

Ram Akhtyar and Others Vs. State of Madhya Pradesh

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Court : Madhya Pradesh Gwalior

Decided On : Jun-29-2011

Judge : G.D. Saxena, J.

Acts : [Code of Criminal Procedure \(CrPC\) 1973](#) - Sections 397, 401, 311, 319, 161; Indian Penal Code (IPC) - Sections 302, 207, 147, 148, 149, 294

Appeal No. : Criminal Revision No.462/10

Appellant : Ram Akhtyar and Others

Respondent : State of Madhya Pradesh

Advocate for Def. : Shri R.K.Shrivastava; Shri Mukesh Sharma, Adv.

Advocate for Pet/Ap. : Shri Arun Pateriya, Adv.

Judgement :

(1) This revision petition under Section 397/401 of the Code of Criminal Procedure 1973 has been preferred against an order dated 25 th May, 2010 passed in Sessions Case No. 49/03 by the Fifth Additional Sessions Judge, Morena, dismissing thereby the application under Section 311 of Cr.P.C. for examination of prosecution witness Satish Chandra Dubey, the Investigating Officer of Crime No. 359/2001 registered at Police Station, Morena for commission of offence under Sections 302, 207, 147, 148, 149 and 294 of I.P.C. against the petitioners/accused and after investigation submitted Final Report before the Criminal Court. The

prosecution in trial had given up him for proving the contradictions and omissions in the statements of material prosecution witnesses of the case.

(2) The facts, in short just for decision of this petition, are that on 12th September 2001 at Ambah bye-pass road near dried Pipal tree, accused Ram Akhtyar, Hari Kishan, Balkishan, Ram Aautar and Shiv Aautar caused death of Om Prakash. Accordingly, Crime No. 359/2001 was registered against above-named accused by Police Station Civil Lines, Morena on the report of Ajay Sharma. After investigation, the charge-sheet was filed. The trial is pending in Sessions Court at Morena. It is alleged that prior to the incident in the month of January 1999, Raghuveer Singh, father of accused/petitioner Ram Akhtyar was murdered. On the report of Ram Akhtyar, petitioner No.1, an FIR was registered against Om Prakash (deceased in the present trial) and Raj Kumar, Ram Lakhan and Jagdish. The Sessions trial was pending before the Sessions Judge, Morena. During trial of the previous Sessions case relating to the murder of Raghuveer Singh on the day of subsequent crime relating to the murder of Om Prakash, the deceased was released and was going on a scooter with Brij Kishore and Ajay Sharma (complainant), who was murdered by the petitioner accompanying with other co-accused. After investigation, the charge sheet was filed only against three accused while other three were not found guilty. At later stage, the trial court took cognizance against those released accused, under Section 319 of Cr.P.C. The prosecution without examining witness Satish Chandra Dubey had given him up. An application under Section 311 of Cr.P.C. for summoning this witness for his examination was submitted by the petitioners-accused, which was dismissed by the trial Judge, under the impugned order.

(3) The contention of the the learned counsel for the petitioners are that witness Satish Chandra Dubey, the Investigating Officer is the material witness for both the sides. He is essential for defence to prove the material contradictions and omissions in the evidence of the scribe of the FIR and other eyewitnesses of the incident. Therefore, it is requested that by allowing the petition the learned trial Judge be directed to summon the said witness for his examination by prosecution and the opportunity to cross examination him be also extended to the accused/petitioners.

(4) The learned Panel Lawyer for the respondent/State as well as learned counsel for the complainant opposed the prayer of the petitioners' learned counsel and submitted that there is no illegality or perversity committed by the trial court in rejecting the application filed by the petitioners.

(5) Heard the learned counsel for the parties and perused the impugned order containing the charge-sheet papers and the statements of the witnesses.

(6) Whenever any application is made for examining witness and or any other recalcitrant witness, then the court must give its careful and anxious consideration to it and ponder over seriousness of the offence as to whether the witness to be examined is a material witness and what will be impact or result of the case and what will be the consequence of acquittal on the society as a result of non-examination of the said witness.

(7) In the case of State of Karnataka v. Bhaskar Kushali Kotharkar (AIR 2004 SC 4333), the Apex Court held:-

“It is true that as a part of fair trial, the investigating officer should be examined in the trial cases especially when a serious sessions trial was being held against the accused. If any of the prosecution witnesses give any evidence contrary to their previous statement recorded under Section 161, Cr.P.C or if there is any omission on certain material particulars, the previous statement of these witnesses could be proved only by examining the Investigating Officer who must have recorded the statement of these witnesses under Section 161, Cr.P.C “

(8) On perusal of the copies of the charge-sheet of the present crime filed by the petitioners, it appears that witness Satish Chandra Dubey, In-charge of the Police Station was the investigator of the crime right from recording of the FIR till submission of the charge sheet and hence for prosecution, his evidence is essential for proving the information and recovery of the incriminating articles. Apart from the above, he also recorded the case-diary statements of the witnesses

under Section 161 of Cr.P.C., therefore, from that angle also his evidence is essential for getting the contradictions and omissions proved in between the case-diary statements and the statements recorded during trial. Looking to the peculiar facts of the case and in the light of the above judgments of Apex Court, this court is of view that the trial court has committed an error in rejecting the application of the petitioners to summon witness Satish Chandra Dubey.

(9) In the result, the revision stands allowed. The impugned order passed by the trial court dated 28/5/10 is hereby set aside. It is directed that the trial court shall summon Satish Chandra Dubey, who recorded the statements of the eyewitnesses during investigation and shall examine him as prosecution witness and also afford an opportunity to the accused-petitioners to cross examine him, on the material particulars. Since the trial is pending for a considerable period, the trial court is directed not to grant unnecessary adjournments for his examination and conclude the trial within a period of six months, from the date of the order passed by this court.

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