaded with the submission, was of the view that the Trial Court ought to have weighed the investigation record, including the parking slip, CCTV footage and associated inquiries, set aside the summoning order on 21 November 2023, concluding that the material adduced fell short of the rigor demanded for invoking Section 319 CrPC.

4. The appellant has approached this Court contending, inter alia, that the High Court misapplied the threshold for exercise of power under Section 319 CrPC, prematurely evaluated an untested alibi and disregarded direct eyewitness evidence. It is in these circumstances that the matter now engages our consideration.

5. Learned counsel for the appellant has advanced the following submissions:

5.1 The police, while filing the final report under Section 173 (2) CrPC, conflated two distinct occurrences: the acid-attack of 13 March 2016 (FIR 30/2016), in which respondent no. 2 was not named, and the incident of 10 May 2016 that forms the gravamen of the present FIR. Respondent no. 2’s alibi materials relate only to 10 March 2016 and were erroneously treated as exonerating him for the later incident.

5.2 Respondent no. 2 has furnished no cogent alibi for 10 May 2016. The documents he now relies on, parking ticket, OPD card, CCTV clip and supporting statements, were never exhibited before the Trial Court nor tested in cross-examination; their veracity can be adjudicated only at trial.

5.3 The eye-witness Jagdev Singh, whose Section 161 statement specifically attributes the fatal taunts to respondent no. 2, corroborates the sworn testimony of PW-1. Taken together, this constitutes prima-facie “evidence” arising in the course of trial, satisfying the threshold for exercise of power under Section 319 CrPC.

5.4 The High Court characterised the confrontation of 10 May 2016 as mere “teasing” and concentrated on the previous acid-attack, thereby undervaluing an independent offence of abetment to suicide that was proximate in time and casually linked to the deceased’s death.

5.5 By resting its decision on investigation-stage material concerning 10 March 2016, the High Court prematurely evaluated an unproven alibi and overlooked the settled principle that the burden of establishing such a defence lies squarely on the accused and must be discharged through evidence at trial.

5.6 Section 319 CrPC is intended to prevent the real perpetrator from escaping trial; once ocular testimony discloses a direct role, the Court is obliged to summon the person concerned. The Trial Court’s order of 04 July 2022 correctly applied this standard, whereas the High Court’s interference under Section 482 CrPC amounts to a pre-trial acquittal on disputed facts.

6. Learned counsel for the respondents, respondent no.1 (State of Punjab) and respondent no.2, have submitted the following arguments:

6.1 The police investigation, supported by a parking-slip timed 06.30 a.m., OPD documentation, medical-store bill, CCTV footage and mobile-tower records, indicate that respondent no. 2 was at PGI Chandigarh on 10 May 2016. Moreover statements of the parking-attendant and chemist, as well as a village-level inquiry, corroborate this. These materials were scrutinised up the chain of command and the final report under Section 173(2) CrPC recorded respondent no. 2’s innocence, which the prosecution never challenged.

6.2 Section 319 CrPC demands evidence stronger than that required even for framing a charge. The testimony of PW-1 merely reiterates the FIR narrative, while Jagdev Singh’s version remains a Section 161 statement, inadmissible until he enters the witness box. No fresh or compelling material emerged after the High Court had earlier (24 November 2021) quashed the Section 193 summons; the prosecution is essentially seeking a second bite on the same record.

6.3 The time-distance matrix reinforces the alibi: village Jagowal is about 90 km from Chandigarh, and the CCTV still shows respondent no. 2 at PGI at 12:09 p.m., making his presence at the village confrontation improbable.

6.4 The Trial Court, in summoning respondent no. 2, ignored the “scientific and documentary” evidence and treated the untested alibi as a matter for trial, thereby reversing the investigative conclusion without any stronger contra-proof. The High Court correctly intervened under Section 482 CrPC, holding that the Trial Court was required to weigh the entire record, including the investigation dossier, before exercising an extraordinary power meant to be sparingly used.

6.5 Finally, respondents contend that conflating the acid-attack FIR of 13 March 2016 (in which respondent no. 2 was never named) with the present FIR has led to misplaced suspicion; repeated attempts to summon him, despite a consistent exoneration, amount to harassment rather than pursuit of justice.

7. Having considered the arguments and submissions of the parties and having examined the material on record, the issue that falls for consideration before us is whether the evidence led justified the Trial Court's exercise of power under Section 319 CrPC to summon respondent no. 2, and whether the High Court was right in setting that order aside at the threshold.

8. We shall first examine the scope of Section 319 (1) of the CrPC which has been reproduced hereunder: *"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."

The provision enables a criminal Court, once seized of the matter, to bring before it any individual whose complicity becomes apparent from the evidence that emerges in Court. It is an exception to the general rule that an accused stands trial only upon charge-sheet and committal; its object is to ensure that the trial does not proceed without a participant who, on the material now available, appears to share criminal liability. The power is extraordinary and therefore to be exercised with circumspection, yet it is neither illusory nor deferential to investigative conclusions: once live evidence evinces a prima-facie case stronger than mere suspicion, the Court must act.

