

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P.No.55 of 2023

The State of Tripura,
Crime Branch,
Ministry of Home Affairs,
Government of Tripura

-----Petitioner(s)

Versus

1. Sri Ranabir Das,
son of Late of Ruhini Kumar Das
of Industry Road, North Kumarghat,
P.S. Kumarghat, District- Unakoti Tripura

2. Sri Hrishikesh Deb,
son of Haribal Deb
of K.N. Road, Kumarghat,
P.S. Kumarghat, District- Unakoti Tripura

3. Smt. Archana Malakar,
daughter of late Kamal Chandra Malakar
of Tongibari, Lalchari Colony,
P.S. Dharmanagar, District- North Tripura,
Presently Chand Tilla,
Care of Rabindra Debnath, near Petrol Pump,
Panisagar, North Tripura

----- Accused Respondent(s)

For Petitioner(s) : Mr. Raju Datta, P.P.

For Respondent(s) : Mr. P.K. Biswas, Sr. Adv.

Mr. Pujan Biswas, Adv.

Ms. Raktima Nandi Majumder, Adv.

Date of hearing &
Judgment & Order : 12.12.2023

Whether fit for
reporting : NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

This Criminal Revision Petition under Section 397 read with Section 401 of Cr.P.C. is filed for setting aside the order dated 20.07.2023 and 05.08.2023 passed in connection with Case

No.S.T.(T-1)03 of 2017 by the Learned Additional Session Judge, Court No.5, West Tripura, Agartala rejecting the prayer of the prosecution to adduce witnesses under Section 311 of Cr.P.C.

2. The gist of the petition filed by the prosecution in short is that one Chayanika Banik, daughter of late Jitendra Chandra Banik of Kamarpukurpar, Near Math Chowmuhani Bazar, P.S. East Agartala was a Teacher of Modern School at Math Chowmuhani and on 01.10.2015 at about 10:15 hrs. she left her house for the purpose of proceeding towards her school. But she did not return back on that day. Her mother namely Smt. Dipika Banik [PW-1] lodged a missing diary at East Agartala Women Police Station, but said Chayanika Banik could not be traced out after search in all probable areas. So the complainant suspected that her daughter namely Chayanika Banik has been kidnapped by any person and on this, she lodged a case to East Agartala Women Police Station vide P.S. No.2015/WEA/063 dated 04.10.2015 under Section 366 of IPC. The 1st Investigating Officer examined some witnesses and recorded their statements under Section 161 of Cr.P.C. and after that, another Investigating Officer was engaged but later on, the case was endorsed to Crime Investigation Department [CID] for further investigation when Sri Ranabir Bhattacharjee, Sub-Inspector of Police, CID conducted investigation of the case. In course of investigation, the I/O visited the place of occurrence and examined all relevant witnesses, recorded their statement under Section 161 of Cr.P.C. and during investigation, the I/O caused arrest of accused persons in connection with this case and as per the confessional statement of the prime accused namely Sri

Ranabir Das and Co-accused namely Sri Hrishikesh Deb in presence of Executive Magistrate, hairs along with small pieces of bones, Wrist Watch, etc., were recovered from the Septic Tank in the House of prime accused namely Sri Ranabir Das. During investigation, Post Mortem Examination was done at AGMC & GBP Hospital. Test identification Parade in respect of accused Sri Ranabir Das at Kendriya Sangsodhanagar, Bishalgarh in presence of Judicial Magistrate. During investigation, T.I. Parade was also held in respect of the recovered seized alamats belonging to the victim namely Chayanika Banik in presence of Judicial Magistrate in respect of one Wrist Watch. Further, during investigation, blood samples of the sister and mother of deceased have been sent to the Director, Center for DNA, fingerprinting and diagnostic (CDFD), Hyderabad for DNA Test.

