



IN THE COURT OF THE PRINCIPAL DISTRICT &
SESSIONS JUDGE, UDUPI AT UDUPI.

PRESENT

Sri K.S. Gangannavar, B.Com., LLB., (Spl.)
Principal District & Sessions Judge,
Udupi

Dated this 4th day of July, 2024

Sessions Case No.39/2021

Applicant/
Accused

Aryan Chandwani S/o Rajan Charvi
Age: 22 years, R/o Room No.102, Surabi
Pride, Vidyarathna Nagar, Shivalli Village,
Manipal, Udupi.

(By Shri Y.V.H. Advocate)

/Vs/

Opponent /
Complainant

The State through
S.H.O., Udupi Women PS

(By Learned Public Prosecutor, Udupi)

Order on application under Section 311 of Cr.P.C.

Accused has filed this application under Section 311 of Cr.P.C. to recall PW1 and 17 for further cross-examination.

2. It is stated in the application that accused is examined two witnesses and got marked Ex.D.1 to 4. The victim/complainant is examined as PW.1 and CW.2 is examined as PW.17. Instagram chats of PW.1 and 2

3. are exhibited as Ex.D.1. Said witnesses have to be cross-examined with regard to Ex.D.1. Cross-examination of PW.1 with regard to the Ex.D.1 is absolutely essential for a just decision in the above case. Ex.D.1 clearly reveals that PW.1 and accused has more than just casual acquaintances. Investigating officer has collected the CDR of the mobile phone of PW.1. It is marked at Ex.P.17. From the evidence of investigating officer who has been examined as PW.21, it is clear that three calls have been made by PW.17 and same has been received by PW.1 between 5.10 and 5.25 p.m. CDR also reveals the same. Hence, conversation between PW.1 and CW.2 and 3 before 5.30 p.m. on the date of incident assumes utmost significance. Cross-examination on that aspect is essential. Hence, sought to recall the witnesses.

4. Learned Public Prosecutor has filed detailed objections wherein it is contended that alleged witnesses are examined and cross-examined. The defence evidence led in this regard is also stated. At this stage, prosecution had closed side of evidence and even accused has examined two witnesses. Now application

is filed to recall PW.1 and 17. In this regard, in the evidence of PW.1 there is already reference for calling witnesses. Victim is already examined on 12.01.2023 and said witness is already cross-examined. Similarly, PW.17 is also cross-examined in detail. Now recalling of the witnesses for the purpose of cross-examination does not arise. Hence, sought to reject the application.

5. Heard the counsels and perused the materials.

6. Points that arise for consideration is:

“Has the accused made out ground to recall PW.1 and 17 for further cross-examination as sought for?”

7. My answer to the above point is in the negative, for the following:

REASONS

8. Section 311 of Cr.P.C. empowers to summon material witnesses or examine any person present or already examined. This power is even invoked to recall or examine the witness already examined before the court. Scope of the powers conferred under Section 311 of Cr.P.C. are not absolute and unconditional. In other

words, mere filing of the application in itself does not entitle to be allowed. Such power is circumscribed by the evidence appearing to be essential to the just decision of the case. In other words, essentiality of the evidence to be canvassed and the just decision of the case are to be balanced in exercising the powers under Section 311 of Cr.P.C.

9. Applicant seeks to recall PW.1 the victim and PW.17 (CW.2). For the same purpose, the applicant relies upon the CDR of the mobile phone of PW.1, the materials collected by the IO whether CDR or any other thing are already part of the charge sheet, it is needless to say, the copy of which is already furnished to the accused. Therefore, accused being aware of that fact is a prima facie.

10. In addition, considering the stage of the trial, it is noticed that prosecution side evidence is completed and defence has also led in the evidence. The witnesses sought to be summoned at this stage were also subjected to examination-in-chief and the cross-examination.

11. Very often, evidence of the prosecution is based on the materials collected during the investigation. In other words, materials of the charge sheet limit the evidence of the prosecution. On the other hand, cross-examination is circumscribed by the relevancy of facts from one end and the intention to impeach either evidence or the witness are the other ends of cross-examination.

12. Application says, further examination is necessary but does not disclose how it has been matter of necessity at this stage. Because materials upon which cross-examination to be conducted were very much available to the accused and inability to put across such questions at relevant point of time is not explained with any cogent material. It appears, the present necessity must have accrued on completing the cross-examination of other witnesses. Such contents are clearly dealt under appreciation of evidence.

13. The essential evidence in this case is appearing from the materials of the charge sheet. Accused being allegedly present on the scene, being

implicated by definite overt acts, accused is already aware of the material evidence involved in making out the charge. At this stage, as observed earlier, witnesses of the prosecution are already examined. Even defence has completed the side of evidence. Therefore, about the fact which was omitted at relevant point of time is not disclosed. The material conversations part of the CDR are already on record. The persons concerned with such CDR are also examined. Now, the possibility of further examinations of the witnesses intending to overcome the weaknesses of the case cannot be overlooked. The principles of fair trial does not allow the occasion to improvise the case or derail the facts with different interpretations. These materials are to be considered within well established scales of proof. Under such circumstances, at this stage, either the definite evidence being essential for the trial is not appreciated or such unknown evidence being part of the fair trial is also not made out. Consequently, application lacks merits. Accordingly, above point is answered in the negative and pass the following:

ORDER

Application filed under Section 311 of
Cr.P.C. is hereby rejected.

For arguments, call on 15.07.2024.

(Dictated to the Stenographer Grade-I, transcript
revised/corrected, then pronounced in the open court
on 4th day of July, 2024)

(K.S. Gangannavar)
Principal District & Sessions_Judge
Udupi.