

Babu Lal and Others. Vs. Babu Lal and Others.

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Court : Allahabad

Decided On : Jun-25-2010

Judge : Raj Mani Chauhan, J.

Acts : [Code of Criminal Procedure \(CrPC\) \(Cr.P.C.\), 1973](#) - Sections 311, 482 ;
[Indian Penal Code \(IPC\), 1860](#) - Sections 302, 201, 12-B ;

Appeal No. : Criminal Misc. Case No. 2792 of 2010.

Appellant : Babu Lal and Others.

Respondent : State of U.P.

Judgement :

1. Heard learned counsel for the petitioners and learned A.G.A. as well as perused the documents available on record.

2. This petition under Section 482 Cr.P.C. has been moved by the petitioners for setting aside the order dated 18.5.2010, passed by the learned Additional District & Sessions Judge, Court No.4, Lucknow whereby the learned Additional District & Sessions Judge has rejected the application filed by the petitioners for recalling Sri Vijendra Pal Singh, the Investigating Officer (P.W.5) for cross-examination.

3. The submission of the learned counsel for the petitioners is that the Sessions Trial No. 447 of 2005; State v. Ram Saharey and others, under Sections 302, 201, 12-B I.P.C., Police Station Chinhat, District Lucknow was fixed on 1.4.2010. On that date, the Investigating Officer Sri Vijendra Pal Singh appeared before the

court. He was examined by the prosecution and cross examined by the two accused. The rest of the accused i.e. petitioners moved an application for adjournment on the ground that their counsel was ill. On that date, their application was rejected by the trial court. On 18.5.2010, the petitioners moved another application through their counsel under Section 311 Cr.P.C. for recalling the Investigating Officer (P.W.5) for cross-examination as the petitioners were not given an opportunity to cross-examine the Investigating Officer (P.W.5). The learned Additional District & Sessions Judge rejected their application on the ground that the Investigating Officer (P.W.5) had been cross-examined at length by two accused. Learned counsel for the petitioners submits that this finding of the learned Additional District & Sessions Judge is illegal. Every accused has right to cross-examine the witness. He cannot be deprived of his right only on the ground that the witness had already been cross-examined by other accused. The impugned order is, therefore, illegal and is liable to be set aside.

4. Learned A.G.A. supported the order of trial court. Considered the submissions of learned counsel for the petitioners and learned A.G.A. Every accused in the eye of law has right to cross-examine the witness who was examined by the prosecution. No accused can be deprived of his right only on the ground that some of the accused had cross-examined the witness. The learned Additional District & Sessions Judge has rejected the application moved by the petitioners only on the ground that the witness (P.W.5) had been cross-examined by two other accused. This finding of learned Additional District & Sessions Judge is illegal and the order dated 18.5.2010 rejecting the application of the petitioners is liable to be set aside. The petition, therefore, succeeds and is allowed.

5. The impugned order dated 18.5.2010 is set aside. The application moved by the petitioners for summoning the Investigating Officer (P.W.5) is allowed. The trial court is directed to summon the Investigating Officer Sri Vijendra Pal Singh (P.W.5) and afford an opportunity to the petitioners to cross-examine him. The petitioners is also directed that they will not seek any unnecessary adjournment.