

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

CRR-3898-2017 (O&M)

Date of decision: - 26.10.2017

Subhash Goyal

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. D.D. Gupta, Advocate for the petitioner.

ARVIND SINGH SANGWAN, J (ORAL)

Prayer in the present petition is for setting aside the order dated 7.10.2017 passed by the trial Court vide which the application filed under Section 311 Cr.P.C. by the prosecution thereby allowing Smt. Sharbati Devi to appear as an additional witness.

Brief facts of the case are that FIR No. 388 dated 8.6.2016 under Section 302 IPC was registered initially at the instance of accused - Subhash Goyal who is the husband of deceased- Renu regarding her unnatural death. During the investigation, police nominated the present petitioner along with another accused-Manju as accused persons and submitted report under Section 173 Cr. P.C. After framing of charges, the case is now fixed for prosecution evidence.

The prosecution has filed an application under Section 311 Cr. P.C. with the averments that Smt. Sharbati Devi is mother of the deceased Renu - wife of Subhash Goyal and the accused has treated her daughter with extreme cruelty and the accused used to beat and quarrel her because he had illicit relations with co-accused, Manju and had committed the murder of Renu. The trial Court after hearing both the parties passed the following orders: -

5. After perusing the documents placed on file along with challan and contents mentioned in the present application moved by the complainant through Public Prosecutor and contents mentioned in the photo copy of the statement of Sharbati Devi recorded during investigation in this case, it reveals that the statement of Sharbati Devi being mother of the deceased, was not attached with the report under Section 173 Cr. P.C and she was not cited as witness in this case. She is material witness for just decision of the case. It is necessary to produce her statement during prosecution evidence by citing her as witness and to examine in this case. Learned Public Prosecutor rightly argued that if the statement of witness is not recorded under Section 161 Cr. P.C. and also not attached with the report under Section 173 Cr. P.C. then it become necessary as per provision under Section 311 Cr. P.C. to bring it on record. The law laid down in authority titled **Om Parkash vs. State of Rajasthan, 2003 CrLJ 4704** is applicable to the facts of the present case wherein it was held in para no. 17 of the judgment as under: -

17. There is no bar that a witness, whose statement under Section 161 Cr. P.C. had not been recorded the time of investigation, cannot be allowed to examine under Section 311 Cr. P.C. under Section 231 Cr. P.C., the Court is to take all evidence produced in support of the prosecution. Therefore, where the statement of witness is not recorded Under Section 161 Cr. P.C., but the prosecution with the prior permission of the Court produce such a witness, the accused cannot be said to have taken by the surprise. When a witness examined in Court, whose statement has not been recorded at the time of investigation under Section 161 Cr. P.C., the evidentiary value to be attached to the evidence of such witness has to be looked into and if, it is found that prejudice has been caused to the accused, then the evidence of such witness may not be acted upon. Therefore, the argument of the learned counsel for the accused-non-petitioner does not find favour in this regard also. The contention of the learned counsel for the accused, that only those witnesses can be examined, whose statements have been recorded by the police under Section 161 Cr. P.C. and find mention the list of witnesses submitted with the challan under Section 173 Cr. P.C., if accepted, will render the provisions of Section 311 Cr. P.C. nugatory. These provisions namely, Sections 161, 173 and 311 Cr. P.C. have got different object, scope and operate in different spheres.

6. Hence, the law laid down in the authority referred by counsel for the accused titled **Raghuveer Parshad Sharma vs. State of M.P. 2010 (3) CCC 773 (MP)** is not disputed but the same is not applicable to the facts of the present case as facts of the present case are entirely distinguishable as in this case the statement of proposed witness was not recorded by Investigating

Officer but in the present case in hand the Investigating Officer recorded the statement of Sharbati Devi and photocopy was handed over to the witness but she was not cited as witness in this case inadvertently.