3. It was further submitted that the elder sister of Chayanika Banik got married in the year 2007 to one Ranadhir Das, elder brother of accused Sri Ranabir Das and after the marriage, a close relationship of love had been developed in between Ranabir Das and Chayanika Banik and consequently, their marriage ceremony was held on 23.07.2012. That time, the accused Ranabir Das who was a Nayeb Subdedar was posted as In-charge BDDS Unit, Unakoti District, Kamranga Bari, Kailashahar and during investigation, it was found that after the marriage of Ranabir Das, he did not maintain any physical and mental relationship with Chayanika Banik which was revealed from the seized diary maintained by deceased Chayanika Banik. It was further revealed that the relationship between Ranabir Das and Chayanika Banik

was not so conducive and on several occasions, Chayanika Banik was driven out from her matrimonial home and on several occasions said Ranabir Das stood outside the house of his in-law and in one occasion said Ranabir Das informed his mother-in-law that he wanted to go for mutual divorce with Chayanika Banik and after Durga Puja in the year 2013, she was send back to her mother's house. Since from January, 2014 Smt. Chayanika Banik started residing at Agartala and joined her earlier job which she had left earlier. Chayanika Banik used to call her husband over phone but the accused Ranabir Das used to avoid her and also abused her using bad languages.

4. It is further submitted that during investigation, it also revealed that on 25.12.2014, Ranabir Das came to the house of his in-laws and thereafter, both Chayanika Banik and Ranabir Das had regular long conversation over phone call when Chayanika Banik expressed her mother that she was observing some change in the mind and attitude of Sri Ranabir Das. Sri Ranabir Das used to meet Chayanika Banik before her school hours in several temples at Agartala but refrained himself for visiting his in-laws house. From Tower Locations of mobile phones used by the accused Ranabir Das it was revealed that accused Ranabir Das visited Agartala frequently with a view to meet his wife Chayanika Banik since July, 2015 keeping his Mobile Phone No.9615358313 in switch off mode using another Mobile No.8014261388 belonging to one Smt. Archana Malakar and Sri Hrishikesh Deb and some other persons. As per Call Details Report [CDR] there were frequent contacts in between Ranabir Das and Chayanika Banik from July, 2015 to till

her abduction on 01.10.2015. On 30.09.2015, during school hours Sri Ranabir Das had conversation with Chayanika Banik over mobile phone and as per CDR report at 12:36 p.m. (613 seconds), 1:27 p.m. (889 seconds) and 03:39 p.m. (41 seconds) there were hot exchange of words during the above phone calls and Chayanika Banik was found extremely angry. In the intervening night of 30.09.2015 as many as 14 Nos. of phone calls were either received or made from mobile No.9615358313 (used by Sri Ranabir Das) with the mobile phone No.9774830605 of Chayanika Banik and even during investigation, the connectivity of mobile phone of accused Sri Ranabir Das with the mobile phone of other accused persons namely Smt. Archana Malakar and Sri Hrishikesh Deb was detected.

5. It was further asserted that during investigation on 01.10.2015, Sri Ranabir Das being In-charge of Bomb Detection Disposal Squad (BDDS), Unakoti District, Kailashahar was found to be absent and his Government Quarter was under lock and key since early morning and on 01.10.2015, Chayanika Banik was abducted through inducement and boarded in a Silver Color Small Car (LMV) bearing registration No.TR 02 E 0786 (owner and driver accused Sri Hrishikesh Deb) from the road behind Nazrul Kalashetra by Sri Ranabir Das who also boarded in the said car and on 29.09.2016, during T.I. Parade Sri Ranabir Das was identified at Kendriya Sangsodhanagar by the eye witnesses who was last seen with Chayanika Banik and during running condition of vehicle Sri Ranabir Das provided one poisonous tablet to Chayanika Banik in the pretext of ensuring pregnancy by that Tablet and after some

time, Chayanika Banik died and said Sri Ranabir Das took the said vehicle up to his house at Kumarghat and ultimately, in the evening on that day, dead body of Chayanika Banik thrown into the Septic Tank in the house of Sri Ranabir Das at Kumarghat. So the I/O during investigation ultimately reached to all the accused persons and arrested through CDR of Aircel Company which was used by all the accused persons and through call details Police started investigation and ultimately arrested all the accused persons and according to their confessional statement and leading to discovery the I/O also recovered some materials such as hairs, hair band, Wrist Watch of Chayanika Banik and some pieces of bones and on the other hand, all the CDR calls a total report regarding call details has been sent by a Nodal Officer of Aircel Company by complying the provision of Section 65B of the Indian Evidence Act and which was also seized by I/O through seizure list and the said Nodal Officer was cited as witness in the Charge-sheet.

