

Gaurav Kumar at Pinta Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Oct-22-2010

Judge : S.C. Agarwal, J.

Appeal No. : Criminal Revision No.3326 of 2010

Appellant : Gaurav Kumar at Pinta

Respondent : State of U.P. and Another

Judgement :

1. This revision under section 397 / 401 IPC is directed against the order dated 21.5.2010 passed by Additional Sessions Judge, Court No.4, Etawah in Sessions Trial No.292 of 2009 State v. Gaurav Kumar @ Pinta and another under section 302 IPC, P.S. Kotwali, District Etawah, whereby the application under section 311 Cr.P.C. filed by Smt. Anita - wife of the deceased Saurabh @ Seetu was allowed and one Jairaj Singh @ Pappu was summoned as a prosecution witness.
2. Heard Sri Manish Tiwary, learned counsel for the revisionist, learned A.G.A. for the State and Sri S.K. Mishra, learned counsel for opposite party no.2.
3. The opposite party no.2 is the wife of deceased Saurabh @ Seetu. Revisionist Gaurav Kumar @ Pinta is the brother of the deceased and co-accused Balram Singh Yadav is the father of the deceased. F.I.R. was lodged on 6.3.2006 at 23:25 hours by co-accused Balram Singh Yadav against unknown persons alleging therein that on 6.3.2006 at about 10:00 p.m., Sri Veer Pal Singh, Former Block

Pramukh, informed him on cell phone that his son had been shot and was admitted in the hospital of Dr. Paliwal. The complainant reached the hospital and found his son dead. Subsequently, after investigation, the complainant Balram Singh Yadav and his son Gaurav Kumar @ Pinta (revisionist) were found involved in the crime and charge-sheet was submitted against them. On 12.5.2010, an application was moved by opposite party no.2 under section 311 Cr.P.C. for summoning one Jairaj Singh @ Pappu on the ground that the incident took place at the residential house of Jairaj Singh @ Pappu, who is the eyewitness of the incident. The statement of Jairaj Singh @ Pappu was recorded by the investigating officer in parcha no.8 of 12.4.2006 wherein Jairaj Singh @ Pappu gave an eyewitness account of the incident and stated that Saurabh @ Seetu was murdered by the accused persons. Therefore, Jairaj Singh @ Pappu is an important witness, who has not been cited in the charge-sheet as a witness by inadvertence. Therefore, he be summoned.

4. Learned trial judge allowed the application 95 Kha on the ground that in his statement recorded under section 161 Cr.P.C., Jairaj Singh @ Pappu had admitted that incident took place at his house and he had seen accused Gaurav Kumar @ Pinta running from the place of occurrence with a rifle in his hand. Hence, this revision.

5. Learned counsel for the revisionist submitted that during investigation, Jairaj Singh @ Pappu was also found involved in the murder of Subhash @ Seetu and was shown to be absconding and an application under section 319 Cr.P.C. has also been filed by the revisionist for summoning Jairaj Singh @ Pappu as an accused, which has not yet been disposed of. It was further submitted that opposite party no.2 had no locus to move the application under section 311 Cr.P.C. and a person, having serious allegations against him regarding his involvement in the crime, cannot be summoned in the same case as a witness.

6. Per contra, learned A.G.A. and learned counsel for opposite party no.2 submitted that earlier revisionist filed criminal revision no.2871 of 2010 in this Court challenging the order dated 15.7.2010 passed by the trial judge and after arguments, the revision was not pressed and was dismissed on 29.7.2010. Jairaj

Singh @ Pappu has already been examined as P.W.4 and the revision has been rendered as infructuous. The revisionist committed brutal murder of his brother Subhash @ Seetu in the house of Jairaj Singh @ Pappu. No charge-sheet was ever filed by the investigating officer against Jairaj Singh @ Pappu. Jairaj Singh @ Pappu has been continuously threatened by the revisionist and his father, which forced him to seek police protection. It was further submitted that an accused has no right to challenge the order passed by the trial court under section 311 Cr.P.C.

7. In reply, learned counsel for the revisionist submitted that earlier revision was filed against order dated 15.7.2010 wherein order dated 21.5.2010 was not challenged, therefore, the dismissal of earlier revision as not pressed has no bearing on this revision. It was also submitted that the revisionist had moved an application under section 319 Cr.P.C. against Jairaj Singh @ Pappu, which has not yet been disposed of by the trial court.

Section 311 Cr.P.C. provides :

8. Power to summon material witness, or examine person present - Any court may at any stage of any inquiry, trial or other proceedings under this court, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine, any person already examined, and the court shall summon and examine or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of the case.

9. From the aforesaid provisions, it is clear that the trial court has the power and authority to summon any person as a witness, if his evidence appears to it to be essential for the just decision of the case.

10. In the instant case, in statement recorded under section 161 Cr.P.C., Jairaj Singh @ Pappu stated that incident took place in his presence and he is an eyewitness of the incident. F.I.R. lodged by co-accused Balram Singh Yadav was scribed by Jairaj Singh @ Pappu. In these circumstances, Jairaj Singh @ Pappu is an important witness who ought to be examined as a prosecution witness. By allowing application under section 311 Cr.P.C., learned trial court did not commit any illegality or irregularity. Moreover, Jairaj Singh @ Pappu had already been

examined as a witness and cross-examination has also been done by the defence after much reluctance and adopting various dilatory tactics, as is apparent from the order-sheet of the trial court.

11. The complainant Balram Singh Yadav is already an accused and is facing trial. The wife of the deceased cannot be said to be a stranger to the proceedings and she can very well be termed as an aggrieved person and is entitled to assist the public prosecutor and the Court. Therefore, it cannot be said that opposite party no.2 has no locus to move application under section 311 Cr.P.C.

12. In view of the above, I find that application under section 311 Cr.P.C. was rightly allowed by the trial court. The impugned order does not suffer from any illegality or irregularity. Jairaj Singh @ Pappu has already been examined as a witness and the revision has been rendered infructuous. Even if the order passed under section 311 Cr.P.C. be quashed, the testimony of P.W.4 Jairaj Singh @ Pappu cannot be effaced of the record.

13. The revision is devoid of merit and is accordingly dismissed.