
(1997) 01 AHC CK 0095

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 645 of 1996

Yogendra Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311

Citation : (1997) 01 AHC CK 0095

Hon'ble Judges : D.C.Srivastava, J

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—This petition under Section 482 Cr. P.C. has been filed by Yogendra Singh, informant of the F.I.R. out of which Sessions Trial Numbers 388 of 1990 and 388A of 1990 State v. Onkar and others and State v. Amroj respectively proceeded. It was a case of double murder in which Mahi Chand and Kamal Singh were done to death and six persons sustained injuries. The trial proceeded. Statements of prosecution witnesses were recorded and the trial reached the stage of recording statements of the accused under Section 313 Cr. P.C. on that date Amroj, one of the accused, absconded. Consequently his case was separated and separate sessions Trial No. 388A of 1990 was given. Other accused were tried in S.T. No. 388 of 1990 and they were ultimately acquitted. Subsequently Amroj appeared and his trial began. It was not a case of de novo trial. On the other hand only statement of Amroj he was to be recorded and thereafter if he desired to adduce defence evidence the same should have been accepted and recorded and after hearing arguments judgment was to be delivered. However, an application was moved on 12/1996 by the Prosecutor requesting that Kalendra, who is an injured witness in the case, be examined inasmuch as he was present in the Court and his evidence was essential for proper decision of the case. This application was rejected by the trial Judge mainly on the ground that because the prosecution had closed its evidence and other accused were acquitted after full trial, the prosecution cannot be permitted to fill in the lacuna in the case, in the trial of Amroj, by examining Kalendra, an

injured witness. It is for quashing of the order dated 1621996 aforesaid, passed by IX Additional Sessions Judge, Meerut that this petition has been filed.

2. The short point, involved in this petition, is as to what is the scope of Section 311 Cr. P.C. in such matter:

"311. Power to summon material witness or examine person present. Any Court may, at any stage of any inquiry trial or other proceeding under this code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and reexamine 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."

3. It is, therefore, clear from the aforesaid provision that the Court at any stage of inquiry, trial or other proceedings under this code inter alia may summon a person as a witness, if his evidence appears to it to be essential to the just decision of the case.

4. It has been argued from the other side that the discretion was properly exercised by the trial Judge and the prosecution could not have been permitted to improve its case by examining another witness specially when the other coaccused were acquitted on the same evidence.

5. In my view, acquittal of the other coaccused is not very material because the learned counsel for the petitioner was informed that the State has preferred an appeal against acquittal which is pending in the High Court. Of course a serious and heinous offence was committed in which two persons were done to death and six persons received injuries. The order of acquittal, in these circumstances, during pendency of the State appeal, has not become final.

6. The question is what is the effect of Amroj accused's absconding at the stage of recording his statement under Section 313 Cr. P.C. and allotting a separate trial number to his case. No doubt a separate trial number has been allotted but it is not indicated from the material on record that Arnroj is to face de novo trial. It is further clear from the record that all the prosecution witnesses in the main trial were examined and crossexamined in presence of accused Amroj. Consequently, there was no necessity for holding de novo trial against Amroj. He had opportunity of getting the prosecution witnesses crossexamined from his counsel. If he absconded on the date when his statement under Section 313 Cr. P.C. was to be recorded it will mean that after his appearance and allotment of a new trial number his trial will stand at the stage of recording his statement under Section 313 Cr. P.C. The question is whether at this stage the prosecution is debarred from approaching the Court for exercising discretion under Section 311 Cr. P.C. by summoning and examining an injured witness who was nominated in the chargesheet and whose copy of statement under Section 161 Cr. P.C. was supplied to him. As mentioned above, Section 311 Cr. P.C. applies at any stage of trial. Consequently, if the trial reached the stage upto

Section 313 Cr. P.C. it cannot be accepted that Section 311 Cr. P.C. is not applicable. Acquittal of coaccused, specially when State appeal against acquittal is pending, cannot be considered an attempt of the prosecution to improve its case or a new cause as was observed by the trial Judge nor it can be said that prosecution intends to supplement deficiencies in its case. There can be no dispute that an injured witness is a material witness for the prosecution to unfold the prosecution story. If such witness was not examined earlier there can be no estoppel against prosecution in examining such witness. The prosecution cannot be compelled to feel satisfied simply because in the trial of remaining accused u had already closed its evidence. If such a view is taken then it would amount to re enscuting (sic) Section 311 Cr. P.C. which is not the function of the Court. What will be the effect of the statement of the injured witness Kalendra will be considered only against accused Amroj and not against the accused who have been acquitted. Consequently, the impugned order cannot be sustained. The petition, therefore, succeeds.

7. The petition is hereby allowed. The impugned order dated 16/2/1996, rejecting application 16 B, is quashed. The trial Judge, namely, IXth Additional Sessions Judge, Meerut is directed to summon and examine Injured witness Kalendra in S.T. No. 388A of 1990 State v. Amroj, under Section 311 Cr. P.C. and shall proceed in accordance with law.