

Neutral Citation No. - 2025:AHC:136396

Reserved On:- 31.07.2025

Delivered On:- 12.08.2025

Case :- CRIMINAL REVISION No. - 3601 of 2025

Revisionist :- Juvenile X And Another

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Hemendra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

1. Heard Sri Hemendra Kumar, learned counsel for the revisionists; learned A.G.A for State-respondents and perused the material on record.
2. This criminal revision is being preferred against the impugned order and judgment dated 20.05.2025 passed by the Additional Sessions Judge, POCSO Act, Bijnor in Special Case No. 1518 of 2024, State vs. Priyanshu and others arising out of Case Crime No. 1248 of 2023, under Sections- 147, 148, 149, 302, 323, 504 IPC, Police Station- Kotwali Shahar, District- Bijnor.
3. The revisionists have assailed the order dated 20.05.2025 passed by the Additional Sessions Judge, POCSO Act, Bijnor in Special Case No. 1518 of 2024 State vs. Priyanshu and others, arising out of Case Crime No. 1248 of 2023, under Sections- 147, 148, 149, 302, 323, 504 IPC, Police Station- Kotwali Shahar, District- Bijnor allowing the applications of the revisionists under Section 311 Cr.P.C in Sessions Trial No. 1518 of 2024, State vs. Priyanshu Rathi and others, but prohibiting them to ask the questions mentioned in applications (kha-27 and kha-29) of the revisionists.

4. First Information Report (F.I.R) lodged on 13.12.2023 in Case Crime No. 1248 of 2023, under Sections- 147, 148, 149, 302, 323, 504 IPC, Police Station- Kotwali Shahar, District- Bijnor on the basis of this case.

5. As per prosecution case, the complainant lodged a report that on 13.12.2023 at about 06:30 p.m his son, Ashu, aged about 22 years was present at home. At the same time, his son received a phone call from Rangashu. Whereupon, his son reached at Nagina Road in front of ITI College where Bhavya @ Happy was present and Babley, Alok, Deepanshu, came there on two motorcycles and started hurling abuses on Bhavya @ Happy and his son, Ashu. Same day at about 07:45 p.m his son was caught hold by Deepanshu and his unknown friend and accused, Babley and Alok Rathu, shoot his son by country made pistol. As a result his son, Ashu, fell down on ground whereas Bhavya @ Happy, got wounded. He reached at spot and took his son of hospital, where his son was declared dead by the doctor and Bhavya @ Happy was admitted for treatment.

6. Regarding the same incident six persons were made accused out of which Akshendra alias Babley, Deepanshu and Aditya, were major and their Sessions Trial No. 1094 of 2024, State vs. Deepanshu and Others. In this trial, the entire evidence has been completed, however, in the meantime, the trial of juveniles i.e., S.T. No. 1518 of 2024, State vs. Priyanshu and Others, under Sections- 147, 148, 149, 302, 307 IPC, Police Station- Kotwali City, District- Bijnor arising out of Case Crime No. 1248 of 2023, under Sections- 147, 148, 302/149, 323/149, 307/149, 504 IPC and Section- 3/25 of Arms Act, Police Station- Kotwali City, District – Bijnor has also been transferred to Additional Sessions Judge (POCSO Act), Bijnor.

7. The statement of P.W.-5, Bhavya alias Happy, was recorded in the present Sessions Trial on 19.02.2025. In the aforementioned statement, he has specifically mentioned that while his statement was recorded in the hospital on 13.12.2023, at that time he has specifically mentioned that he does not know who killed Ashu (deceased of the present case) or did *maar-peet* with him. This question was specifically put to respondent no. 5 which was not allowed by the court.

8. Learned counsel for the revisionist has submitted that the aforesaid statement continued upto 04.03.2024. Specific question regarding the incident was refused to be asked which was necessary and which was as per the object of Section 311 Cr.P.C.

9. An application (Kha 34) was moved by revisionist prayed for recall of P.W.-5 for cross-examination.

10. The similar application was also moved by co-accused, Priyanshu, on 09.05.2025 (kha-35). In support of the argument, a case law *Vipin Shantilal Panchal vs. Gujarat State and others* [2001 (42) ACC 635 Supreme Court] was cited before the court below but the same was also not appreciated.

11. The questions mentioned in the application (kha-34) and (kha-35) were not permitted to be asked by the court which were very necessary in the facts and circumstances of the case and as such the order dated 20.05.2025 is illegal and liable to be set aside.

12. S.T. No. 1094 of 2024, State vs. Deepanshu is the trial of same incident, dealing with major accused and while the bail of Deepanshu was rejected on 18.09.2024, a direction of complete the trial within the year was given, however, the entire evidence was completed in March-2025

and as such, it cannot be said that the accused persons are delaying the trial. The revisionist no. 1 moved an application (kha-29) on 04.03.2025 asking the relevant questions which was prohibited by this court. Similarly Priyanshu, revisionist no. 2, moved an application (kha-27) on 04.03.2025 asking the relevant questions which was prohibited by the court.

13. Learned counsel for the revisionists has further submitted that the impugned orders are patently illegal and the court cannot restrain a witness from asking questions and re-cross-examination cannot be confined to particular questions.

14. He has relied upon the in paragraph nos. 17 and 19 of the judgment of the Apex Court in the case of ***Rammi @ Rameshwar vs. State of M.P., (1999) 8 Supreme Court Cases 649*** are quoted herein below :-

“17. There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the court in accordance with the other provisions. But the court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination.

19. A Public Prosecutor who is attentive during cross-examination cannot but be sensitive to discern which answer in cross-examination requires explanation. An efficient Public Prosecutor would gather up such answers falling from the mouth of a witness

during cross-examination and formulate necessary questions to be put in re-examination. There is no warrant that re-examination should be limited to one or two questions. If the exigency requires any number of questions can be asked in re-examination.

15. Learned A.G.A has opposed the submissions made by counsel for the revisionist.

16. This court finds that the trial court has restricted the witness from asking any questions regarding applications marked as Kha27 and Kha29 which does not seems to be justified.

17. In view of the dictum of the Apex Court quoted hereinabove. The impugned order dated 20.05.2025 passed by the Additional Session Judge, POCSO Act, Bijnor is hereby set aside.

18. The Court is directed to permit the recalled witness to be re-cross-examined freely without any fetters.

19. The criminal revision is ***allowed***.

Order Date :- 12.08.2025
Rohit