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**Court :** Rajasthan

**Decided On :** Jul-20-1984

**Reported in :** 1984WLN548

**Judge :** K.S. Lodha, J.

**Appeal No. :** S.B. Criminal Revision No. 334 of 1983

**Appellant :** Umed Singh and ors.

**Respondent :** Devi Singh and ors.

**Judgement :**

**K.S. Lodha, J.**

1. This revision has been filed by the complainants Umed Singh, Mohan Singh and Madho Singh against the order of the learned Addl Sessions Judge No. 2, Jodhpur, rejecting the application of the Public Prosecutor for additional evidence under Section 311 Cr.P.C.

2. The accused non-petitioners are facing trial for offences under Sections 307, 323 I.P.C. and under Section 25 of the Arms Act. The case of the prosecution briefly stated is that the accused persons on account of a quarrel in respect of a bada attacked the complainant party with swords. Davi Singh is alleged to have given a sword blow on the hand of Madho Singh and the other accused persons

are said to have given sword blow to other complainants. The injured Madho Singh was admitted to the military hospital and the other injured persons were taken to the Mahatma Gandhi Hospital, Jodhpur. The evidence of the prosecution had come to an end and the accused persons have also already been examined and their defence evidence was also over. At that stage, the learned Public Prosecutor moved an application under Section 311 Cr.P.C. on 16-8-83 requesting the court to call the doctor of the military hospital who admitted Mohan Singh and treated him there along with the bed head ticket and the injury report in evidence. A prayer was also made to call some other doctor of the Mahatma Gandhi Hospital with the bed head ticket of another injured Mohan Singh. It was mentioned in the application that it appeared that the police did not collect this evidence during the investigations but for the sake of justice and for the proper decision of the matter, this evidence was most relevant and the court should call the same. After hearing the learned Public Prosecutor and the learned Counsel for the accused persons, the learned Addl. Sessions Judge rejected the application. He was of the opinion that the prosecution had failed to establish that this evidence was necessary for a just decision of the case. He was also of the opinion that the application was belated and the necessary particulars about the name of the doctors etc. who were sought to be summoned had not been mentioned. Aggrieved of this order, the complainants have filed this revision.

3. I have heard the learned Counsel for the parties and have gone through the record.

4. It is urged by the learned Counsel for the complainants that the evidence sought to be produced now in respect of the injuries of Madho Singh is most relevant and important for the just decision of the matter and it was incumbent upon the learned Addl. Sessions Judge to have called this evidence in exercise of his powers under Section 311 the Code of Criminal Procedure. He placed reliance upon *Jamatraj v. State of Maharashtra* : 1968 CriLJ231 On the other hand, the learned Counsel for the accused contended that the learned Addl. Sessions Judge was perfectly justified in rejecting the application on the grounds stated by him. He urged that the prosecution should not be allowed to make up the lacunas left by it by resort to Section 311 Cr. P.C. It was also further contended by him that it is the

complainants who have come up in revision against the order of the learned Addl. Sessions Judge rejecting the application under Section 311 Cr.P.C. and not the Public Prosecutor. In these circumstances, according to the learned Counsel, this application for revision at the instance of the complainant should not be entertained.

5. The learned Counsel for the accused persons strongly relied upon a decision of this Court in State v. B.B. Saxena 1972 R.L.W. 465.

6, I have given my careful consideration to the rival contentions. So far as the objection of the learned Counsel for the accused non-petitioners that this revision at the instance of the complainants should not be entertained, I am of the opinion that looking to the peculiar circumstances of this case and the importance of the evidence sought to be produced, I need not refuse to entertain the revision at the instance of the complainants even though the prosecution agency has not come forward.

7. Now coming to the merits of the matter, it may at once be stated that so far as the evidence regarding the admission of Madho Singh injured to the military hospital is concerned, it certainly appears to be of vital important. Madho Singh is said to have sustained very severe injuries in this incident and was immediately alleged to have been taken to the military hospital where those injuries were examined and he was there treated for sometime. For the reasons best known to the prosecution, this vital evidence was not placed on the record. When this fact came to the notice of the Public Prosecutor, he moved an application for bringing this evidence on record but unfortunately the learned Addl. Sessions Judge refused to call this evidence on the ground of delay and on account of the negligence of the prosecution agency. However, he lost of sight of the fact that under Section 311 of the Criminal Procedure Code, the court is bound to summon and examine in evidence, which appears to it to be essential for the just decision of the case. As already stated above, Madho Singh is alleged to have received very severe injuries and the injury report and the hospital record regarding his stay and treatment in the military hospital and the evidence of the doctor who admitted him and treated him is certainly essential for the just decision of the case. This

evidence need not be shut out merely on the ground of delay or laches on the part of the prosecution agency or the investigating agency. The authority relied upon by the learned Counsel for the accused namely, *State v. B.B. Saxena* (supra) does not apply to the facts of the prosecution case at all. In that case what was sought to be produced under Section 540 Cr. P.C., which is now replaced by Section 311 Pr. P.C. was some evidence in order to rebut the defence evidence already recorded and in those circumstances, it was observed by this Court that such a course was not open and the prosecution should not be allowed to fill up the lacunas left by it on evidence. It was specifically observed by the Court that this case did not fall under the second para of Section 540. The Court took caution to say that it was not laying down that, in no case any additional evidence be called by the judge at the close of the trial after the case for the defence has been closed. It may be pointed out here that in the present case, the injury report in respect of Madho Singh is on the record. Further, the Public Prosecutor as also the learned Counsel for the secludes and probably the learned court itself was under the impression that the injury report had not, been collected by the police. Be that as it may, as stated above, the evidence sought to be produced in respect of the injured Madho Singh is certainly vital and important for the just decision of the matter and the court below should not have refused such evidence.

8. I am not oblivious of the fact that this is an interlocutory order and a revision against such an order may not lie but it does appear to me that this is a fit case where powers under Section 482 Cr.P.C. must be invoked. So far as the other piece of evidence in respect of the injuries on injured Mohan Singh is concerned, the learned Counsel for the petitioners has not Keen able to satisfy me that evidence is necessary for the just decision of the matter. The doctors have already, been examined in this respect.

9. I, therefore, partly accept this application and modify the order of the learned Addl. Sessions Judge No. 2, Jodhpur, to the effect that the application of the prosecution under Section 311 in respect of injuries to Madho Singh sought to be called vide sub-para (1) of para 1 of the application may be summoned. The Public Prosecutor may be asked to give the particulars if necessary. It is needless to observe that the accused will be examined in respect of this evidence again if

necessary and would also be given an opportunity to lead defence evidence. The parties are directed to appear before the learned trial court on 28-7-84.

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