6. Thereafter, all the seized materials seized from the Septic Tank were send by I/O to the Central Forensic Science Laboratory at Gorachand, Kolkata dated 27.10.2016 for DNA, but one Director namely Mr. P. Ghosh returned the same exhibits with some observations to Superintendent of Police, West Tripura, Agartala but the said report was wrongly tagged with the case diary and the said person was not cited as witness in the Charge-sheet.

7. It was further submitted that after completion of the investigation, the I/O submitted Charge-sheet against all the accused respondents and in the Charge-sheet, the I/O in total cited 94 Nos. of witnesses out of which one Sri Jitumoni Das was cited as

witness in Sl. No.77 and also submitted number of Alamats in a Trunk before the Court of Learned Sessions Judge.

8. It was further submitted that by this time Mr. Prabir Saha has been appointed as a Special P.P. and after his appointment, 19 Nos. of witnesses have been examined and only 2 Nos. of I/O were remained to be examined including one Judicial Officer who conducted T.I. on materials. That time, Learned Special P.P. after thorough search of the case docket found that witness Mr. Jitumoni Das who was the Nodal Officer of Aircel Company has submitted the CDR of all the Aircel Phone numbers and he time to time by sending CDR message of various phone calls and location of Tower of Aircel Company and with the said report of Mr. Jitumoni Das, the I/O could reach up to the accused persons for their arrest and said Jitumoni Das at the requisition of I/O had send all the prints of CDR, which were seized by I/O on 04.10.2016 through seizure list. But the said witness could not be examined though summons have been issued to him but it returned back with report that since 2019 said Jitumoni Das had left the job of Aircel Company and attached with another Company and could not find his address. Thereafter, Learned Special P.P. on 20.07.2023 submitted an application before the Learned Court below under Section 311 of Cr.P.C. for issuing summons upon witnesses namely Jitumoni Das and P. Ghosh. It was further submitted that Aircel Company merged with Airtel in the year 2019 and said Jitumoni Das left his job and he is presently residing at Guwahati. In respect of another witness, Mr. P. Ghosh who submitted a report regarding non examination of DNA profile and reasons thereof are required to

be exhibited stating that original report was lying with the case docket and I/O wrongly could not submit the same with the Charge-sheet. But the Learned Court below rejected the application of the prosecution stating inter alia that the prosecution did not submit the address of Mr. Jitumoni Das and the recording of evidence of the case have been started since 2017. So the Court did not find any merit to issue summon upon Mr. Jitumoni Das and in respect of issuing summon upon another witness Mr. P. Ghosh who returned back the exhibits without examination. But the Learned Court below rejected the said prayer of the prosecution. Thereafter, again on 05.08.2023 similar petition was submitted and the said petition was also rejected by the Learned Court below. Accordingly, the prosecution has submitted the present Criminal Revision petition for allowing the prayer of the prosecution under Section 311 of Cr.P.C. by setting aside the order dated 20.07.2023 and 05.08.2023 passed by the Learned Additional Session Judge, Court No.5, West Tripura, Agartala.

9. In course of hearing, Learned P.P., Mr. Raju Datta appearing on behalf of the prosecution has submitted that the evidence of those two witnesses were very much material for just decision of the case. But the Learned Court below without any cogent reasons rejected both the applications which has caused prejudice to the prosecution of this case. Learned P.P. further submitted that if the prayer of the prosecution is not considered, the prosecution case would seriously suffer and for proper adjudication of the case and also to unearth the truth of the case

where one innocent lady had lost her life, the prayer of the prosecution be allowed.

10. Learned P.P referring the seizure memo dated 04.10.2016 submitted that in course of investigation, the I/O of the case seized some documents from said Jitumoni Das, Nodal Officer along with Certificates which needs to be proved for proper adjudication of the case and referring the name of another witness Mr. P. Ghosh, Learned P.P. further submitted that the letter dated 01.11.2016 which was written by the said witness as Director to S.P., Agartala needs to be proved in this case for proper adjudication and relied upon some citations. So Learned P.P. fairly submitted before this Court to allow the prayer of the prosecution under Section 311 of Cr.P.C. by setting aside the impugned orders.

