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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27.08.2019

+ CRL.REV.P. 827/2019

ARSHAD ALI

..... Petitioner

Through Mr.Aditya Singla, Adv. with
Ms.Supriya Juneja, Adv.

versus

THE STATE

..... Respondent

Through Mr.Hirein Sharma, APP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

Crl.M.A. 33215/2019

1. Issue notice.
2. Learned APP accepts notice on behalf of the State and has opposed the present application.
3. Keeping in view the reasons stated in the present application, I hereby condone the delay of 108 days in filing the revision petition.
4. The application is allowed.

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5. Vide the present petition, the petitioner seeks direction thereby setting

aside the impugned order dated 14.01.2019 passed by ASJ, Rohini Courts, Delhi in FIR No.2487/2015 registered at police station Mangol Puri for the offences punishable under sections 302/34 IPC.

6. The revisionist accused is in judicial custody since 25.12.2015 i.e. more than 3 years 6 months.

7. The revisionist was earlier represented by private counsel but due to his poor financial condition, he has taken the help of Amicus Curiae who was appointed by learned Sessions Court on 10.05.2018. By the time amicus curiae was appointed, all the public/material witnesses have already got examined. Amicus Curiae appointed by the Learned Session Court had inspected the judicial case file and after going through the whole case file, he revealed that PW-6 (Javed Alam) who is a star witness of the investigating agency had already been examined by the previous counsel but being an eye witness of alleged incident, no question regarding topography and surroundings were put to him.

8. Learned counsel appearing on behalf of the revisionist submits that the Amicus Curiae appointed by the Learned Session Court had moved an application u/s 311 Cr. P.C. to recall the public witness mentioned above on 24.08.2018 and the same was dismissed by vide order dated 14.01.2019.

However, further cross examination of the said witness is necessary for defense of accused person who would otherwise face consequences on account of non-cross examination on material aspects.

9. Learned APP appearing on behalf of the State submits that PW-6 has been cross-examined in detail on 11.04.2017 and the present application moved by the learned Amicus Curiae after two years of examination, thus, the lacunae of the case cannot be filled up by recalling the witnesses.

10. He further submits that there is apprehension of winning over PW-6, therefore, the present petition may be dismissed.

11. The fact remains that two times, the learned Trial Court appointed Amicus Curiae to defend the petitioner. The second Amicus Curiae perused the record and of the view that PW-6 is an eye witness of the alleged incident, but any question of topography and surroundings were not put to him.

12. Keeping in view the facts and circumstances of the case and the fact that the present petition is filed from Jail and there is no apprehension of winning over the witness, therefore, I hereby allow the present petition.

13. It is made clear that the PW-6 will be examined regarding topography and surroundings of the alleged incident being PW-6 is eye-witness.

14. Accordingly, the Trial Court is directed to give one opportunity to the petitioner to cross examine PW-6.
15. In view of above terms, the petition is allowed and disposed of.
16. Order *dasti* under the signatures of the Court Master.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 27, 2019
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