

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

CRR-4870-2015

Date of decision :08.09.2017

Rajnish and another

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Saurabh Bhardwaj, Advocate
for the petitioners.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Ravinder Malik, Advocate
for the complainant.

H.S. MADAAN, J.

This criminal revision petition is directed against order dated 09.11.2015 passed by Judicial Magistrate Ist Class, Kurukshetra vide which he had allowed an application under Section 311 Cr.P.C. filed by the prosecution for leading additional evidence so as to examine Dr. Lajja Ram, Radiologist. The accused who are petitioners before this Court pray that the petition be accepted and the impugned order passed by the trial Court be set

aside and application under Section 311 Cr.P.C. so moved by the prosecution be dismissed.

Briefly stated the facts of the case as per prosecution version are that on 25.08.2001 at about 9 p.m. when the complainant along with his brother was sitting in his house, then accused Rajnish armed with cutter, Labh Singh armed with *Drant* along with their father Binda trespassed in that house; that accused Rajnish gave cutter blow on the hands of the complainant, Labh Singh gave *Drant* blow on forehead and back of the complainant; that accused Rajnish also gave push to brother of the complainant namely Lakhwinder Singh who is handicapped and Labh singh gave push to the wife of the complainant; that Sukhvinder Singh had arrived at the spot to rescue the injured. Formal FIR No.239 dated 26.08.2011 under Sections 323, 324, 452, 506, 34 IPC registered with Police Station Shahabad, subsequently, offence under Section IPC was added. After investigation, Binda was discharged.

When the challan was filed after completing all the necessary formalities, charge was framed against the accused, to which they pleaded not guilty and claimed trial.

During trial, the prosecution moved an application under Section 311 Cr.P.C. contending therein that PW-11 Dr. Madhu Sabarwal, Medical Officer, Government Multi Specialty Hospital, Sector 16, Chandigarh had given her opinion Ex.PW11/K on the advice of Dr. Lajja Ram, Radiologist, LNJP Hospital, Kurukshetra regarding the nature of injury though inadvertently said Dr. Lajja Ram could not be cited as a witness, but his statement is very much necessary for just and proper decision of the case.

Learned defence counsel appearing on behalf of the accused had rebutted those assertions contending that application is not maintainable, it has been filed just to delay the proceedings; that Dr. Lajja Ram was never cited as a witness nor any type of advice or paper is there on the judicial file, therefore, he cannot be called as prosecution witness to fill up lacuna in prosecution version; that the application has been filed at a very belated stage; that alleged injury as per Dr. Madhu Sabarwal was of road side accident and not an injury caused during quarrel, with these contentions, dismissal of the application was sought.

After hearing learned counsel for the parties, learned trial Court referred to statutory provision of Section 311 Cr.P.C. wherein it is provided that Court may at stage of particularly summon any person as a witness or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential for just decision of the case and being of considered view case of the prosecution would be prejudiced if the application is not allowed and that procedure is the hand made to justice and the ultimate purpose of the Court is to deliver justice. It was observed that no prejudice would be caused to the accused as they would get an opportunity to cross-examine the said witness, therefore, while allowing the application, permission was granted to examine Dr. Lajja Ram, Radiologist as a witness.

Dr. Lajja Ram is none-else but Radiologist who had given opinion regarding nature of injury on the basis of X-ray examination, in that way, he is a material witness in the trial. The accused are getting worried

unnecessarily solely due to reason that testimony of Dr. Lajja Ram many not be favorable to the accused, they are causing hurdles in putting his appearance in the Court to make his statement. The modus operandi being to oppose the application under Section 311 Cr.P.C. in the trial Court and then to file criminal revision petition in this Court.

The order passed by the trial Court is well reasoned one, it cannot be said that trial Court has not exercised its discretion under Section 311 Cr.P.C. in judicious manner. The testimony of Dr. Lajja Ram would be tested by cross-examination then accused would be entitled to produce their witnesses in defence. I do not find any illegality or infirmity in the order in question. The order is certainly not perverse, there is no defect in the order much less apparent on the face of it. Therefore, there is absolutely no merit in the petition, the same stands dismissed accordingly.

08.09.2017
Gaurav Sorot

(H.S. MADAAN)
JUDGE

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**