11. On the contrary, Learned Senior Counsel, Mr. P.K. Biswas appearing on behalf of the respondents submitted that this Criminal Revision petition is not maintainable which is liable to be dismissed with costs. He also submitted that in this case, the recording of evidence has commenced in the year 2017 and till today, the prosecution could not complete the recording of evidence of the prosecution side. Resulting which the respondents are facing serious inconvenience without any justified grounds. He further submitted that since from the year 2017 till today, few prosecutors have been changed in the said case and in all the occasion, the new prosecutor is coming with a fresh list of witnesses, causing prejudice to the accused respondents of this case. He submitted that it is the settled position of law that the prayer of prosecution may be allowed under Section 311 of Cr.P.C.

at any stage. But the Court is to see whether the petition filed is justified or not. Furthermore, from the evidence of PW-44 it is crystal clear that no DNA report is proved in this case. More so, from the record of the Learned Court below it would reveal that several opportunities were given to the prosecution to adduce witness Jitumoni Das. But in spite of issuing summons, the prosecution has failed to adduce him before the Court. Now, at this belated stage just to drag the case and to harass the accused respondents of this case, this prayer is made by the prosecution which needs to be dismissed *in limine*.

12. Learned Senior Counsel further submitted the Court, to render justice to the respondents and in this case, in spite of fixing calendars on so many occasions by the Learned Court below prosecution could not adduce all the witnesses and as alleged by the prosecution, the evidence of witnesses namely Mr. Jitumoni Das and Mr. P. Ghosh are not at all relevant for just decision of this case. So, finally, Learned Senior Counsel prayed for dismissal of this Criminal Revision petition with costs in favour of the accused respondents.

13. I have meticulously gone through the L.C.R. and also heard submissions of Learned Counsels at length. Admittedly, in this case, up to this stage, 64(sixty four) Nos. of witnesses have been examined by the prosecution out of 94(ninety four) Nos. of witnesses as mentioned in the Charge-sheet. Witness Jitumoni Das as alleged by the prosecution is shown as witness in Serial No.77 of the Charge-sheet. But another alleged witness Mr. P. Ghosh has not been cited as witness in the Charge-sheet by the I/O.

14. Further, it appears that on 20.06.2023, Learned Special P.P. fairly submitted before the Court below that the prosecution would adduce the rest witnesses in Serial Nos.91, 92, 94 of the C/S and Smt. A. Debroy who is now posted as Civil Judge, Senior Division, Court No.2, West Tripura, Agartala. Thereafter, on 20.07.2023, Learned Special P.P. filed one petition before the Learned Trial Court under Section 311 of Cr.P.C. for issuing summons upon two witnesses namely Mr. Jitumoni Das, Nodal Officer of Aircel Company, residing at Police Bazar, Shillong and Mr. P. Ghosh, Director of Central Forensic Science Laboratory, Kolkata. But the Learned Court below on 20.07.2023 rejected the prayer of the prosecution in respect of issuing summons upon the witness Jitumoni Das on the ground that the prosecution since from the year 2017 could not furnish his proper address and in respect of another witness, the Learned Court below opined that *".....The hair samples itself can only be analyzed for mitochondrial DNA for which the facility is not available in this laboratory. Secondly, the bone samples, which was recovered from the tank poses very restricted chances to get DNA samples as presence of these bones in water for more than 24 hours reduces the extractability of DNA from bones. As this laboratory is not well equipped to examine such samples, this laboratory is unable to accept the same for examination. Hence, the case is returned herewith in original and inconvenience caused is deeply regretted...."* and ultimately rejected the prayer.

15. Thereafter, on 05.08.2023 again Learned Special P.P. submitted similar prayer and on that day, the Learned Court below

after hearing both the sides again rejected the prayer filed under Section 311 of Cr.P.C. on the ground that the prosecution did not challenge the earlier order dated 20.07.2023.

16. In **V.N. Patil versus K. Noranjan Kumar and Others** reported in **(2021) 3 SCC 661** the Hon'ble Supreme Court has observed as under :

13: The scope of Section 311 CrPC which is relevant for the present purpose is reproduced hereunder:

"311. Power to summon material witness, or examine person present—

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

14. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said "wider the power, greater is the necessity of caution while exercise of judicious discretion."

