

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

**CRR - 2174 of 2016 (O&M)
Date of decision : 06.06.2016**

Ajit

..... Petitioner

Versus

State of Haryana

... Respondent

CORAM:- HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Rajesh Lamba, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 19.05.2016, passed by the learned Additional Sessions Judge, Palwal vide which the application moved by petitioner under Section 311 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for recalling PW-3 Leela Ram and PW-4 Ajay has been dismissed.

2. Learned counsel for the petitioner contended that after the statements of PW-3 Leela Ram and PW-4 Ajay were recorded in the Court, they have furnished their affidavits on 07.05.2016, wherein they have taken a totally different stand, so they were required to be recalled in order to

prove those affidavits and bring on record the real facts but the learned trial Court has wrongly dismissed the application.

3. I have duly considered the aforesaid contentions.

4. The petitioner along with his co-accused is facing trial for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 for intentionally causing the murder of Jitender the son of complainant Leela Ram (PW-3).

5. Complainant Leela Ram was examined as PW-3 on 26.03.2015. PW-4 Ajay was also examined on 02.05.2015. This fact has not been disputed at bar that both these witnesses have supported the prosecution story. PW-3 Leela Ram is the complainant - eye witness and PW-4 Ajay is also the eye witness of the occurrence. They have specifically deposed about the manner in which the occurrence has taken place. After about more than one year from the date of recording their statement, the application to recall them has been filed on the ground that they have given their duly sworn affidavits mentioning therein a totally different version describing the death of Jitender as accidentally due to fall in the cemented drain and having suffered the injury on his head. It is not explained in the application as to what was the reason and occasion for PW-3 Leela Ram and PW-4 Ajay to furnish these affidavits. It appears that these affidavits have only been obtained to contradict the prosecution version after reaching on some settlement with these witnesses and having them won over. The recalling of the witnesses in such circumstances is not permissible. The Hon'ble Supreme Court in case *Hanuman Ram Vs. State of Rajasthan and*

others 2008(4) RCR (Criminal) 823 has authoritatively laid down that once the witness has been examined in chief and cross-examined fully, such witness should not be recalled and re-examined to deny the evidence he has already given before the Court. In the instant case also the purpose of recalling PW-3 Leela Ram and PW-4 Ajay is also to deny and contradict the statements already made by them. The powers under Section 311 Cr.P.C. cannot be exercised in such circumstances, only to facilitate the petitioner to achieve this motive.

6. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned order.

7. Consequently, the present revision petition has no merits and the same is hereby dismissed.

06.06.2016
sunil yadav

(DARSHAN SINGH)
JUDGE