

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

CRM M-36269 of 2013

Date of decision : 14.09.2015

Rajbir Singh @ Raju & ors.

....Petitioners

V/s

State of Punjab & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Vikram Chaudhary, Sr. Advocate with
Mr. Sudhir Sharma, Advocate for the petitioners.

Ms. Rajni Gupta, Addl. A.G. Punjab.

Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Shiv Kumar, Advocate for respondents no. 2 & 3.

RAJAN GUPTA J.

Petitioners have impugned order dated 10.10.2013 (Annexure P-13) passed by Additional Sessions Judge, Gurdaspur whereby application preferred by respondents no. 2 & 3 under section 311 Cr.P.C. has been allowed.

Learned counsel for the petitioners has assailed the order. According to him, application preferred by applicant was not forwarded by the Public Prosecutor. The applicant straight-away appeared before the trial court to depose in the case. Three eye-witnesses have already turned hostile during trial. The court below has, thus, erred in allowing the application under section 311 Cr.P.C. He has relied upon judgment of the Hon'ble Supreme court titled as *Rajaram Prasad Yadav vs. State of Bihar and another* 2013(14) SCC 461.

Plea has been opposed by learned State counsel as well as counsel representing respondents no. 2 & 3. According to them, law is well settled that court is empowered to examine any person whose evidence appears to be essential for just decision of the case.

I have heard learned counsel for the parties.

FIR was registered on the statement of Sukhraj Singh. He stated that he was resident of Gobind Nagar Kahnuwan Road, Batala. On the fateful day, he had gone to Civil court, Batala in connection with some government work alongwith his cousin and a friend. When they were standing near the gate of the court, an Innova vehicle came there and stopped. Accused Rajbir Singh and Jadvinder Singh Bhullar got down from the car alongwith two unidentified persons. Yadvinder Singh Bhullar, Rajdeep Singh and Rajbir Singh @ Raju were carrying revolvers. On exhortation of Rajbir Singh, one person caught hold of his cousin Gurvinder Singh and Yadvinder Singh Bhullar fired a shot from .315 bore rifle. As his cousin was lying on the floor, two more shots were fired by Yadvinder Singh. Other accused also fired shots with their revolvers at Gurvinder Singh while he was lying on the ground. Gurvinder Singh was taken to hospital in a vehicle with multiple bullet injuries on head, chest, legs and private parts. He was declared dead on reaching Civil hospital, Batala. After registration of FIR, investigation ensued. Three prosecution witnesses namely Sukhraj Singh, Baljit Singh and Prabhdial Singh turned hostile. Instant application was moved for examining witnesses namely Sandip Singh and Narpinder Singh as they had witnessed the crime.

It was stated before the court that Gurvinder Singh had been murdered in a brutal and barbaric manner. Accused being very influential, enjoyed political clout and had no fear of law. Murder was committed in broad day light at the gate of civil court, Batala. It was also stated that investigating agency had failed to associate Sandip Singh and Narpinder Singh who had witnessed the murder of Gurvinder Singh.

After considering the entire material, trial court allowed the application for summoning Sandip Singh and Narpinder Singh as prosecution witnesses. On due consideration of the matter, I find that there is no ground to interfere in inherent jurisdiction. Section 311 Cr.P.C. reads as follows:-

"Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

A bare reading of the aforesaid section makes it clear that court has power to summon and examine any person in attendance though not summoned as witness, if his evidence appears to be essential for just decision of the case. Wide powers have been conferred on the trial court for examining such a person as a witness. In judgment reported as *Pranab Bishwas Vs. State of Punjab*, 2012 (4) R.C.R. (Criminal) 337, this court held as follows:-

12. *Before parting with this order, it may be observed that criminal appeal has come up for hearing after lapse of several years from its institution. The appellant is in custody. The material witnesses, who were closely related to the deceased and meant to throw light on relevant issues in this case having not been examined and simply given up as unnecessary at the sweet will of the prosecutor conducting the case. Was it a careless action or actuated with extraneous consideration?*

13. *We direct that an enquiry be held in the matter, as to how the above material witnesses, including the wife of the deceased, who were closely related to the deceased, were given up by the prosecution, as those witnesses were cited to establish the acquaintance of the deceased with the appellant and for showing how the motive could emerge for committing the crime. We also direct that some methodology should be prepared by the State Government and other stakeholders, so that such uncontrolled exercise of discretion by the Public Prosecutor is not misused. Such a tendency not only defeats the criminal justice delivery system but also adversely affects the rights of the appellant, who is in custody since long.*

14. *It would not lie for the prosecution to say that the Public Prosecutor is the best person in the conduct of the trial and sometimes it is known that the witnesses would not be supporting the prosecution case. Such an argument is not applicable to this case because the witnesses are close relatives of the deceased. To allay the fears of prosecution about the impact of the witnesses turning hostile, the law on the subject is very well settled that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to*

*close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The statement of a witness turning hostile recorded under Section 161 Criminal Procedure Code when confronted by the prosecution, can be taken into consideration by virtue of proviso to 162 (1) Criminal Procedure Code. For the above principles, the reference can be made to **State of Rajasthan v. Teg Bahadur and others, 2004 (1) R.C.R. (Criminal) 538: 2004 (3) Apex Criminal 611: (2004) 13 SCC 300 and Bhagwan Dass v. State (NCT of Delhi), 2011(2) R.C.R. (Criminal) 920: 2011(3) Recent Apex Judgments (R.A.J.) 153: (2011)6 SCC 396.***

In the instant case, murder was committed in broad day light at the gate of civil court. Material witnesses of the prosecution turned hostile during trial. Respondents no. 2 & 3 who claimed to be eye-witnesses of the crime came before the court and expressed their willingness to depose. It being the primary duty of the court to arrive at the truth, it allowed the application under section 311 Cr.P.C. Needless to observe that legislature has conferred wide powers on court for summoning witnesses to enable the court to arrive at the truth for the purpose of just decision of the case. Learned counsel for the petitioner has relied upon judgment of the Hon'ble Supreme Court titled as *Rajaram Prasad Yadav's* case (supra). Certain principles of law have been laid down in para 23 thereof. In my considered view applying the ratio of said judgment, no fault can be found with the well reasoned order passed by the court below. Thus, said judgment cannot help the case of the petitioner.

In view of above, no interference in revisional jurisdiction is called for. Dismissed.

September 14, 2015
Ajay/Rajpal

(RAJAN GUPTA)
JUDGE