

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR-21-2024 (O&M)
Date of decision : 05.02.2024**

Anand Vardhan Khanna

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Gurmohan Singh Bedi, Advocate and
Mr. Pawandeep Singh, Advocate, for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana, for respondent No.1-State.

Mr. Manu Sachdeva, Advocate, for
Mr. Abhimanyu Singh, Advocate, for respondents N.2 and 3.

Mr. Akshit Aggarwal, Advocate, for respondent No.4.

Ms. Veena Hooda, Advocate, for respondent No.5.

MAHABIR SINGH SINDHU, J.

Present revision petition has been filed by the petitioner-complainant under Section 401 of the Code of Criminal Procedure, 1973, (for short, 'Cr.P.C') against the impugned order dated 19.12.2023 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, whereby an application of the prosecution under Section 311 Cr.PC was declined.

2. Paper book reveals that Dr. Gaurav Sharma, Medical Officer, Civil Hospital, Naraingarh, examined as PW-13 in a Sessions Trial emanating from FIR No.352 dated 28.06.2018, under Sections 364, 302, 201 and 120-B of the Indian Penal Code, 1860, registered at Police Station Yamuna Nagar, and his cross-examination was concluded on 09.11.2022.

Later on, petitioner-*defacto* complainant filed an application under Section

311 Cr.P.C through Public Prosecutor for re-summoning and re-examination of the above PW-13 regarding nature, place, extent of injuries as well as weapon used in the crime. Precisely, it was averred in the application that PW-13 during his cross-examination stated that “for causing an incised wound or injury, which is bone deep, the weapon with sharp edges should be heavy and should be like a *gandasi*, sword or an axe”. This deposition is claimed to be contrary to the text books and established medical jurisprudence; hence, prayed for recalling of the aforesaid witness. Learned trial Court after hearing the parties dismissed the application while observing as under:-

“16. Now coming to the another application for re-summoning and re-examine Dr. Gaurav Sharma, Medical Officer, Civil Hospital, Naraingarh (PW-13), it has been submitted on behalf of prosecution that in his cross-examination, PW13 has stated that for causing an incised wound or injury, which is bone deep, the weapon with sharp edges should be heavy and should be like a gandasi, sword or an axe and that the said deposition is contrary to text books and established medical jurisprudence regarding which he is required to be re-called for clarification, which is necessary for the just and proper adjudication of the present case. However, it is pertinent to mention here that Dr. Gaurav Sharma (PW 13) has already been cross-examined at length and there is no ambiguity in the statement made by him. It is settled law that exercise of power under Section 311 Cr.P.C should be resorted to only with object of finding out the truth or obtaining proper proof for such facts, which would lead to a just and correct decision of the case and the exercise of said power cannot be dubbed as filling up the lacuna in the case of prosecution”.

3. Learned counsel for the petitioner raised two fold contentions (i) that deposition of PW-13 is contrary to the text book and medical jurisprudence (ii) the learned trial Court while dismissing the application observed that “there is no ambiguity in the statement made by him”, and as

such, it has virtually given the final opinion in the matter; hence, the same would be detrimental to the prosecution case.

4. *Per contra*, learned counsel for respondents No.2 to 5 vehemently opposed the prayer while submitting that there is no illegality with the impugned order; hence, the same does not require any interference by this Court.

5. Heard both sides and perused the paper book.

6. Before proceeding further, it is necessary to recapitulate Section 311 Cr.P.C., which reads as under:-

“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 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.”

7. A perusal of the Section 311 Cr.P.C. reveals that it is running in two parts viz.:-

(A)

(i) any court; (ii) at any stage of any inquiry; (iii) trial or other proceeding under this Code; may summon; any person as a witness; or examine any person in attendance, though not summoned as a witness; or

(B)

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.

8. In view of the above, it is apparently clear that under Section 311 Cr.P.C, the Court is empowered to recall and re-examine any person if his evidence appears to be essential for the just decision of the case.

9. In the present case, learned trial Court while rejecting the application vide impugned order, observed that PW-13 has already been examined by the prosecution and thereafter, he was cross-examined by the defence at length; hence, there is no justifiable ground to re-summon for his re-examination to seek any clarification. At the same time, it was also observed that “there is no ambiguity in the statement made by him”. There is no quarrel that deposition of PW-13 is only an opinion under Section 45 of the Indian Evidence Act, 1872, and the same shall be considered by learned trial Court along with other material at the time of final adjudication. Thus, in such a scenario, the observations made by learned trial Court that “there is no ambiguity in the statement made by him” are to be confined only to the decision of application and not beyond that.

10. As already discussed that deposition of PW-13 to the effect that “incised wound or injury which is bone deep with sharp edges should be inflicted with a heavy weapon and should be like *gandasi*, sword or an axe”, is merely an opinion and thus, none of the parties or learned trial Court would be debarred from relying upon any authoritative medical jurisprudence text book(s) during the course of arguments, when the matter shall be decided finally.

11. In view of the above, this Court does not find any ground to interfere with the impugned order. Hence, this petition is disposed off with a clarification that observations, made by learned trial Court that “there is no ambiguity in the statement made by him” be confined only to the application under Section 311 Cr.P.C. and shall not have any bearing on the merits of the case, in any manner.
12. Ordered accordingly.
13. Pending miscellaneous application(s), if any, shall also stand disposed off.

05.02.2024

monika

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No