

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

SINGLE BENCH: HON'BLE SHRI JUSTICE SHAILENDRA SHUKLA

MCRC NO.430/2019

Babulal s/o Surajmal Patidar & 4 others

Versus

State of M.P

Counsel for the Parties : Shri Amar Singh Rathore,
Advocate for the petitioners.
Shri Rajesh Mali, Public
Prosecutor for the respondent/State.

Whether approved for reporting : Yes

Law laid down : While considering application under section 311 Cr.P.C, the concept of victimology which include interest of victims and witnesses must also be considered along with those of the accused and fair trial encompasses both such interests.

Significant paragraph numbers : 17.

ORDER

(Passed on 04.01.2019)

Petitioners have filed this petition under section 482 of the Code of Criminal Procedure for quashing the order dated 10.12.2018 passed by learned Special Sessions Judge (SC/ST) in Special Sessions Trial No.07/2013, wherein the

application filed under section 311 Cr.P.C by the petitioners for recalling the prosecution witnesses have been rejected.

2. Brief facts of the case are that petitioners are facing trial under sections 147, 148, 149, 307, 302, 294, 323 & 506 of the IPC and under section 3(2)(v) of the Scheduled Castes & Schedules Tribes (Prevention of Atrocities) Act. In this case, prosecution examined 22 witnesses in all and closed the prosecution evidence. Thereafter, accused statements were recorded and nine defence witnesses also adduced their evidence and when the case was fixed for final arguments on 10.12.2018, the Presiding Officer was informed that Advocate Shri A.S.Rathore from Indore would submit his final arguments. Shri A.S.Rathore thereafter appeared and filed an application under section 311 of the Cr.P.C seeking to recall five witnesses already examined on the ground that these witnesses could not be confronted with some material questions. Learned trial Court on that day itself i.e. on 10.12.2018 heard both the parties on the application and rejected the same.

3. Aggrieved, this petition under section 482 Cr.P.C has been filed. In the petition, the petitioners have outlined the questions which needed to be confronted with and instead of five such witnesses mentioned in the application before the trial Court, nine witnesses have been mentioned which have been requested to be recalled. It has been submitted that

learned trial Court rejected the petitioners' application purely on the point of delay. However, for the ends of justice, this should not have been a factor that the application was filed belatedly. The entire case of petitioners depends on the theory of self defence but unfortunately in the cross examination this aspect was not considered and questions were not framed accordingly. Also on the point of distance of the residents of the complainant party from the spot and some other relevant questions were not asked instead counsel asked such questions which are usually never put across by the defence in any trial. Hence, in the interest of justice, this petition has been requested to be allowed and the order of the trial Court has been requested to be quashed and further direction has been sought to direct the trial Court to recall prosecution witnesses viz. Jitendra (PW/4), Sanjay (PW/5), Ramchandra (PW/6), Basant (PW/7), Akash (PW/8), Arjun (PW/9), Rahul (PW/10), Vijay Pal (PW/11) and Sandeep (PW/12).

4. Per contra, learned Public Prosecutor for the State has vehemently opposed the petition submitting that the case is pending since 2013 and is five year old case and if it is reopened then a further delay would take place which would defeat the object of expedited trial in old cases.

5. Considered rival submissions.

-4-

6. A perusal of the impugned order dated 10.12.2018 shows that even after the stage of defence evidence was over and the matter was fixed for final arguments, the accused sought more than 15 adjournments for submitting final arguments and even before defence evidence took 9 dates for completing their defence evidence. In view of these circumstances, the application was rejected.

7. The question before this Court is whether there is any material on record to interfere with the order passed by the learned trial Court?.

8. Learned counsel for the petitioners in his compilation has filed certified copies of the evidence of witnesses who, as per application, need to be cross examined again. It had been pointed out that the cross examination by the erstwhile counsel was perfunctory which did not bring about the defence of petitioners properly. Few citations in support have been filed which are Allahabad High Court decision in the case of **Mustakeem vs. State of Uttar Pradesh LAWS (ALL)-2001-8-30**; Punjab & Haryana High Court in the case of **Nirmal d/o Manoharlal vs. State of Punjab LAWS (P&H)-2001-8-30** & Allahabad High Court decision in the case of **Chhotey, Badri Prasad vs. State of Uttar Pradesh LAWS (ALL) 2005-11-115**. In these citations the basic principle of section 311 Cr.P.C has been reiterated which is

that the Courts have wide discretion to recall any witness/witnesses for the ends of justice.

