

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 993 OF 2017
[@ SPECIAL LEAVE PETITION (CRL) NO. 1067 OF 2016]

MOHD. RAZI & ORS.

APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH & ORS.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. This appeal arises out of the order of the High Court of Judicature at Allahabad in Criminal Revision No.4687 of 2015 confirming the order of the Additional Sessions Judge, Court No.7, Shahjahanpur in S.T. No.392-394/2011 thereby declining to recall PW.1/Sharafat Ullah Khan and PW.2/Rafakat Ullah Khan.
3. When the special leave petition came up for hearing on 15.02.2016, notice was issued limited to the cross-examination of PW2/Rafakat Ullah Khan.
4. Upon perusal of the records, it is seen that examination-in-chief of PW.2/Rafakat Ullah Khan was recorded on 29.02.2012. On that day, the appellants/accused were in jail and were not produced in Court from the jail. On that day, the counsel for the

accused was not present nor he moved any application for deferring the cross-examination. While dismissing the application to recall PWs.1 and 2, the Trial Court has observed, "it is the legal duty of the accused person to make himself appear before the Court when the witnesses are produced and to cross-examine such witnesses or in the alternative move an appropriate application for the deferment of cross-examination".

5. On 29.02.2012, since the accused persons were not produced from the jail, probably the counsel has neither appeared nor filed an application for deferring the cross-examination. PW.2/Rafakat Ullah Khan, being a material witness, an opportunity has to be afforded to the appellants/accused for cross-examining PW.2/Rafakat Ullah Khan. In our view, the High Court was not right in dismissing the revision by a cryptic order.

6. The impugned order of the High Court dated 04.01.2016 passed in Criminal Revision No.4687/2015 is set aside and this appeal is allowed. The Trial Court/Additional Sessions Judge, Court No.7, Shahjahanpur is directed to recall PW.2 for the purpose of his cross-examination. The Trial Court is also directed to ensure that the accused persons are produced from the jail on that day to enable them to give instructions to their counsel for cross-examination of PW.2/Rafakat Ullah Khan. The

appellants/accused are also directed to cross-examine PW.2/Rafakat Ullah Khan on day-to-day basis and cooperate with the progress of the trial.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[R. BANUMATHI]

NEW DELHI;
JULY 05, 2017.

ITEM NO.45

COURT NO.13

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 (Crl.) No(s). 1067/2016

(Arising out of impugned final judgment and order dated 04.01.2016
in Crl. Rev. No.4687/2015 passed by the High Court of Judicature at
Allahabad)

MOHD RAZI & ORS.

Appellant(s)

VERSUS

STATE OF UTTAR PRADESH & ORS.

Respondent(s)

Date : 05-07-2017 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. Gautam K. Laha, Adv.
Mr. P. Negi, Adv.
Mr. Praveen Agrawal, AOR

For Respondent(s) Mr. Nadeem Khan, Adv.
Mr. Misbah Bin Tariq, Adv.
Ms. Shabeena Anjum, Adv.
Mr. M. Amanullah, Adv.
Mr. Neeraj Jha, Adv.
Mr. Nikilesh Ramachandran, AOR

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

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(NARENDRA PRASAD)
COURT MASTER (SH)

(RENU DIWAN)
ASST. REGISTRAR

(Signed order is placed on the file)