7. In the present case, complaint dated 8.6.2016 was made by Subhash Goyal accused that on the same day at about 4.30 p.m., he went to outside from his house then received a telephonic call at about 6.18 p.m. from his neighborer, who told him that his wife has been murdered. FIR No. 0388 dated 8.6.2016 was registered in Police Station Model Town, Panipat under Section 302 of the Indian Penal Code. During the investigation, extra judicial confession was recorded in presence of Harish Kumar Sharma that he had committed a sin and is having friendship with one Manju. His wife came to know about his relationship so he committed murder of his wife. Thereafter, the accused Subhash Goyal and accused Manju joined in the investigation and arrested in this case.

8. Both the accused were charge sheeted under Section 120-B/302 of the Indian Penal Code by my learned Predecessor vide order dated 3.11.2016. Twelve witnesses have been examined out of sixteen witnesses in this case. When the case was fixed for prosecution evidence then the present application moved by the prosecution for summoning the witness Sharbati Devi and proving her statement recorded by the Investigating Officer during investigation in this case but not cited inadvertently. Hence, the evidence of the Sharbati Devi mother is necessary.

9. For the reasons recorded above, the application under Section 311 Cr. P.C. moved by Sharbati Devi wife of late Roshan Lal, resident of Parao Mohalla, near Gulati Hospital Samalkha, District Panipat, through Public Prosecutor, is hereby allowed. Her name be added in the list of witnesses and she be summoned in this case along with remaining witnesses. Application record be attached with the main file.”

Learned counsel for the petitioner challenged the aforesaid order on the ground that Smt. Sharbati Devi was not named as a witness in the report submitted under Section 173 Cr. P.C and her statement was also not recorded by the police under Section 161 Cr. P.C. It is also submitted that she is not a material witness and by allowing the application, right of the accused shall be prejudiced as out of 16 witnesses, 12 have already been examined and the application has been moved just to prolong the trial and to fill up the lacuna.

It is further submitted that prosecution has not explained how this witness is necessary for just and fair decision of the case and therefore, the trial Court has wrongly allowed the application for recording the statement of Smt. Sharbati Devi as an additional witness.

After hearing learned counsel for the petitioner, I find no merit in the present petition.

It is not disputed that powers of the Court under Section 311 Cr. P.C. are wide powers and even if a witness whose statement is not recorded under Section 161 Cr. P.C. or is not cited as a witness in the report submitted under Section 173 Cr. P.C., she can be summoned as an additional witness. It has come on record that during the investigation, statement of Smt. Sharbati Devi was though recorded by the Investigating Officer but she was not cited as a witness inadvertently. It is also worth while to notice here that the petitioner-accused, Subhash Goyal lodged a complaint dated 8.6.2016 with the police that when he was away from his home, he received a telephone message from his neighbor that his wife Renu has been murdered and the aforesaid FIR was registered under Section 302 IPC.

During the investigation, petitioner made an extra judicial confession before Harish Kumar Sharma that he has committed the offence as he is having relationship with co-accused, Manju and his wife, deceased Renu came to know about the same and therefore, petitioner-Subhash Goyal and his co-accused, Manju was nominated as accused persons and nor they are facing trial under Section 302 IPC. In such circumstances, when the investigation was going on, police though recorded the statement of Smt. Sharbati Devi but could not cite her as a witness. Moreover, Smt. Sharbati Devi is the mother of deceased- Renu and

therefore is a necessary witness as she is a natural witness about the relation between her deceased daughter Renu and her husband Subhash Goyal-accused.

The arguments raised by learned counsel for the petitioner that the right of the petitioner-accused will be prejudiced by allowing Smt. Sharbati Devi to be recorded as an additional witness as it will delay the disposal of the trial is without any merit as case is still at the stage of recording the prosecution evidence.

Since the case is still at the stage of recording the statement of the prosecution witness, therefore, I do not find any illegality or perversity in the order passed by the trial Court on 7.10.2017 vide which while exercising the powers under Section 311 Cr. P.C., Smt. Sharbati Devi, mother of the deceased-Renu was summoned as an additional witness.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

26.10.2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No