

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.221 OF 2017
(Mukinda s/o Ukandrao Gawai vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri M.P. Kariya, Advocate for applicant.

Shri P.S. Tembhre, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : APRIL 5, 2017

Issue notice to respondent.

Shri Tembhre, learned Additional Public
Prosecutor waives notice for respondent.

By consent of learned Counsel for the
parties, heard finally.

This application takes exception to the order
passed by learned trial Judge conducting Sessions Trial
No.109/2014 by which permission is granted to
prosecution to re-examine P.W. 4 Dr. Meraj Ali.

Shri Kariya, learned Counsel for applicant,
has submitted that after examination-in-chief when
P.W.4 Dr. Meraj Ali was cross-examined, in paragraph 5
of his evidence, he has in clear terms admitted that
injuries nos. 1 and 2 in column no.17 are possible only
when the victim might have been lying on the ground
and something like stone produced before Court hits on
his head. It is contended that in spite of clear and
cogent evidence of Doctor as aforesaid, after
cross-examination, prosecution orally applied for

re-examination to put question to said witness to seek reply if injuries in column no.17 suffered by deceased were possible to be caused in standing position of deceased being hit by stone produced before the Court. It is further contended that though there was no ambiguity in the evidence of P.W.4 Dr. Meraj Ali, prosecution made a vague request, which was allowed by learned trial Court. It is submitted that said evidence of Doctor be discarded.

Perused the evidence of said witness, who appears to have admitted that injuries sustained by deceased were possible while lying on the ground and hit by stone produced before the Court. Injuries nos.1 and 2 referred in column no.17 are surface injuries, which are stated to be fatal as sustained on head. From the bare perusal of evidence of Doctor, it is clear that he in clear terms has admitted that said injuries were possible if the person was lying on the ground. It appears that case of prosecution is that deceased sustained said injuries while he was in a standing position and thus, on Doctor's admitting as aforesaid, learned Additional Public Prosecutor made oral request to learned trial Court to allow re-examination of said witness to put question if deceased could suffer such injuries on head even in a standing position. The learned trial Court allowed re-examination holding that case of prosecution is that accused hit stone when deceased was in a standing position and prosecution has not led evidence as aforesaid and, therefore, allowed re-examination of the witness, which order apparently

and on the face of it appears to be contrary to law as there appears no ambiguity in the evidence of this witness and as such, there was no necessity for re-examination of said witness.

Law on this aspect is by now well established and in catena of judgments, it has been laid down that purpose of re-examination of witness is only to get clarification of some doubts created in cross-examination and one cannot supplement examination-in-chief by way of re-examination.

In the application in hand, from the evidence of Doctor, no doubt appears to have been created in the cross-examination, which was required to be clarified in re-examination and in fact, by allowing re-examination, it is found that re-examination has supplemented the examination-in-chief. It is also to be borne in mind that in re-examination, no new facts can be introduced. In that view of the matter, I find substance in the criminal application. The same is, therefore, allowed as per order below :

Evidence of P.W.4 Dr. Meraj Ali appearing in the form of his re-examination in para 7 stands discarded. Learned trial Court to proceed further.

JUDGE

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