

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1275 of 2019

- State Of Chhattisgarh, Through The Station House Officer, Police Station Durg, District - Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Petitioner

Versus

1. Sandeep Jain S/o Late Shri Rawalmal Jain, Aged About 42 Years, R/o Ganjpara, In front of Alokchand Trilokchand Jewelers, Durg, Police Station Durg District Durg Chhattisgarh., District : Durg, Chhattisgarh
2. Bhagat Singh Gurudatta S/o Satnam Singh Gurudatta, Aged About 47 Years, R/o In front of Om Parisar, Near Kalibadi, Police Station Mohan Nagar, District Durg Chhattisgarh., District : Durg, Chhattisgarh
3. Shailendra Sagar S/o Avtar Singh, Aged About 47 Years, R/o Address Gurunanaknagar, Police Station Mohan Nagar, District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondents

For Petitioner/State – Mr. Adil Minhaj, Govt. Advocate.

For Respondents – Mr. Ganesh Ram Burman, Ms. Smita Jha and Mr. Amiyakant Tiwari, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

02-11-2020

1. This criminal revision has been brought being aggrieved by the order dated 12-02-2019 passed in S.T. No.56/2018 dismissing the application filed by the applicant under Section 137 of the Indian Evidence Act.
2. It is submitted by the State counsel appearing for the applicant that in matter of prosecution in a double murder case, star witness Sourabh Golcha was examined as PW-8. This witness made some inconsistent statement in cross-examination by defence which was not according to the statement given by him under Section 161 of the Cr.P.C. and also new statement in comparison to the statement given by him in the examination-in-chief. Hence, for this reason the prosecution has moved an application for re-examination of this witness. The defence will definitely have opportunity to cross-examine again in case, nothing would be stated or recorded in such re-examination which may be against the defence side. Therefore, the order that has been passed is erroneous. Therefore, it is prayed that the impugned order be set aside and the

prosecution be given opportunity to re-examine the material witness of the case, namely, Sourabh Golcha.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Dahyabhai Chhaganbhai Thakker vs State of Gujarat**, AIR 1964 SC 1563.

3. Learned counsel for the respondents oppose the submission made by the applicant's side and submit that Section 138 of the Indian Evidence Act provides for order of examinations, cross-examination and re-examination. The provision does not permit re-examination of the witness at later stage, therefore, any such prayer for re-examination should be made immediately after completion of the cross-examination of the witness and in principle in re-examination of the witness cannot be permitted to destroy the defence of accused party. Therefore, revision petition filed is baseless. Learned Court below has not committed any error, therefore, it is prayed that the revision petition be dismissed.

4. Considered on the submissions and perused the copy of the deposition of the star witness of prosecution who is clearly Sourabh Golcha. The trial of this Sessions case is against Sandeep Jain, Bhagat Singh and Shailendra Sagar. Gist of the statement of this witness is this, that on receiving information he arrived at residence and found his maternal grand-father and grand-mother in dead condition who were shot with some firearm. Then this witness called his maternal uncle, who is accused Sandeep and then rest of the legal formalities were done. There is some admission made in cross-examination in paragraph 18 that one net-cap was seized from the spot and that one Sonraj Golcha was present at that time. In paragraph 19, on suggestion given by the defence the witness has admitted that the door of the room of accused Sandeep was bolted from outside. Similarly on suggestion given by the defence he has made admission that the wall from street side can be scaled by

using a ladder along with making other admissions regarding possibilities.

Concern of the prosecution is this, that these statements have been newly introduced by the witness on suggestions by defence, hence, their clarification is needed. Section 138 of the Indian Evidence Act provides that the re-examination shall be directed to the explanation of any new statement or disclosure in cross-examination; and, if the Court permits re-examination in which any new statement is brought with the permission of the Court, then the adverse party may further cross-examine upon that matter. Thus the provision under Section 138 of the Indian Evidence Act empowers the Court to permit re-examination.

On the basis of the submission made from the applicant's side and also after perusal of the statement of witness Sourabh Golcha, I am of this view that there are new statements made by the witness in cross-examination. Since the prosecution is keen to seek explanation on these new statements, the Court below should have normally allowed it. Hence, I am of this view that learned Sessions Court has erred in exercise of jurisdiction present with it under the provision of the Indian Evidence Act. Therefore, the impugned order needs interference. Accordingly, the revision petition is allowed. The impugned order is set aside and it is ordered that the petitioner/prosecution is given opportunity to re-examine witness Sourabh Golcha (PW-8) to seek clarification on the points mentioned hereinabove and also within the limit of provision under Section 138 of the Indian Evidence Act.

Sd/-

(Rajendra Chandra Singh Samant)
Judge