

ORDER BELOW EXH.176 IN SESSIONS CASE NO.26/2013 :

(The State of Maharashtra Vs Ramashish Yadav & others)

1) Application is preferred by accused No.1 to re-call witnesses, on the ground that vital questions, which are just for the decision were not asked to the eye-witness and the brother of deceased, by previous Advocate, who has cross-examined them. There is change of Advocate for accused No.1. According to the defence, vital questions in respect of the incident, place of incident are not put which would cause prejudice to the accused, who is charged for offence punishable with death or Life-imprisonment.

2) Learned PP has given say that application is filed to fill-up the lacunas and be dismissed.

3) Learned Advocate for the accused No.1 relied on the citation in case of *Natasha Singh Vs CBI (State)* reported in 2013 *ALL SCR 2126*, wherein it is held that an application under Section 311 Cr.P.C., must not be allowed only to fill-up a lacuna in the case of prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the

case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party.

4) Learned Advocate has submitted that witness P.W.1 Jagannath Salunkhe and eye-witness P.W.3 Ashish Appaso Ghanwat mainly be re-called. It is submitted that no questions, which are already put, will be repeated. It is submitted that, important questions in respect of the incident and the place itself are not put by the earlier Advocate, though cross-examination is taken, it is more or unimportant point.

5) In my view, Learned prosecution will be at liberty to rebut the evidence when witness is re-called. I do not find that re-calling the above mentioned two witnesses would change the nature of the case, or it would amount to re-trial. The nature of punishment is severe. Hence, it would be fit and proper to give opportunity to the Learned Advocate for the accused No.1, who is now continuing the trial, to put questions which are vital for defence and were not put by previous Learned Advocate. Hence, application is allowed to re-call P.W.1 Jagannath Salunkhe and P.W.3 Ashish Appaso Ghanvat, only

SATARA.
8th January, 2018.

[Priti Kumar (Ghule)]
Addl. Sessions Judge, SATARA.

ORDER

A.S. to pay the amount by Cheques to applicants, as per order below Exh.41, on proper identification.

SATARA.
8th June, 2016.

(P.V.Ghule)
Member, M.A.C.T., SATARA.