

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

CRR 2978 of 2016

Date of Decision: August 24, 2016

Sukhdev Singh @ Sukha

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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**Present:- Mr.S.K. Nehra, Advocate
for the petitioner.**

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M.M.S. BEDI, J. (ORAL)

Petitioner is facing trial under Section 302 IPC in a case registered at the instance of PW1 Baaj Singh alleging that his brother Kuldeep Singh was murdered by the petitioner and his other accomplice and the motive behind the incident is that the younger brother of the complainant Gagandeep Singh had contracted Court marriage with Pooja, sister of Laddi on account of which they were nursing a grudge with the family members of the complainant. They had committed the murder of his brother. The prosecution agency has examined complainant Baaj Singh as PW1, Raj Kaur as PW2 and SI Inderjit as PW7. The petitioner moved an application under Section 311 Cr.P.C. for recalling the said three witnesses for further cross-examination on the ground that certain very essential and important

questions have been left to be put to the witnesses which are necessary for the just decision of the case.

Counsel for the petitioner has argued that there are patent improbabilities regarding the presence of the witnesses on the spot and there are glaring contradictions in the medical evidence and the ocular version which are required to be put to the witnesses. It has been mentioned that the presence of the eye-witness PW1 brother of the deceased is a concoction as he is not a resident of the area where the occurrence has taken place. His presence is improbable. There was no light on the spot at the time of the occurrence and that the said facts are required to be put to the witnesses.

I have heard learned counsel for the petitioner and on asking of the Court, counsel for the petitioner has informed that the defence evidence is yet to be produced. The trial Court while dismissing the application under Section 311 Cr.P.C. has considered all the circumstances and arrived at a conclusion that the summoning of the prosecution witnesses for further re-examination is not necessary as the witnesses have been cross-examined at length on all the material points and the application is vague regarding the cross-examination which, as per the petitioner stood left at the time of earlier cross-examination.

I have considered the contention of counsel for the petitioner. He places strong reliance on the judgment in **Rajaram Prasad Yadav Vs. State of Bihar and another**, AIR 2013 SC (Crl.) 1746 laying down the parameters which are required to be borne in mind while dealing with an application under Section 311 Cr.P.C. There is no dispute regarding the parameters laid down in the said judgment but in the present case where the

prosecution witnesses have already been cross-examined at length, merely at the instance of accused, they cannot be re-summoned on the basis of the vague averments, as the contradictions in the medical and ocular version can always be appreciated by the trial Court if the said contradictions are made part of the arguments at the final stage. In case the petitioner accused wants to produce any evidence pertaining to the non-existence of the adequate light on the spot, he can always produce evidence in defence and raise the material arguments at final stage. The application under Section 311 Cr.P.C. has rightly been declined by the trial Court.

Petition is dismissed without prejudice to the rights of the petitioner to produce any defence evidence at appropriate time.

August 24, 2016
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.