

GAHC010112242022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./613/2022

SALIM UDDIN AND 3 ORS
S/O- LATE FARIZUDDIN

R/O- WARD NO-15
HOJAI TOWN

P.S AND DIST- HOJAI
ASSAM

2: TAPJUL ALI
S/O- LATE HUSSAIN ALI

3: IMDADUR RAHMAN
S/O- KHALILUR RAHMAN

4: HIFZUR RAHMAN
S/O- KHALILUR RAHMAN

ALL ARE RESIDENTS OF-
VILLAGE- KATHALPUR

P.O- NILBAGAN
PIN-782446
P.S AND DIST- HOJAI
ASSAM
VERSUS

THE STATE OF ASSAM AND ANR
REP. BY PP
ASSAM

2:SEW PRASAD CHAUHAN
S/O- LATE ALIGU CHAUHAN

VILLAGE- BORDOLOI COLONY
P.O
P.S AND MOUZA - HOJAI

DIST- NAGAON (NOW HOJAI)ASSAM

PIN-782435

Advocate for : MR. M U MAHMUD
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

11.08.2023

1. Heard Mr. M. U. Mahmud, learned counsel for the petitioners. Also heard Mr. S. Nawas, learned counsel for the respondent No. 2.
2. The present application is filed assailing the order dated 26.09.2022 passed by the learned Sub Divisional Judicial Magistrate, Hojai, in GR Case No. 677/2022, whereby in exercise of power under Section 311 of Cr.P.C., the learned Court below has allowed three persons to be witnessed to the incident though they were not recorded as witness by the Investigating Authority while filing the charge-sheet.
3. The FIR was lodged by one Sew Prasad Chauhan i.e. the respondent No. 2 with the following allegations:-

“Sir,

With due respect, I beg to state that the above named accused at 3 A.M. armed with sharp iron rod, pistol weapons breaking my doors and windows of my house unlawfully and holding hands of my family members hurt with dagger and tried to kill us. The accused persons forcefully snatched the below mentioned articles, money, gold ornaments, mobiles and other valuable things. They also tried to burn our house.

Now, the condition of my family members are serious and they are under treatment.

So, it is requested to you to investigate the matter and take proper action against the accused persons”.

4. Thereafter on the basis of the said FIR, a case being Hojai Police Station
Case No. 149/2012 under Sections
147/148/149/442/448/420/324/326/307/380/436/511 of IPC dated
01.06.2012 was registered. Subsequently, after investigation, charge-sheet
was filed on 30.12.2012 vide Charge Sheet No. 220/2012, wherein the
present petitioners were arrayed as accused.
5. During the course of trial, an application was filed by the Prosecution
under Section 311 of Cr.P.C. to bring three witnesses for examination
namely (1) Ramawati Chouhan, (2) Smt. Puhita Chouhan and (3) Smti.
Gayatri Chouhan. The basis of such application was that these three
persons were the injured person who got injury in the alleged incident and
their medical report with injury report are also available on record.
6. On the basis of the aforesaid application, the learned Court below, in
exercise of power under 311 of the Cr.P.C. came to a conclusion that the
examination of the aforesaid three witnesses shall be necessary to come
into a just decision in the aforesaid case. Accordingly, the application was

allowed by the impugned order dated 26.09.2022.

7. Mr. Mahmud, learned counsel for the petitioners submits that the trial was almost over, all the prosecution witnesses were examined, however, at that point, the said application was filed when the prosecution came to learn that there is no iota of evidence to implicate the petitioner. Therefore, such application was not necessary and was filed without any valid ground and filled up the lacuna.
8. This Court has given anxious consideration to the submissions made by the learned counsel for the parties. Also perused the materials available on record.
9. The law is by now well settled that that the power under Section 311 of the Cr.P.C., can be exercised at any stage of any trial or other proceeding under the Cr.P.C. Such power cannot be refused to be exercised for the reason of closure of evidence. The basic contour of power under Section 311 of Cr.P.C., is to do justice. Such power needs to be exercised whenever the Court finds that any evidence is essential for the just decision of the case. As laid down in many cases by the Hon'ble Apex Court that such statutory provision is enacted to emphasize that the Court is not a helpless bystander in the derailment of justice and quite to the contrary, the Court has a vital role to discharge in ensuring that the cause of discovering the truth as an aid in realization of justice is manifest.
10. In the case in hand, the claim is that the three witnesses are injured witness and it is also well settled that the evidence of injured witnesses stands in a higher pedestal. Therefore, this Court cannot find any fault with

the learned Court below in exercise of its power under Section 311 of the Cr.P.C.

11. Accordingly, the present criminal revision petition is dismissed. While parting with the record, it is made clear that this Court has not commented on the merit of the trustworthiness of the three injured witnesses or has also not concluded that these are the injured witnesses. Such veracity is to be determined during the course of the trial and during their examination and the petitioner shall definitely get a chance to cross-examine these witnesses.
12. With the aforesaid observation, the present criminal revision petition stands dismissed.

JUDGE

Comparing Assistant