9. Admittedly, the case in hand is more than 5 years old. It has also not been disputed by the petitioners that the application under section 311 Cr.P.C was preferred at the stage of final arguments and that too when the case had been adjourned for the same purpose more than a dozen times. The question is whether the application under section 311 Cr.P.C ought to have been allowed for the ends of justice?.

10. The term “ends of justice and fair trial” has more often been considered to be a term from the point of view of accused. However, in the recent past the concept of victimology has gained attention and in its several judgments the Hon'ble Apex Court has stressed that while considering the concept of fair trial, the interests of the victims and witnesses also need to be considered and the Court should adopt a balance approach between the interests of the accused and that of the victims and witnesses.

11. Recently, this question came up before the Apex Court in the case of **State of Haryana vs. Ram Mehar & others AIR 2016 SC 3942**. In this case the facts were similar to the present case. The evidence of prosecution had been concluded, statements under section 313 Cr.P.C were also recorded and defence witnesses had also been examined and it was then that the application under section 311 Cr.P.C was

filed wherein it was requested that certain witnesses be recalled as some important questions pertaining to investigation particularly with regard to the type of weapons used and injuries caused need to be asked which could not been asked earlier. The trial Court rejected the application. Dissatisfied, the accused approached the High Court and the High Court allowed the same terming the recall necessary in the interest of justice. The order of the High Court was thereafter challenged before the Hon'ble Supreme Court. The Hon'ble Apex Court in this case then made certain pertinent observations while allowing the SLP and rejecting the prayer for application filed under section 311 Cr.P.C. The Hon'ble Supreme Court observed as under:

“One cannot afford to treat the victim as an alien or a total stranger to the criminal trial. The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim”

It was further observed as below:

“Suffice it to say, a criminal trial does not singularly centres around the accused. In it there is involvement of the prosecution, the victim and the victim represents the collective. The cry of the collective may not be uttered in decibels which is physically audible in the court premises, but the Court has to remain sensitive to such silent cries and the agonies, for the society seeks justice. Therefore, a balance has to be struck.”

12. The Apex Court drew from various other citations of the Supreme Court and it would be proper to make a mention about such citations and the pronouncements therein.

13. In the case of **Mangal Singh vs. Kishan Singh AIR 2009 SC 1535**, it was held that *“any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and particularly on the two sides of the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore, no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence.”*

14. In the case of **Iqbal Singh Marwah vs. Meenakshi Marwah AIR 2005 SC 2119**, it was held that *“delay in the prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost.”* In the case of **Shiv Kumar Yadav vs. State AIR 2015 SC 3501**, the Apex Court observed as under:

“While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end,

the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. The witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for the victims, especially so, in heinous crimes, if they are required to repeatedly appear in court to face cross-examination.”

15. Lastly, in the case of **Vinod Kumar vs. State of Punjab AIR 2015 SC 1206**, it was held that “*the duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded*”.

16. The case in hand is no different. After allowing full play to the accused persons/petitioners, they again have turned around seeking to recall witnesses. If this prayer is allowed, it would amount to disturbing the balance between the interest of the accused *vis-a-vis* interest of the victims apart from the fact that further time in an already old case would be spent leading to more adjournments. The Hon'ble Supreme Court in the case of Vinod Kumar's case (supra), coming down heavily on unnecessary adjournments observed that “*adjournments which were malady at one time, with the efflux of time, a metamorphosed into malignancy. What was a mere disturbance once has become a disorder, a diseased one, at present*”.

-9-

17. Suffice it to say that while considering the application filed under section 311 Cr.P.C the Courts are required to consider the interests of victims/witnesses and prosecution along with all accused and that while considering the concept of fair trial and interest of justice, a balance has to be struck between the two contrasting interests as stated earlier, more so, when the application under section 311 Cr.P.C has been filed at very belated stage. Further, it must not be forgotten that interest of justice also involves refraining from giving undue adjournments which may become a necessary corollary, once application under section 311 Cr.P.C is allowed.

18. In view of the above observations, it is concluded that the impugned order is not erroneous and no interference is called therein. Consequently, this petition filed under section 482 Cr.P.C stands dismissed.

(SHAIENDRA SHUKLA)
JUDGE

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