



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1800-2024 (O&M)

Date of Decision: 17.09.2024

Amrik Singh

...Petitioner

Versus

State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. Amandeep S. Manaise, Advocate,
for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner (accused) assails order dated 27.08.2024 passed by the learned Sessions Judge, Gurdaspur vide which an application filed by the complainant under Section 311 read with Section 91 of the Cr.P.C. for re-examination of PW-9 Jarnail Singh, PW-10 Manjit Kaur and PW-11 Gurpreet Singh has been allowed.
2. The matter arises out of FIR No.66 dated 29.05.2021 registered at Police Station Sadar Gurdaspur, under Sections 302, 307, 34 IPC lodged at the instance of Jarnail Singh, wherein it is stated that on 29.05.2021 at about 6.30 AM, he alongwith his son Gurpreet Singh, brother Balwinder Singh and sister-in-law Manjit Kaur had gone to their fields to attend some agricultural activities. At about 7.30 AM, Jony, driver of accused Amrik Singh, came there on a tractor with 'rotavator' attached. By the same time, Amrik Singh alongwith his daughter Jyoti also came there in a black coloured car. Amrik Singh was having a .315 rifle on his shoulder and a



pistol in his right hand. Thereafter, Amrik Singh started driving the tractor while his daughter exhorted him (Amrik Singh) to mow down the lady finger crop in the fields of Balwinder Singh and that in case Balwinder Singh obstructs them, a lesson be taught to him. It is further alleged that around the same time, Jatinder Singh, Sarpanch also raised a *lalkara* '*Chacha Karde Kam, Bach Ke Na Jaan*'. Upon noticing the said developments, the complainant and his son Gurpreet Singh also rushed closer. When Balwinder Singh and his wife Manjit Kaur and Gurpreet Singh tried to stop Amrik Singh from damaging their crop, Amrik Singh took out his pistol and fired on Balwinder Singh hitting on his chest. Amrik Singh fired another shot hitting the right shoulder of Manjit Kaur and yet another shot hitting her above right thigh. When Gurpreet Singh started running to save himself, Amrik Singh also fired at him hitting him at his back. Balwinder Singh died at the spot.

3. The matter was investigated by the police and upon conclusion of investigation, challan was filed against Amrik Singh and Jony @ Harjohn Singh, whereas Jyoti @ Sumandeep Kaur and Jatinder Singh, Sarpanch were found innocent.
4. Pursuant to framing of charges against the accused, the prosecution led evidence. However, when Jarnail Singh (complainant) i.e. brother of the deceased, Manjit Kaur i.e. widow of the deceased and Gurpreet Singh, son of the complainant, who were all eye-witnesses, stepped into the witness-box on 05.09.2022 as PW-9 to PW-11 respectively, they absolutely resiled from their previous statements recorded during the course of investigation and did not support the case of prosecution.



5. While PW-9 Jarnail Singh stated that he was never present at the spot when the occurrence had taken place and was away to Sabzi Mandi, Gurdaspur, PW-10 Manjit Kaur and PW-11 Gurpeet Singh, who were injured, took a stand that when they were working alongwith Balwinder Singh (deceased) in the fields, two unidentified persons with muffled faces came there on a motor-cycle and both of them fired towards them and they could not identify the assailants.
6. All the aforesaid three eye-witnesses were declared hostile. However, the trial proceeded further and the statements of the accused were recorded in terms of Section 313 Cr.P.C. When the matter was at the stage of defence evidence, complainant – Jarnail Singh as well as injured - Manjit Kaur and Gurpreet Singh moved an application seeking permission to re-examine themselves while pleading that they were under duress and undue influence of the accused, who had pressurized them to make false statements before the Court. The said application was allowed by the trial Court vide order dated 27.08.2024, which has been impugned before this Court.
7. Learned senior counsel appearing on behalf of the petitioner/accused submitted that the aforesaid application has been filed at the highly belated stage, when the matter was at the stage of recording defence evidence and is nothing, but a ploy to black-mail the accused and to extort money from them. Learned senior counsel submitted that the contention of the eye-witnesses i.e. the complainant and the injured, that they were pressurized and were forced into making their earlier statements cannot be accepted inasmuch as when the statements were recorded in the Court on 05.09.2022, accused Amrik Singh was in custody, who otherwise is an aged person having chronic heart ailment. Learned senior counsel further



submitted that the statement of the accused having already been recorded in terms of Section 313 Cr.P.C., their defence already stands disclosed and in case the eye-witnesses are re-examined at this stage, the accused will stand seriously prejudiced.

8. This Court has considered the aforesaid submissions.
9. While it is correct that the application for re-examining the witnesses was filed at a belated stage, but there is no absolute rule that such an application cannot be filed belatedly. Rather, it is well-settled that an application under Section 311 Cr.P.C. can be filed at any stage before pronouncement of the judgment. The case in hand is a case wherein serious allegations of murder of one person and attempt to murder two others have been made. It is not a case where many exaggerations have been made by the complainant. Two of the witnesses are stamped witnesses having sustained gun shot injuries in the same very occurrence from the same weapon, which was used to kill Balwinder Singh. The weapon of offence i.e. .32 revolver had been recovered from the petitioner Amrik Singh alongwith 5 live cartridges and 5 empty cartridges i.e. on the very next day of the occurrence i.e. on 30.05.2021. On 01.06.2021, .315 bore rifle was also recovered pursuant to the disclosure statement suffered by the petitioner.
10. While it is correct that as on day when the statements of the witnesses were recorded i.e. on 05.09.2022, accused Amrik Singh was in custody, but he had been availing interim bail on medical grounds since 21.04.2022 and had been directed to surrender before the jail authorities on the morning of 23.08.2022. In other words, it was just about 12 days prior to the day when the witnesses deposed in the Court that Amrik Singh had surrendered before the jail authorities and otherwise had been on interim bail for a good



4 months and during which period he would have got ample opportunity to pressurize and coerce witnesses.

11. While resiling of witnesses or taking an absolute volte-face by a witness can hardly be appreciated, but having regard to the facts and circumstances of the case where the witnesses i.e. the complainant and the injured witnesses are close relatives of the deceased, their resiling become rather suspect particularly when the witnesses were themselves injured and the accused are also known to them and are specifically named in FIR. It is neither a case of belated FIR nor a case of exaggerations. Rather, it appears that at one stage the complainant had also moved application dated 25.05.2022 (Annexure P-4) to SSP concerned pointing out that accused were pressurizing them. The instant case pertains to one of the most heinous offences i.e. offence of murder and under these circumstances, when the witnesses themselves come up with a plea that they have been coerced to resile from their earlier statements, this Court does not deem appropriate that opportunity for re-examination of the witnesses be not afforded particularly when re-examination of the said witnesses will not amount to filling lacunae in prosecution case or cause any prejudice to the accused (petitioner), as he will be given full opportunity to cross-examine the re-called witnesses and the earlier statements made by these witnesses are not going to be absolutely erased and wiped out from the record of the case. The Courts should always make an endeavour to bring truth on record.

12. Hon'ble the Supreme Court in a case reported as **Zahira Habibulla H. Sheikh & others Vs. State of Gujarat & others, AIR 2004 SC 346,**

where the witnesses had resiled and the accused had been acquitted and



said acquittal had also been upheld by the High Court, still ordered for re-trial by re-examining the witnesses. In para 41 of judgment, it has been held as under:

"41. "Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, **either due to threats, coercion, lures and monetary considerations at the instance of those in power**, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to mockery. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a

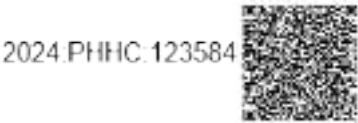


protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the 'TADA Act') have taken note of the reluctance shown by witnesses to depose against dangerous criminals- terrorists. In a milder form also the reluctance and the hesitation of witnesses to depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies.”

(...emphasis supplied).

13. It has been further held as under:

“45. It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The Court can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in.”



14. Upon analysis, it is a duty cast upon a court to arrive at the truth and ensure that justice prevails. An application under Section 311 Cr.P.C. may be allowed at any stage of trial, if the courts are of the opinion that examination of any such person appears to it to be essential to the just decision of the case.
15. The facts of the present case, when examined in the light of ratio of the above cited judgment, do not leave any room for taking a different view from a view as has been taken by the trial Court. Finding no infirmity in the impugned order, the same is hereby upheld. The petition is sans merit and is hereby dismissed.

17.09.2024
Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No