

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.216 of 2019

Kanshiram Sahu, S/o Shri Nilkanth Sahu, aged about 30 years, R/o Mopar, Police Station Suehla, Nagar Panchayat Kunra, District Baloda Bazar – Bhatapara, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through District Magistrate, Baloda Bazar, District Baloda Bazar – Bhatapara, Chhattisgarh

--- Respondent

For Applicant	:	Smt. Smita Jha, Advocate
For Respondent	:	Shri Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

11.3.2019

1. With the consent of Learned Counsel appearing for the parties, the revision is heard finally.
2. The instant revision has been preferred against the order dated 28.11.2018 passed by the 3rd Additional Sessions Judge, Baloda Bazar in Sessions Trial No.5 of 2018, whereby the Additional Sessions Judge has rejected the application under Section 311 of the Code of Criminal Procedure preferred by the Applicant for recalling Prosecution Witness No.4, Lucky alias Tushar Vaishnav.
3. A trial, being Sessions Trial No.5 of 2018 is going on against the Applicant and other co-accused persons for an alleged offence punishable under Sections 302, 201, 109, 34 of the Indian Penal Code. On 18.7.2018, during trial, one of the eyewitnesses, namely, Lucky alias Tushar Vaishnav (Prosecution Witness No.4), who is a

child witness, was present before the Trial Court. His statement was recorded. This witness has been cross examined by the Counsel appearing on behalf of the co-accused persons. Since the Counsel for the Applicant Advocate Shri Rishi Jha was not present before the Trial Court on that date due to his illness, junior Counsel requested the Court for an adjournment of the case, but the Trial Court, observing that witness Lucky alias Tushar Vaishnav is a child witness aged about 7 years and calling him frequently to the Court will leave an adverse mental effect on him, directed the junior Counsel to cross examine the said child witness on the same date itself. When the junior Counsel expressed his inability to cross examine the child witness, the Trial Court directed for cross examination of the child witness by the Applicant himself, but no question was put by the Applicant to the child witness. Thereafter, on 21.8.2018, an application under Section 311 of the Code of Criminal Procedure was moved by the Applicant for re-summoning the child witness for his re-cross examination which has been rejected by the Trial Court vide the impugned order dated 28.11.2018. Hence, this revision by the Applicant.

4. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
5. A perusal of the order-sheets of the Trial Court and deposition-sheet of child witness Lucky alias Tushar Vaishnav (PW4) shows that on the date of his examination before the Trial Court, the Senior Counsel for the Applicant was not present. It is also clear that cross-examination of the child witness concluded on that date at 5:40 p.m. Since the matter is related to a murder and the child

witness is a star witness of the case, certainly his further cross-examination would have taken much more time on that date and, therefore, on that date, his further cross-examination could not be concluded. Therefore, the Trial Court ought to have afforded an opportunity to the Applicant to cross-examine child witness Lucky alias Tushar Vaishnav (PW4). But, the Trial Court has not done so. Since Lucky alias Tushar (PW4) is a star witness and an eyewitness as well, the offence in question is of heinous nature and Lucky alias Tushar has not been cross-examined on behalf of the Applicant, affording of an opportunity to the Applicant for cross-examination of Lucky alias Tushar would be in the interest of justice.

6. Consequently, the revision is allowed. The Trial Court is directed to afford an opportunity to the Applicant for cross-examination of child witness Lucky alias Tushar Vaishnav (PW4). It is made clear that cross-examination of the child witness shall be done by the Applicant on the date of his next appearance itself to be fixed by the Trial Court and no further adjournment shall be granted by the Trial Court in this regard. All the expenses of appearance of the child witness before the Trial Court for his cross-examination shall be borne by the Applicant.

Sd/-

(Arvind Singh Chandel)
Judge