

State (Delhi Administration) Vs. Ramesh Kumar

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Court : Delhi

Decided On : Feb-05-1990

Reported in : 1990RLR177

Judge : P.K. Bahri, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311

Appeal No. : Criminal Revision Appeal No. 241 of 1989

Appellant : State (Delhi Administration)

Respondent : Ramesh Kumar

Judgement :

P.K. Bahri, J.

(1) Only a short point is involved in this criminal revision. So, I proceed to dispose of this finally.

(2) The respondent is facing trial for offences punishable u/Ss. 323 and 302 of the IPC. There is only one eye witness of the occurrence and she was examined as PW1. Her exam-in-chief was recorded on 13.4.1987 and her cross-exam, was completed on 4.7.1987. Pw 1 Pushpa herself had made an application on 12.12.1988, in which she had prayed for being given permission to narrate the true facts of the case and she filed two affidavits giving out her version of the

occurrence which was at variance to what she had deposed in court as Public Witness 1 or had told the police in the F.I.R. The Additional Sessions Judge had not allowed that application and had observed that the question whether Public Witness 1 should be allowed to give any other statement would be decided after prosecution evidence has been completed.

(3) The respondent had filed an application praying that Public Witness 1 be recalled for purposes of further cross-exam, as new material in the shape of affidavits of Pushpa had come on the record and thus, it has become necessary to confront Public Witness 1 with her averments made in the two affidavits being in contradiction what she had deposed in court. The learned Additional S.J. exercising his power u/S. 311 of the Code of Criminal Procedure ('the Code') had allowed this application and had directed for recalling Pw 1 for further cross-exam. This order has been challenged by the State by filing this criminal revision.

(4) Counsel for the petitioner has vehemently argued that the court should not have passed the impugned order as it would amount to allowing a particular witness to go back on his sworn testimony in court. He has urged that in all probability Pushpa had been won over by the respondent after she had been examined in court as Public Witness 1 and thus, the Additional S.J. was not right in exercising his power u/S. 311 of the Code for directing recalling of Pw I for purposes of further cross-exam,

(5) Under S. 311 of the Code, the court has discretion at any stage of the inquiry or trial or other proceeding to summon any person as a witness or recall or re-examine any person already examined and the court is bound to summon and examine or re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

(6) The Supreme Court had an occasion to interpret similarly worded S. 540 of the previous Code in *Jamatraj Kewalji Govani vs . State* : 1968 CriLJ231 and it was laid down that S. 540 is intended to be wide as the repeated use of the word 'any' throughout its length clearly indicates. The section is in two parts. The first part gives a discretionary power but the latter part is mandatory. The use of the word 'may' in the first part and of the word 'shall' in the second firmly establishes this

difference. It was laid down that as the section stands there is no limitation on the power of the Court arising from the stage to which the trial may have reached, provided the Court is bonafide of the opinion that for the just decision of the case, the step must be taken and this power is exercisable at any time.

(7) In Mohd. Hussain vs . K.S. Dalipsinghji : 1970 CriLJ9 , a question of recalling a witness, who had already been examined, came up for consideration. One Public Witness Ali was examined as a witness and after his cross- exam. had concluded the defense had moved an application for recalling him for cross- exam. The request was declined. The plea taken by the defense for recalling the witness was that the witness was repentant and wanted to say that he had given false evidence. The Supreme Court held that no ground was made out for recalling Ali because there was no affidavit from Ali nor was there any other material showing that his testimony was incorrect in any material particular. The court emphasized that the court has inherent power to recall a witness if it is satisfied that he is prepared to give evidence which is materially different from what he had given at the trial, but there must be some material from which the court could be satisfied that the witness should be recalled for giving further statement, may be in contradiction with the statement already made by him.

(8) The learned counsel for the respondent has also brought to my notice Sukkhan vs. State of U.P. 1988(1) Crimes 245. In the said case also, after a witness had been examined in court he had given an affidavit denying that he had witnessed the occurrence. The application moved by the accused praying for recalling of the said witness for further cross-exam, was allowed by the High Court mentioning that the said witness should have been summoned afresh U/S. 311 of the Code and confronted, with his affidavit and given an opportunity to explain his behavior.

(9) In the present case, in view of the fact that Public Witness 1 Pushpa had herself given affidavits giving facts which are in contradiction with what she had deposed in court, the discretion exercised by the Additional S.J. in permitting recalling her for further cross-exam, in order to enable the defense to confront her with her affidavits appears to have been exercised in the interest of justice. After all the court has to appraise the testimony of the solitary eye witness and in case

the prosecution feels that Pw 1 had been won over and had gone back on her sworn testimony by filling affidavits at the instance of the defense, the prosecution would be well within its right to pray to the court for putting questions to Public Witness 1 in shape of cross-exam, to elicit the truth from her. No judgment has been brought to my notice by the learned counsel for the petitioner where in such like facts the power u/S. 311 of the Code was held not exercisable by the trial court; rather it is obligatory for the trial court to recall any witness if his evidence appears to be essential to the just decision of the case. The affidavits of Public Witness 1 filed after her statement had been recorded could furnish sufficient material for the court to be satisfied that it is a fit case for recalling the said witness for purposes of further cross-exam and re-exam.

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