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ITEM NO.102

Court No.6

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 830 OF 2011

BABY SHRUTI(MINOR) THROUGH
HER FATHER AND NATURAL GUARDIAN
SHRI RAM CHANDER

Appellant (s)

VERSUS

STATE OF NCRT, DELHI & ANR.

Respondent(s)

(With appln(s) for stay and office report)

Date: 10/07/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s) Ch. Leela Sarveswar, Adv.

Mr. Vineet Mishra, Adv.
Mr. V.N. Raghupathy, Adv.

For Respondent(s)

Mr. Satish Chand Gupta, Adv.
Mr. Sarbendra Kumar, Adv.
Mr. R.S.M. Kalkay, Adv.
Mr. Prakash Sharma, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

Mrs Anil Katiyar, Adv.

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

We do not find any cogent reason to interfere with the well
reasoned judgment of the High Court. The appeal lacks merit and is
accordingly dismissed in terms of the signed order.

| (DEEPAK MANSUKHANI) | (M.S. NEGI) |
| Court Master | Court Master |

(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

BABY SHRUTI(MINOR)
THROUGH HER FATHER
AND NATURAL GUARDIAN
SHRI RAM CHANDER

Appellant (s)

VERSUS

STATE OF NCRT, DELHI & ANR.

Respondent(s)

O R D E R

This appeal has been preferred against the impugned judgment and order dated 21.9.2010 passed by the High Court of Delhi at New Delhi in Criminal Miscellaneous Case No. 1994 of 2010 by way of which the High Court reversed the order dated 21.1.2010 passed by the Additional Sessions Judge on the application of the prosecution under Section 311 Cr.PC, whereby the learned Additional Sessions Judge has directed for summoning the witness Baby Shruti for her examination in the case.

Baby Shruti had been allegedly subjected to rape at the tender age of 5 1/2 years. Her statement was recorded by the police under Section 161 Cr.PC but she was not examined or produced for recording her statement under Section 164 Cr.PC before the Magistrate.

She appeared as a witness in the criminal trial before the learned ASJ and learned ASJ tested the capacity of the child witness and came to the conclusion that she was not able to understand as what was being asked and what for she had to give the evidence. In view thereof, the Court being of the view that the child witness was incapable and had no capacity to understand the case discharged her.

After a lapse of about 2 years, prosecution filed an application under Section 311 Cr.PC to examine the same child witness which has been allowed

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by the learned ASJ.

Aggrieved, the accused filed a Criminal Miscellaneous Appeal before the High Court which has been allowed by the High Court for the reasons that if the child witness was not able to understand anything about the incident or was not able to give evidence in respect of the alleged crime and she had been discharged, she should not be brought in the garb of Section 311 Cr.PC. Secondly, the mother of the witness PW3 Krishna Sahu has admitted in her evidence before the Court that after being discharged of the child witness, PW 3 had tutored the child how to depose in the Court. Therefore, the High Court rightly came to the conclusion that it will be a tutored version of the child even if she is permitted to be examined under Section 311 Cr.PC.

That is why, the High Court has reversed the order passed by the learned ASJ under Section 311 Cr.PC.

We do not find any cogent reason to interfere with the well reasoned judgment of the High Court. The appeal lacks merit and is accordingly dismissed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(S.A. BOBDE)

NEW DELHI
JULY 10, 2013.