

IN THE COURT OF ADDITIONAL SESSIONS JUDGE - IV- BHAGALPUR
ST No. 650 of 2018+895 of 2018

Sl. No.	Date of Order	Order with Signature of the Court	Office action taken with date
	22.07.2019	By this order the Court shall decide the application dated 23.05.2019 filed on behalf of PW Surbhi Kumari seeking to add certain facts in her court deposition recorded on 13.05.2019. The submission of the Ld. Counsel of the witness and the Ld. Counsels of all the seven accused persons were heard on 20.07.2019. Sh. Uttam Kumar Pandey, Advocate has submitted, on behalf of the witness, that the statement of the witness Surbhi Kumari was recorded on 13.05.2019 before the Ld. District and Sessions Judge, Bhagalpur when she appeared as prosecution witness in the case and some of the facts which the witness has stated at the time of her examination could not be recorded in her statement. It has further been submitted that the witness had pointed out to the Ld. District and Sessions Judge that some portion of her deposition is not recorded in the deposition and the Ld. District and Sessions Judge had told her to make a proper application through the Public prosecutor in this regard. It is argued by the Counsel representing the witness that the facts mentioned in the application may kindly be added in the statement of the witness recorded on 13.05.2019. The aforesaid submissions of the Ld. Counsel for the witness are refuted by Sh. Martin Cyril Lall, Sh. Panna Kumar Singh, Sh. Kaushlendra Nath Sahai, Sh. Surya Narayan Singh, Sh. Pawan Kumar Jha, and Sh. Munir Ahmad Ld. Advocates for all the seven accused persons saying that whatever the witness had stated was accurately recorded by the Ld. Court and after reading and	

going through the statement the witness had signed the statement which proves that the witness was satisfied about its correctness. It is further submitted by the Ld. Counsels that the prosecution has filed an application under section 319 of the Cr.PC on the basis of the statement of PW Surbhi Kumari to summon one Kakku @ Ranjit Rai and by filling this application the witness wants to add more allegations against the said Kakku @ Ranjit Rai to strengthen the prayer made in the application under section 319 of the Cr.PC.

The statement of the witness and the order sheet dated 13.05.2019 perused carefully. In the order sheet dated 13.05.2019 there is nothing that the witness had made any complaint that her statement was not correctly recorded. The statement is dully signed by the witness. It is pertinent to mention here the fact that just above her signature it is written that, "PADHA/PADHWAKAR SUNA AUR SAHI PAKAR APNA HASTAKSHAR/ANGUTHA KA NISHAN DIYA".

The statement of the witness was recorded before the Ld. District and Sessions Judge, and there are full signatures of the Ld. District and Sessions Judge at the last page of the statement and there are initials of the Ld. District and Sessions Judge on rest of the pages. From the above it is clear that whatever the witness has stated at the time of her examination was recorded correctly. Even otherwise there is presumption of section 114 (e) of the evidence act, "That judicial and official acts have been regularly performed." The recording of the evidence of the witness was a judicial act of the Ld. District and Sessions Judge and is squarely covered by the presumption.

In a sense the application is a direct allegation on the Ld. Court that the Ld. Court of Ld. District and Sessions Judge has deliberately not recorded

the whole statement of the witness and the Ld. Court deliberately did not mention the objections of the witness in the order sheet dated 13.05.2019. If such types of applications are entertained then there would be no sanctity of the judicial proceeding. Anyone would say as per his/her convenience that I have made such and such statement and it was not recorded properly by the court or would say that the court has recorded certain facts which were not stated by him/her.

Since the statement bears the signatures of the witness and the Ld. Sessions Judge, there is nothing in the order sheet dated 13.05.2019 that the witness has pointed out any discrepancy in her statement, the application has not been filed through the Public Prosecutor, there is delay of 10 days in filling the application which coincides with the filling of application under section 319 of the Cr.PC. to summon one Kakku @ Ranjit Rai against whom the witness wants to add certain fact in her statement, therefore in the above facts and circumstances and the statutory provisions of law no question arises at all to allow the prayer of the witness to add some more facts in her statement recorded on 13.05.2019. **Resultantly the application dated 23.05.2019 is hereby rejected.**

Typed and corrected by me.

(DINESH SHARMA)
4th ASJ, Bhagalpur

(DINESH SHARMA)
4th Additional Sessions
Judge Bhagalpur.