

ITEM NO.28

COURT NO.14

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 10011/2019

(Arising out of impugned final judgment and order dated 28-03-2019
in CRLR No. 3388/2018 passed by the High Court Of Judicature At
Allahabad)

MUNSHI LAL & ANR.

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

Date : 13-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. K.Vijayanthi,Adv.
Mr. Manoj Gorkela,Adv.for
M/S. Gorkela Law Office, AOR

For Respondent(s)
Mr. Vishnu Shankar Jain, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

(SUMAN WADHWA)
AR CUM PS

(PRADEEP KUMAR)
BRANCH OFFICER

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO....79.....OF 2020
(Arising out of SLP(CrI.) No. 10011/2019)

MUNSHI LAL & Anr.

....APPELLANT(S)

VERSUS

State of U.P. & Anr.

...RESPONDENT(S)

O R D E R

Leave granted.

This appeal has been filed by the accused against the judgment of the High Court dated 28.3.2019 whereby the High Court confirmed the order of the Trial Court rejecting the application filed by the accused for recalling the witnesses for cross-examination. Both the Trial Court as well as the High Court had rejected this application mainly on the ground that over period of time the accused have settled the matter either with the victim or with some of the witnesses and therefore the witnesses have turned hostile. That in our opinion cannot be a ground to reject the application under Section 311 Cr.P.C.

As far as the present case is concerned, we find from the record of the case that when the prosecution witnesses were examined, counsel for the accused were not present and the cross-examination recorded is nil. The first such date 28.06.2016 on which date one of the accused Mukesh was produced from jail, PW.1 was examined on that day. Since the counsel were not present, the matter was adjourned till after lunch. After lunch also no counsel was present and therefore the cross-examination was closed. Again on 27.07.2016 what statement of PW.2 was recorded, no counsel was present and nil cross-examination has been recorded. Similarly, on 15.09.2016 the same order is repeated in respect of PW.3. Thereafter, on 1.3.2017 another witness Hoshiar Singh was examined and since no counsel was present, no opportunity to cross-examine the witness was provided. On 2.4.2018 statement of PW.5 was recorded but it is not clear whether this witness was subjected to cross-examination or not. On 25.7.2018 the accused Mukesh was produced from the jail. Other accused were present and then the counsel for the accused moved an application for recall of witnesses PWs. 1, 2 and 3. This application has been rejected. From the record we find that almost on all dates the accused were unrepresented and the presence of the counsel is marked only in the order dated 25.7.2018 and prior to that on 31.5.2018.

Competent legal aid is the fundamental right of every litigant. This legal aid has to be meaningful legal aid, and not only a formality. It appears that only one witness was summoned on a particular date. In case the Court found that the accused or their counsel are trying to delay the matter by not appearing to cross-examine the witnesses, then the appropriate course for the Presiding Officer was to appoint legal aid counsel on behalf of the accused to conduct the cross-examination. On one hand, we must protect the right of the accused to get legal aid but on the other hand, we must balance it with the need to have speedy trial and also to ensure that witnesses are not forced to come all time and again come to court just because the counsel for the accused are not present.

This Court is aware that sometimes counsel remain absent just to ensure that the witnesses do not come. That practice is also not correct. Normally, in case on the first date the counsel for the accused are not present, then the Court shall adjourn the matter to the latter half of the day. If the counsel are absent in the later half of the date also, then a legal counsel should be appointed who must be given reasonable time to prepare the brief and to cross-examine the witnesses of atleast 2 or 3 days and the witnesses can be summoned thereafter. In such an eventuality, the accused cannot say that they have not been given an opportunity. As far as the present case is concerned, no effort was made by the Trial Court to try and get the witnesses cross-examined on behalf of the accused.

Therefore, we see no reason why their application for cross-examination should have been rejected, that too on the ground, that the witnesses have turned hostile. The duty of the Court is to ensure that the statement of witnesses are recorded.

We therefore set aside the order of the High Court and the Trial Court and direct that only three witnesses, whose cross-examination has been sought for, shall be produced by the prosecution for cross-examination on the date to be fixed by the Trial Court in the month of February, 2020 itself. In case the counsel for the accused chose to remain absent, the Trial Court as directed by us above, shall appoint a legal aid counsel and the witnesses shall be subjected to cross-examination not later than 15.3.2020.

With these observation this appeal is disposed of.

.....J
(DEEPAK GUPTA)

New Delhi;
13th January, 2020.

.....J.
(ANIRUDDHA BOSE)