

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 445 of 2017

1. Dileshwar Yadav S/o Govrdhan Yadav Aged About 46 Years R/o Village Chhatasarai, Ghuigoda, Police Station Bagbahar, District Jashpur, Chhattisgarh.
2. Thuni Bai W/o Dileshwar Yadav Aged About 44 Years R/o Village Chhatasarai, Ghuigoda, Police Station Bagbahar, District Jashpur, Chhattisgarh. --- **Applicants**

Versus

- State of Chhattisgarh through the Station House Officer, Police Station- Bagbahar, District- Jashpur, Chhattisgarh. --- **Respondent**

For the applicants	:	Mr. Shivendra Bharadwaj, Advocate
For the State	:	Mr. Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

20.06.2017

1. The instant revision is against the order dated 25.03.2017 passed by the learned Additional Sessions Judge, Kunkuri, Distt. Jashpur (C.G) in Sessions Trial No.21/2013 whereby an application preferred by applicants accused u/s 311 Cr.P.C., to recall the evidence of certain witnesses has been rejected.
2. Learned counsel for the applicant would submit that the I.O., in this case has reached the spot before the FIR which would show that false allegations have been attributed and which was not properly being brought before the Court. It is further submitted that though the statements of eye witnesses P.W.4 Janardan, P.W.5 Champa Yadav, P.W.6 Jugeshwar, P.W.7 Brindawati and P.W.8 Benudhar Yadav have been recorded but major contradictions and omissions could not be brought on record by the earlier counsel appearing on behalf of the accused by examining and cross examining the

witnesses therefore, in absence of pointing out such contradictions or omissions, the applicants will suffer irreparable loss, which cannot be compensated and they may lose their right of defence, therefore, the accused may be protected.

3. On the other hand, learned State Counsel opposes the petition.
4. Perused the application filed u/s 311 Cr.P.C. The documents filed along with the charge sheet would show that the FIR was registered on 11.12.2014 at about 10.30 a.m., and the incident happened at 8.30 a.m. The FIR was lodged by one Janardan Yadav wherein the applicants have been named. In order to appreciate the fact that whether there are major contradictions and omissions which were left out in the statement of eye-witness namely P.W.4 Janardan who also lodged the FIR, the court statement recorded on 16.02.2016 and the statement recorded by the Police u/s 161 Cr.P.C., were examined.
5. Likewise the court statement of Champa Yadav (P.W.5) recorded on 16.12.2016, statement of Jugeshwar recorded on 17.02.2016 and the statement of Brindawati recorded on 17.02.2016 and lastly the statement of Benudhar Yadav (P.W.8) were also examined along-with the statement made to the Police u/s 161 Cr.P.C. According to the learned counsel for the applicant major omissions and contradiction though claimed to be apparently existed on the face of record but when he when he was categorically asked, he is unable to point out that what are the major contradictions and omissions in the statement of eye-witness and the statements recorded u/s 161 of Cr.P.C., by the Police during

investigation.

6. Reading the evidence and statements of witnesses of the present case as against the statements made before the police u/s 161 Cr.P.C., nothing is pointed out and examination of it would prima facie shows that what are the mistakes which existed in this case. Detailed cross examination has been made which is to be appreciated by the trial Court. Only with change of counsel after the witness is examined will not allow the accused to invoke the provisions of Section 311 of Cr.P.C., as a matter of right. One has to specifically prima facie point out the damage caused for inadequate examination or cross-examination, which is absolutely prejudicial to the accused and/or the error existed on the fact of it is not established. All the witnesses have categorically stated the fact that two ladies were subjected to assault and murdered on the allegations of sorcery or witchcraft.
7. Therefore, taking into such facts situation, the statements have to be appreciated by the trial Court along-with other evidence while adjudicating the case on merits. At this stage, I do not find that any major contradiction or omissions were left out which would cause prejudice to the rights of the applicants so as to invoke the jurisdiction u/s 311 of Cr.P.C. Consequently, I do not find any reason to entertain the petition. It is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE