

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10718-2023

Sushma Devi

.....Petitioner

Vs.

State of Haryana and Others

.....Respondents

Reserved On: 09.04.2024
Pronounced On: 15.04.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Suvir Sidhu, Advocate and
Mr. Gursher Singh, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. AG, Haryana.

Mr. K.D.S. Hooda, Advocate for
respondent Nos.2 & 3.

None for respondent No.4.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner, who is the complainant in case FIR No.66 dated 02.03.2020 under Sections 302/ 34, 120-B of the IPC and Section 25 of Arms Act registered at Police Station Civil Lines, District Hisar, Haryana, has prayed for quashing of order dated 06.02.2023 (Annexure P-6) passed by learned Additional Sessions Judge, Hisar, whereby application under Section 311 Cr.P.C. for re-examination of the petitioner as prosecution witness, was declined.

2. Perusal of the paper-book would reveal that FIR was lodged on the statement of Sushma Devi (petitioner) wife of Dharampal (deceased). She is

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the current Sarpanch of Village Sulkhani. As per her statement, on 02.03.2020 at about 08:30 a.m., she had gone to take bath in the bathroom, whereas her husband Dharampal had gone out of house in the street to throw the garbage, when she heard sound of crackers in the street. She came out of the bathroom and saw that her husband was lying on the ground. She further saw that a boy wearing a helmet was firing shots at her husband with a pistol, whereas another boy was standing beside him, whose face was also covered with a cloth. She raised noise but both the assailants fled away on the bike parked in the street along with their weapons. Hearing the sound of bullets and the noise raised by her, many people of the locality reached the spot. Her husband Dharampal was taken to the hospital but was declared brought dead. She named some persons namely Ramesh Patarkar, Amin and Salin etc. to be the suspects, as they had been evicted from illegally encroached panchayat land by her (complainant).

After conducting the necessary investigation, final report under Section 173 Cr.P.C. was filed.

3.1 The testimony of complainant Sushma Devi- petitioner as PW-1 was recorded by the trial Court on 22.09.2022, copy of which is Annexure P-4, in which after giving the FIR version, she disclosed that on 02.03.2020, in the evening police had shown her a footage in the phone, in which she had identified Vinod and Sandeep @ Sandy, who had fired shots upon her husband.

3.2 Besides, during her statement, the three accused Sandeep, Vinod and Jagdish @ Sonu were produced in the Court through Video Conferencing from Central Jail-1, Hisar. She (petitioner) identified Vinod @ Vinodi to have committed the murder of her husband Dharampal. Another accused Vikrant @

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Mukesh was produced through Video Conferencing from Bhondsi Jail, Gurugram and shown to the witness but she failed to identify him. Apart from this, a sealed parcel containing a pen drive was opened in the Court. The pen drive was played on the screen and after seeing the same, she (petitioner) stated that the person wearing the helmet was Vinod and the person sitting on the pillion was Sandeep @ Sandy and that the footage had been shown to her by the police. According to her, she was present near the boundary wall of the house, from where she had seen the accused firing at her husband.

4.1 After recording the testimony of PW-1 Sushma Devi on 22.09.2022, an application was moved by the said petitioner under Section 311 Cr.P.C. (copy Annexure P-5) on 05.12.2022 so as to recall her and to physically identify the accused. According to her, when her statement was recorded in the Court on 22.09.2022, and she was asked to identify accused through VC, she had identified Vinod @ Vinodi but other two accused could not be identified through Video Conferencing but she could identify the accused if physically produced before her. Stating that identification of the accused was primary and substantive evidence and that said identification was essential in the Court, prayer was made by the petitioner to recall her.

4.2 Said application has been dismissed by the Court by way of impugned order dated 06.02.2023 (Annexure P-6).

5.1 Assailing the aforesaid order, it is contended by learned counsel that at the time of recording the statement of PW1 Sushma- petitioner, learned Additional Sessions Judge, Hisar did not make compliances by satisfying himself with respect to Rule 14.7 of the rules for Video Conferencing for

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Courts as received from Hon'ble Supreme Court and forwarded by this Court, as per which the Court is required to satisfy that Advocate, required person or any other participant is being seen and heard clearly and can clearly see and hear the Court.

5.2 Learned counsel contends further that objective of Section 311 Cr.P.C. is to take on record the entire true facts so that none of the party is prejudiced by lack of any fact. Learned counsel has placed reliance upon ***“Jamatraj Kewalji Govani vs. State of Maharashtra-AIR 1968 SC 178”***, wherein it was held as under:

“It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction.” (Emphasis added)”

5.3 Still further, it is argued by learned counsel that petitioner is an aged widow lady of more than 64 years and that respondent Nos.2 to 4 - accused were produced in the Court through the medium of Video Conferencing and that due to distance between the petitioner and screen and her old age, she was not able to identify anyone from such distance and that this fact has not been appreciated by the Court concerned. Learned counsel also contends that recalling PW1 does not amount to filling the lacuna in the case in the facts and circumstances.

