

Brij Mohan Vs. State

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Court : Delhi

Decided On : Dec-10-2010

Judge : Shiv Narayan Dhingra, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C.) - Section 161

Appeal No. : Bail Appln. 1588/2010

Appellant : Brij Mohan

Respondent : State

Advocate for Def. : Mr. Sunil Sharma, Adv.

Advocate for Pet/Ap. : Mr. B.K. Sharma, Adv.

Judgement :

1. This is an application for grant of bail made by the applicant/petitioner during the pendency of the trial on the ground that the evidence of material witness was over and nothing incriminating had come against the applicant/petitioner. In the application, reference to the contradiction in the statement of witnesses has been made.

2. I have gone through the statement of PW1 Mangal Singh. The examination-in-chief of PW1 shows that he completely supported the prosecution's case and has in detail described how the crime took place and Bail Appln. 1588/2010 Page 1 Of 3 what was the involvement of the applicant. He was confronted with his statement

made to the police and it is argued that he had improved upon his statement made to the police. Similarly, the attention of the Court was drawn to the contradictions in earlier statement and the statement made in the Court. Learned counsel for the applicant/petitioner has further drawn my attention to the statement of PW3 Dr. S.Kohli, his cross-examination and the statement of other witnesses. It was submitted that this was a fit case for grant of bail in view of improvements, contradictions and in view of testimony of PW3.

3. I consider that it would not be appropriate for this Court to analyse the statement of the witnesses recorded before the Trial Court at this stage and come to conclusion whether the commission of offence has been proved against the applicant or not as it will prejudice the interests of applicant. Suffice it to say, the witnesses have not only described the role of the applicant but have also supported the prosecution case. The contradictions and improvements in statement to which counsel for the applicant has pointed out are not such that the entire testimony of the witnesses stand washed away. It is settled law that whenever a witness is examined in the Court after lapse of long time the contradictions are ought to be there. The testimony of a witness cannot be rejected on the ground that there were contradictions in the testimony given in the Court and the statement made before the police. There is no authenticity of the statement made to the police under Section 161 Cr.P.C. The only authentic statement which the Court can consider is the statement made in the Court. While writing judgment, the Court, after going through the contradictions, has to arrive at a conclusion whether the improvements and contradictions were so material so as to dis-believe the witness or not. At this stage, it is not possible to Bail Appln. 1588/2010 Page 2 Of 3 give this finding. The applicant/petitioner is involved in the case of culpable homicide and looking at his role, I do not consider it a fit case for grant of bail. The application is hereby dismissed.

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