

**8 SC 53600/2016**  
**STATE Vs. DEEPAK DABAS**  
**463 /2016 (Vijay Vihar)**

**13.12.2022**

Present: Sh. P.K. Samadia, Ld. Addl. PP (Subst.) for State.

Accused Ajay and Deepak produced from J/C  
through VC.

Accused Satbir in person on bail.

IO is not present.

PW6 Ms. Dhanpati Devi partially examined in chief.

In her statement recorded by the IO U/s 161 Cr.P.C,  
PW6 Dhanpati Devi had stated that at the time of incident, two of  
assailants were wearing helmet but their faces were visible and  
she could identify them. Ld substituted APP for the State has  
sought adjournment for further examination of PW6 on the  
pretext that he need to seek clarification from the IO before  
getting the accused persons identified through this witness. Ld  
APP has also submitted that it is his discretion to decide that  
from which witnesses an accused is to be identified or not.

Submissions heard.

True, that in some cases, Hon'ble Supreme Court of  
India and higher Courts have mandated the presence of IO during  
the prosecution evidence to assist the prosecutor. However, the  
said directions cannot be interpreted to the prejudice and

inconvenience of the witnesses. In cases where testimony of a witness is clear and same can be recorded without presence of the IO, there is no logic of putting the witness to unnecessary and unwanted inconvenience merely for want of the IO. That is definitely not the spirit of the directions issued by Higher Courts.

In the case in hand, the witness had clearly stated in her statement U/s 161 Cr.P.C that she could identify the assailants despite the fact they were wearing the helmet. Since the witness was clear in her version, the Ld substituted Addl. PP could have easily proceeded to conclude her examination in chief but he refused to complete the examination in chief on a baseless and preposterous ground. Same has not only resulted into unnecessary harassment and inconvenience to the witness who is traumatized mother of the injured and old lady of more than 60 years of age but has also delayed the proceedings.

Accordingly, let an explanation be called from the Chief Prosecutor that as to why the prosecution should not be directed to pay cost for delaying the proceedings and causing harassment and inconvenience to an old aged witness.

It is clarified that if no plausible explanation is given by prosecution, Court shall have to proceed further to impose appropriate cost upon the prosecution assuming the absence of the requisite explanation.

PW6 is discharged for today. She be summoned for NDOH.

PW HC Pradeep is present in the Court today for further examination in chief but he has also not been examined for want of case property.

Directions are issued to the concerned SHO to ensure the production of the case property on NDOH.

Be put up for further PE and explanation from the prosecution on **07.03.2023**.

**(BABRU BHAN)**  
**ASJ-03 (NORTH WEST),**  
**ROHINI/ 13.12.2022**