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6. Though learned State counsel supports the case of petitioner, but learned counsel for respondent Nos.2 & 3 strongly opposed the same by submitting that as many as three accused were produced in the Court through Video Conferencing at the time of recording testimony of the petitioner and that she identified only one of them and that the application for recall so as to physically produce the accused, is nothing but an attempt to fill up the lacuna. Learned counsel contends that the trial Court has taken into consideration all the relevant aspects while dismissing the application by way of impugned order. Prayer is made for dismissal of the petition.

7. Before considering the contention of learned counsel for the petitioner, it will be opposite to reproduce the observations made by the trial Court concerned while dismissed the application under Section 311 Cr.P.C. by way of impugned order. The same reads as under:

“4.....The applicant/ complainant appeared in the witness box as PW1 on 22.09.2022. She made a detailed statement and the accused Vinod @ Vinodi as well as Sandeep @ Sandy were produced on that day through video conferencing. The witness i.e. the applicant/complainant Sushma (PW1) carefully saw the faces of the two accused on the computer screen which were clear on that day and that was also observed by the undersigned on the computer screen. The applicant- complainant (PW1) identified one of them Vinodi @ Vinodi and failed to identify accused Sandeep @ Sandy. It was not the request of the witness i.e. the applicant-complainant (PW1) on that day that she was not able to identify accused Sandeep @ Sandy through video conferencing. It was also not the request of the applicant/ complainant (PW1) that she could not identify the accused Sandeep @ Sandy as he was not produced physically. It is also not the stand of the applicant-complainant now that the video conferencing facility was not well connected on that day and the computer screen was not clear to identify the face of the accused Sandeep @ Sandy. Once the applicant-complainant has already appeared in the witness

box as PW1 and failed to identify the accused Sandeep @ Sandy, she may not be recalled as a witness with the physical presence of the same accused without any basis as the same will certainly amount to filling up the lacuna of the case of the prosecution and that may also cause prejudice to the accused.”

8. Here itself, it is relevant to note that statements of PW1 - petitioner Sushma Devi was recorded on 22.09.2022 by the same Presiding officer i.e. Shri Amit Sehrawat, learned Additional Sessions Judge, Hisar, who has made the observations in the impugned order dated 06.02.2023 (Annexure P-6). It is clear from his observations that at the time of recording the testimony of PW1, the witness i.e. petitioner had carefully seen the faces of the accused i.e. Vinod @ Vinodi @ Sandeep @ Sandy on the computer screen, which was clear on that day and this fact was also observed by the Presiding Officer on the computer screen and that petitioner was able to identify one of them i.e. Vinod @ Vinodi but had failed to identify accused Sandeep @ Sandy. It has also been noticed that no request had been made by the petitioner on that day that she was not able to identify the accused Sandeep @ Sandy through Video Conferencing nor any request was made that she was so unable to identify Sandeep @ Sandy due to non-production of him physically. It has also been correctly observed by learned Presiding Officer, which fact is evident from the application Ex.P5 also that it is not the stand of the petitioner that Video Conferencing facility was not well connected on that day or that the computer screen was not clear so as to identify the face of accused Sandeep @ Sandy.

9. As far as the relevant rule pertaining to the Video Conferencing, referred by learned counsel for the petitioner is concerned, the same reads as

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under:

“xxx14.7-The Court shall satisfy itself that the Advocate, Required Person or any other participant that the Court deems necessary at the Remote Point or the Court Point can be seen and heard clearly and can clearly see and hear the Court.xxx”

10. The aforesaid Rule would indicate that Court is required to satisfy itself that the Advocate, required person or any other participant, which the Court deems necessary at the Remote Point or the Court Point, can be seen or heard clearly and can clearly see and hear the Court. The said Rule does not mandate the Court concerned so as to record its satisfaction in this regard, before conducting the proceedings of the Court through video conferencing or before recording the testimony of any witness.

11. In the impugned order, learned Presiding Officer has clearly observed that computer screen was quite clear on that day and this fact was duly observed by him (by Presiding Officer) on that day. It has already been noticed that even in the application (Annexure P-5), it is not the contention of the petitioner that on the date of recording her testimony on 22.09.2022, the computer screen was not clear or that she was not able to see the faces of the accused clearly.

12. In the aforesaid facts and circumstances, learned trial Court has rightly observed that once the petitioner- complainant failed to identify the accused Sandeep @ Sandy in the witness box, her recall, with physical presence of the accused, without any basis, will certainly amount to filling up the lacuna in the prosecution case, which will cause prejudice to the accused.

13. No doubt that objective of Section 311 Cr.P.C. is the just decision of the case but at the same time, it does not mean that prosecution can be

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allowed to fill up its lacuna to the prejudice of the accused.

14. Consequent to the aforesaid discussion, this Court does not find merit in the present petition.

Dismissed.

(DEEPAK GUPTA)
JUDGE

April 15, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No