

Salim Khan Vs. Shaista and ors

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Court : Delhi

Decided On : Feb-22-2011

Judge : Shiv Narayan Dhingra, J.

Acts : Code Of Criminal Procedure (Cr.P.C) - Section 311; Indian Penal Code (IPC) - Sections 302, 120-B, 34

Appeal No. : CRL. REV. P. 421 of 2011

Appellant : Salim Khan

Respondent : Shaista and ors

Advocate for Def. : Mr. O.P. Saxena, Adv.

Advocate for Pet/Ap. : Mr. R.K. Jain; Mr. Mridul Jain, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

1. By this revision petitioner has assailed order dated 6 th May, 2010 passed by learned ASJ dismissing an application under Section 311 Cr. P.C. The petitioner is complainant/ brother of deceased in a case under Section 302/120-B/34 IPC. Respondent No. 1 to 4 are the accused persons who are facing trial. The petitioner

made an application that additional witness namely Shama and Suhail, who are the children of the deceased and were present at the time of incident should be called and examined by the Court as witnesses. Shama is 13 years old and Suhail is 9 years of age. It is averred that they were sleeping in the same premises besides accused Shaista and deceased Tasleem on the night of commission of offence. Accused Shaista is non-else but mother of the two children. Accused Shaista scared and warned them not to speak anything before the police, otherwise, they would be killed like their father and for this reason they did not speak before the police but they were the natural witnesses.

2. The trial court observed that Shama had already been summoned and examined in this case. She was more matured than the other child witness namely Suhail and since she has already deposed and claimed herself to be the eye-witness, there was no necessary that witness Suhail be also examined as witness.

3. The date of incident was 2nd August, 2008. Statement of Shama was recorded on 22nd August, 2008. Statement of Suhail was not recorded and the application under Section 311 Cr. P.C. was made before the trial court on 13th May, 2009 only when other two prosecution witnesses turned hostile. The trial court therefore considered that it was not appropriate to record a child witness so late, more so, when the application itself was made after turning of prosecution witnesses hostile. The trial court also observed that it is the quality of evidence and not the quantity which matters and since Shama has been examined claiming herself to be an eye witness, Suhail was not necessary to be examined for the just decision of the case.

4. I consider that the trial court rightly dismissed the application. Shama was examined as an eye witness by the police during investigation and was cited as a witness. Suhail did not make a statement to the police despite enquiry and he was therefore not examined or cited as a witness by the police.

5. A child witness is easy to tutor. Summoning a child witness after turning hostile of other prosecution witnesses do give an indication that prosecution was making effort to fill up lacuna. I find no force in this petition. The petition is hereby dismissed in-limini.

