

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 98 of 2017**

1. Kanhaiya @ Guduwa Yadav S/o Arjun Yadav, Aged About 35 Years
 2. Jageshwar Yadav, S/o Arjun Yadav, Aged About 38 Years
 3. Rama Yadav, S/o Arjun, Aged About 26 Years
- All above R/o Village Bijlahwa, Police Station Kamleshwarpur District Surguja Chhattisgarh.

---- Applicants**Versus**

State of Chhattisgarh Through Police Station Kamleshwarpur, District Surguja Chhattisgarh.

---- Respondent

For applicants	:	Shri Manoj Paranjpe, Advocate.
For Respondent/State	:	Shri Bhaskar Pyasi, Panel Lawyer.

SB:Hon'ble Shri Justice P.Sam Koshy**Order On Board****31/01/2017**

1. The present revision under Section 397 CrPC has been preferred against the order dated 04.01.2017 passed by the 1st Additional Sessions Judge, Surguja, in Sessions Trial No.50 of 2016. The applicants are accused persons in FIR dated 31.01.2016 in Crime No.02/2016 at Police Station Kamleshwarpur, District Surguja, where the original applicants have been charged for having committed an offence under Sections 302 and 201 read with Section 34 of IPC.
2. The grievance of the applicants is that, after the matter was put to trial, the evidence of prosecution was recorded and it was completed on 28.11.2016. Thereafter, the matter was proceeded for recording statement of the accused as also the defence evidence. Finally the matter

was closed for final argument on 19.12.2016. However, on 19.12.2016 the final argument could not be heard and the matter was adjourned for 04.01.2017. Meanwhile, on 23.12.2016, an application under Section 311 CrPC was moved by the prosecution for examination of three witnesses namely Suniya, Nirmal and Vijay Singh. The said application was entertained and allowed vide order dated 04.01.2017 against which the present revision petition has been preferred.

3. Learned counsel appearing for the applicants assailing the said order submits that no justified reasons have been assigned in the application under Section 311 CrPC by the prosecution and this aspect has not been properly appreciated by the court below while allowing the said application. The court below in a mechanical manner has passed the order without discussing what was necessity of examination of these witnesses. Thus, prayed for quashing of the order dated 04.01.2017.
4. The State counsel however opposes the submission on the ground that it is a case where there is a serious charge of murder against the present applicants and have been charged for the offence under Sections 302 and 201 IPC. In addition, the State counsel also submits that all three witnesses were cited by the prosecution at the time of charge sheet itself. These are witnesses who are also eyewitness to the incident, and therefore, their evidence was vital for the prosecution's case, and as such the court below has not committed any illegality or infirmity while allowing the said application.
5. Having considered the facts and circumstances of the case in the opinion

of this court there is no illegality or infirmity as such in passing of the order by the court below particularly taking note of the fact that there does not appear to be substantial delay on the part of the prosecution in moving the application under Section 311 CrPC. Further, the three witnesses cited were also witnesses whose name appeared in the list of witnesses and to add with it, these witnesses are also said to be eyewitnesses to the incident. Therefore, in the interest of justice also it was proper for the court below to have allowed the said application.

6. For the reasons mentioned hereinabove, the revision being devoid of merit is liable to be and is hereby dismissed.

SD/-

(P.Sam Koshy)

Judge