

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No.916 of 2024

Danish Ali

.....Revisionist

Vs.

State of Uttarakhand

.....Respondent

Mr. Arvind Vashistha, Senior Advocate assisted by Mr. Hemant Singh Mahra and Ms. Devanshi Joshi, Advocates for the revisionist.
Mr. Virendra Singh Rawat, AGA for the State.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this revision is made to the order dated 25.11.2024, passed in Sessions Trial No.16 of 2024, State vs. Rubina Alvi and others, by the court of First Additional District Judge, Kashipur, District Udham Singh Nagar ("the case"). By it, an application filed by the prosecution under Section 311 of the Code of Criminal Procedure, 1973 ("the Code") has been allowed and the witness, who is not shown as a witness in the charge-sheet has been summoned.

2. Heard learned counsel for the parties and perused the record.

3. The case is pending against the revisionist under Sections 302, 201, 120-B, 341, 506 IPC. According to the prosecution case, the wife of the deceased had extramarital relations with the

revisionist, therefore, the deceased was killed in his own house by strangulation after administering him the sleeping pills. It is the further case of the prosecution that the sleeping pills were provided by the revisionist to the wife of the deceased.

4. In the case, after PW3 was examined, an application under Section 311 of the case was filed by the prosecution on the ground that the daughter of the deceased and the co-accused was at her home, on the date of incident, but she has not been made a witness, therefore, she may be examined. This application was objected to by the defence *inter alia* on the ground that the witnesses examined in the court has not made any mention of witness Km. Ayana; witness Km. Ayana was never interrogated by the Investigating Officer; there is no reason shown, as to why Km. Ayana be examined as a witness, therefore, the application may be rejected. After hearing the parties, by the impugned order, the application under Section 311 of the Code was allowed and Km. Ayana has been summoned as a witness.

5. Learned Senior Counsel appearing for the revisionist would submit that the impugned order is not in accordance with law. He would submit that the

mother of Km. Ayana is in judicial custody for the last more than one year; Km. Ayana is staying with the informant; at the relevant time, Km. Ayana was a young girl of 04 years; she was never interrogated by the Investigating Officer; there is no reason shown, as to why she has not been examined. It is argued that, if at this stage, Km. Ayana is permitted to be examined as a witness, it may prejudice the interest of the revisionist.

6. Learned State counsel would submit that the impugned order is in accordance with law. It does not warrant any interference.

7. Who is to be examined as a witness, generally, it is left with the Prosecutor. The court generally, does not intervene in such matters and prior to it, it is the Investigating Officer, who interrogate the witnesses, who may depose on fact-in-issue or on the relevant fact in the court.

8. In the instant case, admittedly, Km. Ayana is not a witness in the charge-sheet. It is also admitted that she is daughter of the deceased and the co-accused, her mother. Section 311 of the Code is one of the provisions, which empowers the court to summon

any witness or to examine any person, if evidence of such person appears to be essential to the just decision of the case. The Section is quite wide. What is essential is, any person may be summoned as a witness, if his evidence appears to be essential for the just decision of the case.

9. In the case of Mannan Shaikh and others Vs. State of West Bengal and another, (2014)13 SCC, 59. The scope of Section 311 of the Code is discussed and the Court has observed as, **“The aim of every court is to discover truth. Section 311 of the Code is one of many such provisions of the Code which strengthen the arms of a court in its effort to ferret out the truth by procedure sanctioned by law. It is couched in very wide terms. It empowers the court at any stage of any inquiry,.....**

The words “*essential to the just decision of the case*” are the keywords. The court must form an opinion that for the just decision of the case recall or re-examination of the witness is necessary. Since the power is wide its exercise has to be done with circumspection.”.

10. In the instant case, as per prosecution in the morning, the co-accused revealed that her husband is not waking up. He had taken some medicines on the previous night and thereafter, she had gone to sleep with Km. Ayana, her daughter. PW2 Mohammad Hassan has stated so.

11. Undoubtedly, Km. Ayana was a person in the home, where as per prosecution her father was killed. Does she know anything more? Can she speak about it? And; more importantly, is she capable to be administered oath or is she able to understand the questions and give their answers? These and many more questions would find answer, once she is examined.

12. There is another set of questions/apprehensions that have been raised on behalf of the defence i.e. as to why the Investigating Officer has not interrogated her? This will simply be answered by the Investigating Officer, when he will appear before the court and if, he has already examined and Km. Ayana is examined thereafter, the defence still has an opportunity to recall the Investigating Officer to ask anything about Km. Ayana, who is examined in the court. But, this Court is of the view that, in fact, for

the just decision of the case, Km. Ayana should be examined as a witness. The court below has not committed any error in allowing the application under Section 311 of the Code.

13. Having considered, this Court does not see any reason to interfere in the impugned order. Accordingly, the revision deserves to be dismissed at the state of admission itself.

14. The criminal revision is dismissed *in limine*.

(Ravindra Maithani, J.)
19.12.2024

Sanjay