

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.90 OF 2015

1. Dadasaheb Uttamrao Bhosale,
Age 43 years, Occu. Agriculture
2. Krushna @ Kashinath Uttamrao Bhosale,
Age 38 years, Occu. Agriculture,
3. Kailas Kakasaheb Pund,
Age 33 years, Occu. Agriculture

All R/o Alamgaon, at Present Nagzari
Shivar, Taluka Ambad, Dist. Jalna

..Applicants
(Orig.accused Nos.
1, 2 and 4)

Versus

- The State of Maharashtra

..Respondent

Mr Joydeep Chatterji, Advocate for applicants
Smt. M.S. Patni, A.P.P. for respondent

CORAM : A.I.S. CHEEMA, J.

DATE : 21st September 2015

PER COURT

Heard learned Counsel for the applicants.

2. It has been argued by learned Counsel for the applicants that in Sessions Case No.2/2013, applicants had filed application before the Sessions Court to call witness Bhagwat Pandurang Solanke as Court witness. According to Counsel for applicants statement of the above witness was recorded by the Investigating Officer but the witness Bhagwat was not examined and thus, the applicants moved the application to call the said witness as Court witness under Section 311 of the Code of Criminal Procedure. The Court should have called the witness as the evidence appears to be essential for just decision of the

case. It is argued that in the interest of justice the application should have been allowed, but the same has been rejected.

3. Learned A.P.P. opposes the revision application claiming that the examination of the witness concerned was not necessary, as the said witness had merely carried the dead body of Gangaram from the spot to the hospital and rest of the statement of the witness is hearsay as to what he was told by Ishwar Radhakisan Bhosale or what was being told by Satyabhamabai.

4. On going through the material available on record, what appears is that it was a time bound session which was being conducted and at the stage of judgment, the applicants filed Exh.111. There is no reason why the applicants, if they so felt that the evidence was necessary in the interest of justice, did not call the concerned person as defence witness. Under Section 311 of the Cr.P.C. it was for the Court to consider if the evidence was necessary in the interest of justice. Instead of resorting the provision in their favour to call witness in defence, the accused tried to push court at the stage of judgment for what they conceive as necessary.

5. I have gone through the concerned statement which was given by Bhagwat, which in the earlier part refers to what was told to him by Ishwar Radhakisan Bhosale and the later part shows as to what Satyabhamabai was saying when he had reached the spot from where he helped in carrying the dead body of Gangaram to the hospital. What was heard by this witness would be hearsay. What he did was

that he carried dead body of Gangaram to the hospital, which cannot be said to be evidence so material that his accused would suffer if the said witness is not examined.

6. For the above reasons, the impugned order is correct, legal and proper. There is no case to interfere and the Revision Application stands rejected.

(A.I.S. CHEEMA, J.)

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