

**Surendra Singh and Others Vs. State of U.P. and anr.**

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**Court :** Allahabad

**Decided On :** Mar-23-2011

**Judge :** S.C. Agarwal,J.

**Acts :** Indian Penal Code (IPC) - Sections 323, 504, 506; Code of Criminal Procedure (CrPC) (Cr.P.C.) - Section 311, 482; S.C./S.T. Act - Section 3 (1) (X)

**Appeal No. :** APPLICATION U/S 482 No. - 4092 of 2011

**Appellant :** Surendra Singh and Others

**Respondent :** State of U.P. and anr.

**Advocate for Def. :** Govt. Advocate

**Advocate for Pet/Ap. :** Ashutosh Pratap Singh; Lokendra Pratap Singh, Advs

**Judgement :**

1. Heard learned counsel for the applicants and learned A.G.A. for the State.
2. There is no need to issue notice to opposite party no.2. This application u/s 482 Cr.P.C. has been filed with a prayer to quash order dated 19.1.2011 passed by Addl. Sessions Judge / Fast Track Court No.5, Etah in S.T. No.649 of 2008, State v. Surendra Singh and others under sections 323, 504, 506 IPC and section 3 (1) (X) S.C./S.T. Act, whereby application under section 311 Cr.P.C. filed on behalf of the applicants for permission to crossexamine P.W.1 was rejected.

3. The facts, as revealed by order dated 19.1.2011, are that on 19.8.2009, the case was fixed for evidence. Examination-in-chief of P.W.1 Biri Singh was recorded before lunch and the case was posted after lunch for cross-examination. At about 2:35 p.m., the application for adjournment was moved on behalf of the defence counsel on the ground that he was busy in another Court. The said application was rejected and opportunity for cross-examination of P.W.1 was closed. On 17.9.2009, application under section 311 Cr.P.C. was moved by accused for opportunity of cross-examination of P.W.1, which was rejected. Learned counsel for the applicants submitted that on 19.8.2009, the applicants' counsel could not appear before the trial court for cross-examination of P.W.1, as he was busy in another Court and, therefore, learned trial court ought to have adjourned the case and should not have closed the opportunity for cross-examination.

4. Subsequently, when application under section 311 Cr.P.C. was moved, the same ought to have been allowed and should not have been rejected whimsically.

5. Considering the facts and circumstances of the case, this Court is of the opinion that by rejecting the application under section 311 Cr.P.C., valuable rights of the applicants for cross-examination of P.W.1 have been adversely affected. The accused in a criminal case cannot be punished simply for the reason that his counsel could not appear in Court for the purpose of cross-examination.

6. Reasonable opportunity of cross-examination should always be granted to the accused. It is not the case of the prosecution that the applicants were in any manner abusing the process of law. P.W.1 was examined on 19.8.2009 and on that date, adjournment was sought by counsel for the defence and I fail to understand any reason why this adjournment should not have been granted. No doubt, the trial court is under a duty to dispose of criminal case expeditiously, but it must also be kept in mind that justice hurried is justice buried.

7. In these circumstances, the impugned order cannot be sustained and is liable to be quashed.

8. Application u/s 482 Cr.P.C. is allowed.

9. Impugned order dated 19.1.2011 is quashed.

10. Learned Addl. Sessions Judge / Fast Track Court No.5, Etah is directed to provide an opportunity to the applicants to cross-examine P.W.1 Biri Singh. On production of a certified copy of this order, the trial court shall fix a date for this purpose and shall summon P.W.1 for cross-examination. When P.W.1 appears before the trial court, the applicants shall be provided an opportunity for cross-examination and thereafter the case shall proceed in accordance with law.

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