9. The Constitution Bench of this Court in *Hardeep Singh v. State of Punjab*¹, observed that Section 319 CrPC is designed to ensure that every participant in a crime is brought before the Court and its provisions are therefore to be interpreted constructively and purposively, so that the true offender does not slip through procedural gaps. The relevant paras of the judgement are hereunder:

"8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the Courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the Courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

9. The presumption of innocence is the general law of the land as every man is presumed to be innocent unless proven to be guilty. Alternatively, certain statutory presumptions in relation to certain class of offences have been raised against the accused whereby the presumption of guilt prevails till the accused discharges his burden upon an onus being cast upon him under the law to prove himself to be innocent. These competing theories have been kept in mind by the legislature. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. This is also a part of fair trial and in our opinion, in order to achieve this very end that the legislature thought of incorporating provisions of Section 319 CrPC. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the Court

¹ (2014) 3 SCC 92

to carry out the abovementioned avowed object and purpose to try the person to the satisfaction of the Court as an accomplice in the commission of the offence that is the subjectmatter of trial.”

9. Hence, in our considered opinion, the power under Section 319 CrPC is triggered not by conjecture but by “evidence” that surfaces in Court. In the present case, narrated in detail how, on the morning of 10 May 2016, respondent no. 2, together with others, stopped a car, confronted the deceased and, in the Punjabi vernacular, told him that he and his family ought to drown themselves for failing to retaliate. PW-1 further described the immediate impact of those words: the deceased broke down, secluded himself, and a few hours later left home never to return alive.

10. The primary argument of Respondent no. 2 rests on his alibi. An alibi, however, is a plea in the nature of a defence; the burden to establish it rests squarely on the accused. Here, the documents relied upon, parking chit, chemist’s receipt, OPD card, CCTV clip, have yet to be formally proved. Until that exercise is undertaken, they remain untested pieces of paper. To treat them as conclusive at the threshold would invert the established order of criminal proceedings, requiring the Court to pronounce upon a defence before the prosecution is allowed to lead its full evidence. Even assuming the documents will eventually be proved, their face value does not eclipse the prosecution version. The parking slip is timed at 06:30 a.m.; the chemist’s bill and CCTV images are from 12:09 p.m. The confrontation is alleged at 08:30 a.m. A road journey from Jagowal to Chandigarh of roughly ninety kilometres in a private vehicle can comfortably be accomplished within the intervening window. More importantly, abetment to suicide is not an offence committed at a single moment. It may consist of a build-up of psychological pressure culminating in self-destruction, and the law punishes that build-up wherever and whenever it occurs.

11. Learned counsel for the respondents urged that the police, having once accepted the alibi, were the best judges of its authenticity and that their conclusion should not be lightly brushed aside. The submission overlooks the scheme of the CrPC. Once cognizance is taken and trial commences, the investigating agency’s view yields to the Court’s independent assessment. If, in the midst of that trial, evidence implicating a new participant surfaces, the Court is duty-bound to act on it. Section 319 CrPC would be rendered otiose if an Investigating Officer’s earlier opinion could freeze the array of accused for all time.

12. It was next argued that PW-1’s deposition merely reproduces the FIR. We are unable to agree. A first information report is only an initial version; a statement under oath, recorded in Court, is substantive evidence. Indeed, it is difficult to conceive of what stronger material could be demanded at the summoning stage short of a confession. The threshold is not proof beyond reasonable doubt; it is the appearance of involvement which is apparent from evidence adduced in the proceeding. That threshold was satisfied here.

13. We believe that the High Court, in interfering under Section 482 CrPC, placed decisive reliance on the investigation dossier and characterised the 10 May 2016 episode as mere “teasing”. Such a description underplays both the content and the effect of the words spoken. If the allegations is true, telling a physically challenged man that he and his family should die, and doing so in the immediate aftermath of a grievous acid attack, is not banter. Sensitivity to the social context, where honour and shame weigh heavily, was called for. The offence, no doubt, will have to be established at the trial. The Trial Court will also decide whether on facts the offence is established, keeping in view the law

laid down by this Court in **Mahendra Awase vs. State of Madhya Pradesh**¹ and other judgments interpreting Section 306 IPC.

14. Having regard to the purpose of Section 319 CrPC, we see no infirmity in the order of the Trial Court. On the contrary, non-summoning of respondent no. 2 would have risked a truncated trial and a possible failure of justice. The High Court, by elevating unproved defence documents above sworn testimony, adopted an approach that was neither consistent with the text of Section 319 CrPC nor consonant with the realities of a case involving a vulnerable victim. The Court's intervention, in effect, foreclosed the prosecution from testing the alibi and deprived the Trial Court of jurisdiction expressly conferred upon it.

16. For the reasons recorded above, the appeal succeeds and is allowed. The judgment and order dated 21 November 2023 passed by the High Court of Punjab and Haryana in CRM-M No. 31120 of 2022 is set aside.

17. The order of the Trial Court dated 04 July 2022 summoning respondent no. 2 to stand trial for the offence punishable under Section 306 IPC shall stand revived. Respondent no. 2 shall appear before the Trial Court within four weeks from today and thereafter abide by all further orders of the Trial Court. It will be open to the Trial Court to regulate the conditions of his release, if any application for bail is moved, in accordance with law.

18. All observations made herein are confined to the present adjudication under Section 319 CrPC and shall not influence the final appreciation of evidence by the Trial Court.

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

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)