

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.198 of 2023**

Arising Out of PS. Case No.-546 Year-2019 Thana- GOPALGANJ TOWN
District- Gopalganj

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SANTOSH KUMAR @ SANTOSH PRASAD SON OF BALIRAM PRASAD
RESIDENT OF VILLAGE - MUKERI TOLA, P.S. - GOPALGANJ, DISTRICT
GOPALGANJ, BIHAR

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sumit Shekhar Pandey

For the Respondent/s: Mr. Sanjay Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
CAV ORDER

4 12 -07-2024 Heard on Admission.

2. The present revision application has been preferred by the petitioner being aggrieved with the order dated 30.11.2022 (annexure-7) passed by the learned Additional District & Sessions Judge-X, Gopalganj, Bihar in connection with Sessions Trial No. 378 of 2022 arising out of Town P.S. Case No. 546 of 2019, whereby the application filed for correction/modification in the statement (examination- in-chief) of Prosecution Witness No.2, namely, Khushbu Devi has been allowed.

3. It is submitted by the learned counsel for the petitioner that on the basis of written report made by one Ram Sagar Chaoubey, the police registered an F.I.R. being Town P.S. Case No. 546 of 2019 under Section 341, 324, 307,



379, 504/34 of the Indian Penal Code and after completion of investigation, charge-sheet has been submitted against the petitioner along with other accused persons. Thereafter, the learned Chief Judicial Magistrate, Gopalganj took cognizance of the offences under Sections 447,341,323,307,354,504,506/34 of the Indian Penal Code and accordingly, charges were framed against the accused persons including the petitioner leading to commencement of trial.

4. During course of trial, one Khusbhu Devi has been examined as P.W.-2 and her statement was recorded on 16.11.2022. On 17.11.2022, learned A.P.P. for the State submitted an application before the learned Sessions Court for some corrections in the statement of P.W.-2, Khusbhu Devi and the same was allowed by the learned Sessions Court on the ground that due to clerical/typographical error certain incorrect facts mentioned in the application have, inadvertently, been recorded in the statement of P.W.-2, Khusbhu Devi.

5. It is submitted by the learned counsel for the petitioner that learned Sessions Court while allowing the application filed by the learned A.P.P. has materially erred in



appreciating the materials available on record and passed the impugned order amending the statement of P.W.-2, Khusbhu Devi even though she has navigated through her version of examination -in-chief and found the same to be true and correct. The learned Sessions Court also failed to consider that such type of amendment is not permissible. The observation made by the learned Sessions Court in the impugned order that due to clerical mistake, this has happened is also perverse and contrary to the record, therefore, on this ground only, the impugned order is liable to be set aside.

6. Learned counsel for the State submitted that the learned Sessions Court has rightly passed the impugned order and opposed the arguments advanced by the learned counsel for the petitioner

7. Heard both the sides and perused the impugned order and also gone through the materials available on record.

8. Perused the statement of Khushbu Devi, P.W.-2. On careful perusal thereof, it is apparent that in paragraph-3 of the statement (examination-in-chief), she has deposed that it is **Sanjay Prasad**, who had assaulted her niece, namely,



Riya Kumari by a **Sword.** According to the application seeking amendment filed by the learned Additional Public Prosecutor, it is averred that due to typographical mistake, name of '*Sanjay Prasad*' is, inadvertently, recorded in place of '*Santosh Kumar*'. Further, in the 8th line from the top at paragraph-1 of the examination-in-chief of P.W.-2, Khusbho Devi, it is deposed that at the time of incident, all the accused persons were having rod in their hands, but according to the amendment application, '**rod**' has, inadvertently, been recorded/typed in place of '**lathi**' by the deposition writer.

9. The learned Sessions Court after hearing both the parties allowed the amendment application on the ground that due to clerical/ typographical error, the aforesaid mistake has been committed in the deposition of P.W.-2.

10. The learned Additional Session Judge relying on the judgment rendered by the Hon'ble Apex Court in the case of ***Mir Mohd. Omar & Others Vs. State of West Bengal***, reported in **1989 4 SCC 436**, allowed the correction/amendment in the examination-in-chief of P.W.-2 on the ground that some clerical/typographical errors are there which can be corrected in exercise of powers



conferred under Section 278 of Cr. P.C. Bare perusal of the statement (examination-in-chief) of P.W.-2, Kushbu Devi recorded before the Trial Court reveals that the error mentioned in the correction/amendment application are not the clerical/typographical error. The P.W.-2, Kushbu Devi categorically stated everything in her deposition and it was also signed by her after recording of her statement, therefore, the finding of learned Sessions Court/Trial Court in this regard is perverse. Thus, on this ground only, the impugned order is liable to be set aside and is, hereby, set aside.

11. However, it is made clear that the prosecution has full right to make an application before the learned Trial Court to re-examine the said witness at this point. If the learned Trial Court allows the such application on being filed, the defence shall also be provided reasonable opportunity to cross-examine the witness on this point.

12. With the aforesaid observation, this revision application is allowed.

(Arvind Singh Chandel , J)

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