

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.319 of 2019**

1. Umesh Yadav, aged about 24 years, son of Shri Bhola Ram Yadav,
2. Umashankar Yadav @ Pitambar, aged about 30 years, son of Shri Bhola Ram Yadav,
3. Smt. Triveni Yadav, aged about 25 years, wife of Shri Umashankar Yadav @ Pitambar,

All are residents of Village Bhilai, P.S. Arang, District Raipur, Chhattisgarh

---- Applicants

versus

The State of Chhattisgarh through the Station House Officer, Police Station Arang, District Raipur, Chhattisgarh

--- Respondent

For Applicants	:	Shri Pushpendra Kumar Patel, Advocate
For Respondent	:	Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

6.3.2019

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 11.2.2019 passed by the 2nd Additional Judge to the Court of 1st Additional Sessions Judge, Raipur in Sessions Trial No.21 of 2019, whereby the Additional Sessions Judge has dismissed the application under Section 309 of the Code of Criminal Procedure for adjournment of the case and also closed opportunity of the Applicants/accused for cross-examination of prosecution witnesses, namely, Smt. Devkunwar Yadav, Premlal Sahu Patwari, Domeshe Yadav, Jitendra Kumar Yadav and Kumar Singh.

3. Facts of the case, in brief, are that against the present Applicants/accused, a trial, being Sessions Trial No.21 of 2019 for an offence punishable under Sections 306/34 and 304B of the Indian Penal Code is going on. On 11.2.2019, the case was fixed for evidence of the prosecution witnesses and on that date the above-named prosecution witnesses were present before the Trial Court. An application under Section 309 of the Code of Criminal Procedure was filed by the Applicants/accused for adjournment of the case on the ground that they have engaged a Counsel on 11.2.2019 itself and, therefore, the said Counsel is not prepared to cross-examine the witnesses. The Trial Court, vide the impugned order dated 11.2.2019, has rejected the said application on the ground that on 8.2.2019, the case was fixed for evidence of the prosecution witnesses and on that date prosecution witnesses Devkunwar Bai and Domesh Yadav were present before the Trial Court, but on that date, the case was adjourned on the request of the Applicants/accused that they wanted to change their Counsel. Thereafter, the case was fixed for 11.2.2019. On 9.2.2019 and 10.2.2019, the Applicants/accused had sufficient opportunity to engage another Counsel, but they did not do so and engaged another Counsel on 11.2.2019 itself. The Trial Court recorded statements of the above-named prosecution witnesses on 11.2.2019 and when the Counsel for the Applicants/accused expressed his inability to cross-examine the above-named prosecution witnesses, the Trial Court closed the opportunity of the Applicants/accused for cross-examination of the said prosecution witnesses. Hence, this revision by the Applicants/accused.

4. Learned Counsel appearing for the Applicants/accused submits

that on 11.2.2019 itself, the Applicants had engaged another Counsel and that Counsel was not prepared on that date to cross-examine prosecution witnesses Smt. Devkunwar Yadav, Premlal Sahu Patwari, Domesh Yadav, Jitendra Kumar Yadav and Kumar Singh. These witnesses are material witnesses and the instant matter relates to a heinous crime. Therefore, the Applicants/accused may be afforded an opportunity to cross-examine these prosecution witnesses.

5. Learned Counsel appearing for the State opposes the above submission.
6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
7. Considering the facts and circumstances of the case, further considering that the Applicants/accused had engaged another Counsel on 11.2.2019 itself, prosecution witnesses Smt. Devkunwar Yadav, Premlal Sahu Patwari, Domesh Yadav, Jitendra Kumar Yadav and Kumar Singh are material witnesses and the matter relates to a heinous crime, I am of the view that affording of an opportunity to the Applicants/accused for cross-examination of the aforesaid prosecution witnesses would be in the interest of justice.
8. Therefore, the Trial Court is directed to afford an opportunity to the Applicants/accused to cross-examine prosecution witnesses Smt. Devkunwar Yadav, Premlal Sahu Patwari, Domesh Yadav, Jitendra Kumar Yadav and Kumar Singh. It is made clear that these

prosecution witnesses shall be cross-examined by the Applicants/accused on the date of their next appearance itself to be fixed by the Trial Court and no further adjournment shall be granted in this regard. All the expenses of appearance of these witnesses before the Trial Court for their cross-examination shall be borne by the Applicants/accused.

9. Consequently, the instant revision is allowed to the extent indicated above.

Sd/-

(Arvind Singh Chandel)
Judge