

(2000) 10 AHC CK 0077**Allahabad High Court****Case No:** Criminal Revision No. 2389 of 2000

Kulbul and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Oct. 23, 2000**Citation:** (2001) 2 ACR 1733**Hon'ble Judges:** Krishna Kumar, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Krishna Kumar, J.

This revision has been filed against the order dated 5.9.2000 passed by the learned Additional District and Sessions Judge, Varanasi, whereby rejecting the application moved by the revisionist for adducing additional evidence.

2. Learned Counsel for the revisionist contended that there were cross cases. The case filed from the side of the revisionists resulted in acquittal of the accused of that case, while the revisionists were convicted and sentenced and they filed the appeal before the lower appellate court, which is pending.

3. It is clear that the Appellants could not get the injury report, etc. filed in this case before the trial court and they wanted to get those injury report brought on record at the stage of appeal.

4. The learned lower appellate court has rightly upheld that to fill up the lacuna, additional evidence cannot be admitted at the stage of appeal. It cannot be held that the said injury report, F.I.R., etc. were not in the knowledge of the accused-Appellants particularly when the cross cases were also proceeding. It was for the accused-Appellants to get those injury report, F.I.R. etc. filed in the case. It was also required from the Appellant that those injury reports be got proved by the Medical Officer.

5. Learned Counsel for the revisionists placed reliance upon State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another . In that case the prayer for adducing additional evidence was rejected on the ground of delay. This case law is not applicable to the facts of the present case.

6. Learned Counsel for the revisionists further placed reliance upon Mohanlal Shamji Soni Vs. Union of India and another , wherein general proposition of law has been laid down that witnesses can be summoned or recalled at any stage. Again, there was no such prayer for summoning or recalling the witnesses.

7. Further, the learned lower appellate court has upheld that lacuna cannot be allowed to be filled in. Definitely it was a lacuna when injury of accused side was not got proved by filing the injury report and by summoning the Medical Officer.

8. In view of what has been indicated herein above, I am of the view that the learned lower appellate court has rightly rejected the application.

9. There is no force in the revision. It is accordingly dismissed.