17. In **Varsha Garg versus State of Madhya Pradesh and Others** reported in **2022 SCC Online SC 986** the Hon'ble Supreme Court has further observed as under :

"37. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest."

18. In **Satbir Singh versus State of Haryana and Others** reported in **2023 SCC Online SC 1086** the Hon'ble Supreme Court has observed as under :

"10. In **Manju Devi v. State of Rajasthan**, (2019) 6 SCC 203, this Court emphasized that a discretionary power like Section 311, CrPC is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, whilst also ensuring no prejudice is caused to anyone. A note of caution was sounded in **Swapan Kumar Chatterjee v. Central Bureau of Investigation**, (2019) 14 SCC 328 as under:

'10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.'

11. In **Harendra Rai v. State of Bihar**, 2023 SCC OnLine SC 1023, a 3-Judge Bench of this Court was of the opinion that Section 311, CrPC should be invoked when '... it is essential for the just decision of the case."

19. In **Harendra Rai versus State of Bihar and Others** reported in **2023 SCC Online SC 1023** the Hon'ble Supreme Court

in dealing with the matter under Section 313 of Cr.P.C. has observed as under :

"114. Section 311 CrPC confers wide powers on any court at any stage of any inquiry, trial or other proceeding under this Code to summon material witness or examine person present. Such person may not be a person summoned as a witness. Power to recall and re-examine is also vested. The concept is that it should be essential for the just decision of the case. The said section is reproduced hereunder:

"Section 311 in The Criminal Procedure Code, 1973

311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or. recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

115. This power can be exercised not only by the Trial Court but also by the appellate Court or revisional Court. The logic behind this provision is that the endeavour of the Courts is to find out the truth which would be essential for the just decision of the case. Additionally, Sections 367 and 391 Cr.P.C confers powers on the High Court dealing with death reference and appellate Courts to take additional evidence.

20. From the aforesaid citations, it is clear that the power for issuing summons upon the witnesses can be exercised not only by the Trial Court but also by the Appellate Court or by the Revisional Court. The main purpose of Section 311 of Cr.P.C. is that the Court should endeavor to find out the truth which would be essential for the just decision of this case. The object underlying, under Section 311 of Cr.P.C. is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or the determinative factor is to see whether it is essential to just decision of this case or not.

21. It is undisputed that up to this stage, the prosecution has adduced 64 (sixty four) Nos. of witnesses. It is also on record that since 2017, the case is pending for adjudication and by this

time, the Learned Court below has given huge opportunities to the prosecution to adduce witnesses. From the contents of the seizure list and also from the communication vide letter dated 01.11.2016 written by alleged witness namely P. Ghosh to SP, Tripura, Agartala, it appears to this Court that for fair adjudication of this case, the evidence of both the witnesses would be relevant. The Learned Court below considering the materials on record ought to have allowed the prayer of the prosecution filed under Section 311 of Cr.P.C. for proper adjudication of this case and if the evidence of those witness are not recorded, in my considered view, the prosecution may be prejudiced in this case. So, for fair ends of justice and considering the nature of charges and also to unearth the truth of the case of the prosecution, this Court deems it proper to allow the prayer of the prosecution to adduce the said witnesses namely Sri Jitumoni Das and Mr. P. Ghosh, in view of the provision provided under Section 311 of Cr.P.C.

22. In the result, the present Criminal Revision petition filed by the prosecution is hereby allowed. The order dated 20.07.2023 and 05.08.2023 passed by Learned Additional Sessions Judge, Court No.5, West Tripura, Agartala in connection with Case No.S.T.(T-1)03 of 2017 is hereby set aside. The prosecution is allowed to adduce the witnesses namely Sri Jitumoni Das and Mr. P. Ghosh for fair adjudication of this case under Section 311 of Cr.P.C. Since, the case is pending since 2017, so it is hereby ordered that the prosecution should take utmost endeavor to adduce all the rest witnesses at an earliest for early completion of

trial and the Learned Court below should make endeavor to dispose of the case latest by 30th April, 2024.

With this observation, the case is disposed of.

A copy of this order be communicated to Learned Court below along with LCRs.

JUDGE



Digitally signed by Sabyasachi
BHATTACHARJEE
Date: 2023.12.13 10:51:15 +05'30'

Sabyasachi B