

CRR-1383-2023

2024:PHHC:056739

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1383-2023

Date of Decision: 25.04.2024

AMARJIT SINGH @ ROBIT

... Petitioner

Versus

STATE OF PUNJAB & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sidhant Vermani, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

Mr. Vivek Chauhan, Amicus Curiae
for respondent No.2.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the order dated 03.05.2023 passed by the Additional Sessions Judge, Amritsar whereby an application filed by the prosecution under Section 311 Cr.PC for summoning Man Sheesh Singh has been allowed.

2. The brief facts of the case are that Harjinder Kaur got lodged an FIR No.136 dated 29.08.2016 U/s 302/380/411/120-B IPC, P.S. C-Division, Amritsar with the allegations that she had two children, a son Jaswinder Singh @ Romi and daughter Daljit Kaur. Jaswinder Singh @ Romi was married and had two children. She (complainant) had left the house to go to gurudwara in the afternoon leaving behind her daughter-in-law Parwinder Kaur and grand children at the house whereas her son Jaswinder Singh @ Romi had gone for work. In the evening at about 7.30 pm she (complainant)

CRR-1383-2023

met her daughter-in-law Parvinder Kaur at the gurudwara along with her children. She (daughter-in-law) had stated that she had left behind her husband Jaswinder Singh @ Romi at home after serving him meals. When they all went back home at 9.45 PM, her (complainant's) daughter-in-law went upstairs on the upper portion and started screaming loudly. She (complainant) also went to the upper portion and saw that the body of her son Jaswinder Singh @ Romi was lying in a pool of blood as some unknown person had committed his murder with a sharp edged weapon.

3. During the course of investigation it transpired that Parvinder Kaur was in a love affair with one Amarjit Singh (petitioner) because of which the deceased had been murdered. Based on these allegations the instant FIR came to be registered and a report under Section 173(2) Cr.PC came to be filed.

4. Thereafter charges were framed and a number of prosecution witnesses were examined.

5. Subsequent thereto an application under Section 311 Cr.PC was moved as the prosecution wished to examine Man Sheesh Singh son of the deceased as a prosecution witness. As per the application, he was an eye witness and had seen the occurrence and, therefore, his deposition was essential for the just adjudication of the case.

6. A response was filed by the accused wherein it was stated that a new version was being coined by the prosecution. In fact Man Sheesh Singh has never been cited in the list of witnesses and had not been associated with the investigation at any earlier stage. Therefore, the application under Section 311 Cr.PC ought not be allowed.

7. Vide order dated 01.02.2018, the said application came to be allowed and PW-Man Sheesh Singh was ordered to be summoned for recording his evidence.

8. The aforementioned order was impugned in CRR-776-2018.

Vide order dated 27.03.2023 (Annexure P-1) this Court set aside the impugned order dated 01.02.2018 and the case was remanded back to the Trial Court for a fresh adjudication on merits.

9. The Trial Court thereafter, proceeded to allow the application under Section 311 Cr.P.C. once again and directed that Man Sheesh Singh be summoned and examined as a prosecution witness vide order dated 03.05.2023.

10. It is this order which is under challenge in the present petition.

11. The learned counsel for the petitioner contends that the instant application had been moved at a belated stage. Had Man Sheesh Singh be present at the spot and been an eye-witness, his statement ought to have been recorded during the course of investigation. A new version was being sought to be set up by moving the instant application. In fact, PW6-Jaswant Singh who was the purported witness of an extra-judicial confession was examined and did not support the prosecution case and came to be declared a hostile witness on 12.05.2017. On realizing that the case of the prosecution stood on a weak footing, the application under Section 311 Cr.P.C. was moved on 23.01.2018 (Annexure P-4). He contends that while it is true that an application under Section 311 Cr.P.C. can be moved at any stage, it cannot be used to fill up a lacuna moreso in the present case when Man Sheesh Singh was never cited as a witness in the report under Section 173(2) Cr.P.C. and

the application had only been moved after Jaswant Singh (PW6) had turned hostile. By virtue of moving the application the prosecution sought to set up an entirely different case to that which had been set up initially. He, therefore contends that the impugned order was liable to be set aside.

12. On the other hand, the learned State counsel along with the learned Amicus Curiae contend that an application under Section 311 Cr.P.C. can be moved at any stage. In the instant case, the examination of PW-Man Sheesh Singh was essential for the just adjudication of the case. Therefore, the present petition was liable to be dismissed.

13. I have heard the learned counsel for the parties.

14. The FIR in the instant case had been registered on the statement of Harjinder Kaur wife of late Gurjit Singh, the mother of the deceased Jaswinder Singh alias Romi. During the course of investigation, the statements of a number of witnesses were recorded. However, one of the relevant witnesses was Jaswant Singh before whom an extra-judicial confession was purportedly made by Amarjit Singh (petitioner). Man Sheesh's statement was never recorded during the course of investigation and therefore, he was never cited in the list of witnesses. However, during the course of the Trial, when Jaswant Singh was examined as PW6 and turned hostile on 12.05.2017, it was only then that an application was moved under Section 311 Cr.P.C. on 23.01.2018 to summon Man Sheesh Singh as a purported eye-witness of the occurrence. At no earlier stage was Man Sheesh Singh ever stated to be an eye-witness. Quite apparently, he is sought to be summoned as a witness only because Jaswant Singh the alleged witness of the extra-judicial confession has turned hostile and in the absence of any

other substantial evidence the case of the prosecution would be on a weak footing. Therefore, the application under Section 311 Cr.P.C. has been moved at this belated stage only to shore up the prosecution case.

15. In view of the aforementioned discussion, I find considerable merit in the present petition. Therefore, the order dated 03.05.2023 passed by the Addl. Sessions Judge, Amritsar stands quashed.

(JASJIT SINGH BEDI)
JUDGE

25.04.2024
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No