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**(1998) 10 AHC CK 0038**

**In the Allahabad High Court**

**Case No : Criminal Miscellaneous Case No 453 of 1998**

Mohd. Shueb Asif

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

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**Date of Decision : 07-10-1998**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 311  
Evidence Act, 1872 — Section 127, 27

**Citation : (1998) 10 AHC CK 0038**

**Hon'ble Judges : A.N.Gupta, J**

**Final Decision : Allowed**

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## **Judgement**

A.N. Gupta, J.—On 471996 the petitioner lodged an F.I.R. at P.S. Chowk, Lucknow, being Crime No. 250 of 1996, under Section 364A, I.P.C., alleging that Rais, opposite party No. 4 was his servant and on the previous day that is 371996 at about 5.30 p.m. he had taken minor child of the petitioner aged about 21/2 years for walking but he did not turn up. When he did not come back home, a search was made but in vain. Subsequently, dead body of the infant child was recovered on discovery made under Section 27 of the Evidence Act. After investigation chargesheet under Sections 302/120B/364/201, I.P.O. was preferred against opposite parties No. 2 to 5 and they are being tried at present in ST. No. 563 of 1997 by IInd Additional Sessions Judge, Lucknow.

2. In the trial before the entire prosecution evidence could be closed the Public Prosecutor moved an application that Taukir Farhat and Guddu Ghosi, who were witnesses regarding evidence under Section 120B, I.P.C. and A/mat Khan in whose presence the dead body of the child was recovered, be discharged as they had been won over by the accused. This application was allowed by the learned IInd Additional Sessions Judge, Lucknow. Subsequently the complainant on 15798 moved an application praying that aforesaid three witnesses be ordered to be examined under Section 311, Cr. P.O. It was mentioned in the application that although earlier the Public Prosecutor has moved an application for discharge of these witnesses because they were won over by the accused persons but said

witnesses wanted to give evidence on the basis of what they had seen and heard. This application has been rejected by learned IInd Additional Sessions Judge, Lucknow by means of his order dated 24/7/1998. Now this petition under Section 482, Cr. P.O. has been preferred.

3. After hearing the learned counsel for the complainant, learned counsel for the accused persons and the learned Additional Government Advocate, I find that it is not possible to sustain the order passed by the learned IInd Additional Sessions Judge, Lucknow. Although the impugned order is a longish one and the learned Sessions Judge seems to have taken lot of pains in passing the order but he has lost sight of the provisions of Section 311, Cr. P.C. In a case of murder recovery of dead body under Section 127 of the Evidence Act is very important and material fact and even if the prosecution did not examine witness of that fact, it was the duty of the Sessions Judge to examine such a witness as a Court witness because such evidence was necessary for just decision of the case. It appears that the learned Sessions Judge needs to be reminded that under Section 311, Cr. P.C. a duty is cast upon the Sessions Courts to examine such witnesses as are necessary for just decision of the case as Court witnesses irrespective of the fact whether such witnesses have been produced or not.

4. Since in this case examination of these three witnesses was necessary for just decision of the case this petition under Section 482, Cr. P.C. is allowed and the order dated 24/7/1998 is hereby quashed. The trial Court is directed to permit examination of three witnesses mentioned above and the accused shall have opportunity to cross-examine them. If the prosecution or the complainant fails to examine these witnesses, the trial Court shall examine them as Court witnesses. In case the witnesses do not turn up, the learned Sessions Judge shall procure their attendance by coercive process. In case the statements of the accused under Section 313, Cr. P.C. have already been recorded, the accused shall be given another chance after the aforesaid witnesses are examined. Since one of the accused is in jail, the trial Court shall expedite the trial. It is further directed that the Sessions Judge, Lucknow shall transfer this case from the Court of IInd Additional Sessions Judge, Lucknow to some other Court.