

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.235 of 2018

Hitlesh @ Mithlesh @ Dadu Rajwade, S/o Kapil Rajwade, aged about 23 years, Caste Rajwar, R/o Village Girvarganj (Bairpara), Police Station and District Surajpur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the Police Station Surajpur, District Surajpur, Chhattisgarh

--- Respondent

For Applicant	:	Shri Rakesh Pandey, Advocate
For Respondent	:	Shri Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

5.3.2019

1. With the consent of Learned Counsel appearing for the parties, the revision is heard finally.
2. The instant revision has been preferred by the accused against the order dated 6.2.2018 passed by the 2nd Additional Sessions Judge, Surajpur in Sessions Trial No.61 of 2017, whereby the Additional Sessions Judge has allowed the application under Section 311 Cr.P.C. submitted by the prosecution for summoning witnesses, namely, Dr. Shailendra Gupta, Dr. S.N. Paikara and the Arms Clerk of the office of the District Magistrate.
3. Facts of the case, in short, are that on 29.6.2017 at about 8:10 hours, one Rameshwar lodged a report to the effect that on 29.6.2017 at about 5 – 5:30 a.m. while victim Amrita was sweeping verandah, allegedly, the Applicant came there on a motorcycle and

fired blank point gun shot on her left side of neck. She was taken to Ambikapur Medical College and thereafter to CIMS, Bilaspur. An offence under Section 307 IPC and Sections 25 and 27 of the Arms Act was registered. After investigation, charge-sheet was filed on 18.9.2017. During trial, the prosecution moved an application under Section 311 Cr.P.C. on the ground that Dr. Shailendra Gupta, Dr. S.N. Paikara and Arms Clerk of the office of the Collector, Surajpur have not been cited as witnesses in the charge-sheet. Relevant documents have already been filed along with the charge-sheet, therefore, the above witnesses may be added and summoned as prosecution witnesses. The Applicant filed reply and submitted that there is no document available on record relating to the above three witnesses. It was also submitted that there is no post of Arms Clerk in the office of the Collector, Surajpur. After hearing the parties, the Additional Sessions Judge, vide the impugned order dated 6.2.2018, allowed the application of the prosecution. Hence, this revision by the accused.

4. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
5. Section 311 Cr.P.C. runs thus:

“311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned 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 it to be essential to the just decision of the case.”

6. A bare reading of Section 311 Cr.P.C. reveals that the Court is empowered to summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.
7. In the case in hand, while filing the charge-sheet, the prosecution did not cite the above referred to three witnesses as prosecution witnesses. During the course of trial, the application under Section 311 Cr.P.C. was moved by the prosecution for summoning them on the ground that relevant documents have already been annexed with the charge-sheet with regard to them. But, what documents were annexed with the charge-sheet with regard to them have not been explained by the prosecution in their application under Section 311 Cr.P.C. After hearing the parties, the Additional Sessions Judge, without assigning any reason that why the statements of the above three witnesses are essential for just decision of the case, allowed the application. Therefore, the order of the Additional Sessions Judge is not in accordance with law.
8. Resultantly, the impugned order dated 6.2.2018 passed by the Additional Sessions Judge is set aside. The matter is remanded to the Additional Sessions Judge to decide the application under Section 311 Cr.P.C. preferred by the prosecution afresh and pass a reasoned order in accordance with law. The instant revision is allowed in the aforesaid terms.

Sd/-

(Arvind Singh Chandel)
Judge