

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.858 of 2018**

1. Biharilal Rajput, son of Laxman Rajput, aged about 42 years,
2. Santoshi Bai Rajput, wife of Late Kejuram Rajput, aged about 30 years,

Both residents of Indra Nagar, Umariya, P.S. Bilha, District Bilaspur, Chhattisgarh

---- Applicants

versus

State of Chhattisgarh through the Police Station GRP, Bilaspur

--- Respondent

For Applicants	:	Shri Shailendra Dubey, Advocate
For Respondent	:	Shri Neeraj K. Sharma, Dy. Govt. Advocate on advance copy

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

21.8.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The revision has been preferred against the order dated 26.7.2018 passed by the 8th Additional Sessions Judge, Bilaspur in Sessions Trial No.21 of 2018, whereby the application of the Applicants/accused filed under Section 311 of the Code of Criminal Procedure has been rejected.
3. On 7.6.2018, prosecution witness Dr. Geeta Pradhan was examined by the prosecution. On that date, since the Counsel for the Applicants/accused was not present before the Trial Court, the case was fixed for 16.7.2018 for cross-examination of Dr. Geeta Pradhan. On 16.7.2018, the Counsel for the Applicants/accused

reached before the Trial Court for cross-examination of Dr. Geeta Pradhan, but before reaching of the Counsel, Dr. Geeta Pradhan had already returned with the permission of the Court and the case was fixed for examination of the accused. Thereafter, an application under Section 311 of the Code of Criminal Procedure was filed by the Applicants/accused for calling prosecution witness Dr. Geeta Pradhan for her cross-examination, which has been rejected by the impugned order.

4. Learned Counsel appearing for the Applicants/accused submits that on 7.7.2018 the Counsel for the Applicants/accused was not available and on 16.7.2018 when the Counsel reached before the Trial Court, by that time prosecution witness Dr. Geeta Pradhan had been sent back by the Court. On that date, another witness S.L. Rajput was cross-examined by the Counsel for the Applicants. Since Dr. Geeta Pradhan was not available on 16.7.2018, she could not be cross-examined by the Counsel for the Applicants. Dr. Geeta Pradhan is a material witness and she has not been cross-examined by the Counsel for the Applicants, therefore, one opportunity should be given to the Counsel for the Applicants to cross-examine her.
5. Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Applicants. He submits that ample opportunity has been given by the Trial Court to the Counsel for the Applicants/accused for cross-examination of Dr. Geeta Pradhan.
6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.

7. Since Dr. Geeta Pradhan is a material witness and at the time of recording of her examination-in-chief on 7.7.2018, the Counsel for the Applicants/accused was not present in the Trial Court and thereafter on 16.7.2018 also, when the Counsel for the Applicants/accused reached before the Trial Court, but by that time she had returned from the Court and no opportunity has been afforded to the Counsel for the Applicants/accused to cross-examine her, it would be in the interest of justice to afford an opportunity to the Counsel for the Applicants/accused to cross-examine her.
8. Consequently, the revision is allowed. The Trial Court is directed to call prosecution witness Dr. Geeta Pradhan and afford an opportunity to the Counsel for the Applicants/accused to cross-examine her. It is made clear that on the date of appearance of Dr. Geeta Pradhan before the Trial Court, the Counsel for the Applicants/accused shall remain present before the Court on time to cross-examine her. If the Counsel for the Applicants/accused is unable to remain present before the Trial Court on the said date and time, an alternative arrangement shall be made by the Applicants/accused for cross-examination of Dr. Geeta Pradhan on that fixed date and time.

Sd/-

(Arvind Singh Chandel)
Judge