

(2024) 04 UK CK 0173
In the Uttarakhand High Court
Case No : Criminal Revision No. 198 of 2024

Joga Ram

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 30-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 304B, 498

Code Of Criminal Procedure, 1973 — Section 161, 233, 233(3), 311, 313

Citation : (2024) 04 UK CK 0173

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : M.S. Pal, Kunwar Vikramaditya Shah, Manisha Rana Singh

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. The challenge in this revision is made to order dated 01.03.2024, passed in Sessions Trial No.21 of 2022, State Vs. Joga Ram, by the court of Sessions Judge, Pithoragarh, District Pithoragarh ("the trial").

2. Heard learned counsel for the parties and perused the record.

3. The revisionist is facing the trial under Sections 304B and 498 IPC. The revisionist was examined under Section 313 of the Code of Criminal Procedure, 1973 ("the Code") on 01.03.2024. In his defence, he wanted to examine a witness Trilochan alias Trilok Chandra Bhatt, who was a witness at Serial No.5 in the chargesheet.

4. The prosecution had not opted to examine Trilochan alias Trilok Chandra Bhatt as a witness. The application filed by the revisionist was rejected by the court below holding that the witnesses, who have been discharged, may not be examined as defence witnesses.

5. In the impugned order, reliance has been placed on the principles of law, as

laid down in the case of State of M.P. Vs. Badri Yadav and another, (2006) 9 SCC 549.

6. Learned Senior Counsel appearing for the revisionist would submit that in order to afford an opportunity of fair trial, as also in order to afford an opportunity to the revisionist to prove his innocence, examination of Trilochan alias Trilok Chandra Bhatt, as a witness, is necessary. Therefore, the application for examining Trilochan alias Trilok Chandra Bhatt, as a defence witness, filed by the revisionist ought to have been allowed; the impugned order is bad in the eye of law.

7. Learned State Counsel would submit that the statement of Trilochan alias Trilok Chandra Bhatt, whom the revisionist wants to examine as defence, is not vital for the just decision of the case.

8. It is the prosecution case that after marriage, the revisionist did harass the deceased for and in connection with the demand of dowry and on 15.03.2022, at about 12:00 in the noon, the deceased telephonically informed that she was being attacked with stones by the revisionist and she was killed.

9. Witness Trilochan alias Trilok Chandra Bhatt is a chargesheeted witness. His statement under Section 161 of the Code has been recorded, which is produced for the perusal of the Court. He runs a shop. In his statement given during investigation, he told it to the Investigating Officer that on 15.03.2022, he had seen the deceased walking ahead and the revisionist was following her. Thereafter, the deceased was found in a pond. This witness has given his opinion to the Investigating Officer as to how the revisionist could have saved the life of his wife.

10. In the case of Badri Yadav (supra), the facts were quite distinct. In that case, two eye witnesses had already been examined as PW8 and PW9. But subsequent to it, they filed an affidavit claiming that they were pressurised and tutored to give such statement. They were subsequently examined as defence witnesses, as DW1, Mohd. Amin, and DW2, Zakir Ali, respectively. The trial court had convicted the accused in the case of Badri Yadav (supra), but the High Court had reversed the finding relying upon the testimony of DW1 and DW2. Under those fact and circumstances, the Hon'ble Supreme Court has held that, "it illustrates the disquieting feature as to how the High Court has committed a grave miscarriage of justice in recording the acquittal of the respondents."

11. In Para 14 of the judgment in the case of Badri Yadav (supra), the Hon'ble Supreme Court observed as follows:-

"14. Section 233 itself deals with entering upon defence by the accused. The application for recalling and re-examining persons already examined, as provided under Section 311 CrPC, was already rejected. The power to summon any person as a witness or recall and re-examine any person already examined is the discretionary power of the court in case such evidence appears to it to be

essential for a just decision of the case. Under Section 233 CrPC the accused can enter upon defence and he can apply for the issue of any process for compelling the attendance of any witness in his defence. The provisions of sub-section (3) of Section 233 cannot be understood as compelling the attendance of any prosecution witness examined, cross-examined and discharged to be juxtaposed as a defence witness. In the present case PW 8 and PW 9 were juxtaposed as DW 1 and DW 2. This situation is not one what was contemplated by sub-section (3) of Section 233 CrPC.”

12. In fact, the factual aspects in the case of Badri Yadav (supra) were quite distinct. In the instant case, the chargesheeted witness, who was examined during investigation, has never been examined by the prosecution. Now if the revisionist wants to produce him as a defence witness, he should get an opportunity to do so. Therefore, this Court is of the view that the Court below has committed an error in rejecting the application 64-B filed by the revisionist. Accordingly, the revision deserves to be allowed.

13. The revision is allowed.

14. The application 64-B, filed in the trial for examination of Trilochan alias Trilok Chandra Bhatt is allowed.

14. The revisionist shall be afforded an opportunity to examine Trilochan alias Trilok Chandra Bhatt, as a defence witness.