

**(2011) 11 AHC CK 0325**

**Allahabad High Court**

**Case No:** Criminal Revision No. 4866 of 2011

Rajpal and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** Nov. 15, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 311
- Penal Code, 1860 (IPC) - Section 201, 302, 364

**Citation:** (2012) 1 ACR 580 : (2012) 1 ADJ 59

**Hon'ble Judges:** S.C. Agarwal, J

**Bench:** Single Bench

**Final Decision:** Allowed

### **Judgement**

Hon"ble S.C. Agarwal, J.

Affidavit filed today is taken on record.

Heard learned counsel for the revisionists and learned AGA for the State.

2. This revision is directed against the order dated 3.11.2011 passed by Addl. Sessions Judge, Court No. 16, Meerut in S.T. No. 243 of 2001, State v. Rajpal and others, under Sections 364, 302, 201 IPC, P.S. Inchauli, District- Meerut, whereby application 346-Kha u/s 311 Cr.P.C. for recalling Momin (P.W.-5), Nasim (P.W.-6) and Gul Mohd. (P.W.-7) for cross-examination was rejected.

3. Learned counsel for the revisionists submitted that earlier counsel for the revisionists did not cross-examine the three witnesses mentioned above and did not appear at the time of cross-examination. Therefore, these witnesses were cross-examined only on behalf of other co-accused but could not be cross-examined on behalf of the revisionists.

4. The application was rejected by the trial Court on the ground that earlier, opportunity for cross-examination was given to the revisionist, which was not

availed by them and there was no ground to summon these witnesses for cross-examination.

Learned AGA supported the impugned order.

5. Admittedly, P.W.-5, P.W.-6 and P.W.-7 were examined by the prosecution but were not cross-examined at all on behalf of the revisionist-Raj Pal and Ram Pal. Now the revisionists have engaged a new counsel and he found that these three witnesses could not be cross-examined at all and consequently, he moved an application u/s 311 Cr.P.C. In view of the fact that these three witnesses were not cross-examined on behalf of the revisionist.

6. Learned Addl. Sessions Judge was not justified in rejecting the application. The case is under Sections 364 and 302 IPC, which is punishable with death and imprisonment for life. In such a serious case, the right of cross-examination of the accused should not be closed forever due to fault of the counsel and the client should not be suffered for the default of the counsel. It was the duty of the trial Court to afford reasonable opportunity to the accused for cross-examination of the witnesses. Even though, the conduct of the revisionist during trial, has not been exemplary, but if the revisionists were not cooperating with the Court and were deliberately avoiding the cross-examination of the witnesses, the trial Court was always at liberty to cancel their bail but their right of cross-examination should not have been closed.

7. The revision is allowed. The impugned order dated 3.11.2011 is set aside. The revisionists are directed to deposit a sum of Rs. 3000/- before the trial Court within a period of three weeks from today alongwith the certified copy of this order. On deposit of costs, learned Addl. Sessions Judge shall fix a date for cross-examination of Momin (P.W.-5), Nasim (P.W.-6) and Gul Mohd. (P.W.-7) and on such date, these three witnesses shall be summoned and the revisionists shall be provided an opportunity for cross-examination of three witnesses.

8. However, it is made clear that no adjournment shall be granted to the revisionists for the purposes of cross-examination of P.W.-5, P.W.-6 and P.W.-7.

The amount of costs shall be given to the three witnesses Momin (P.W.-5), Nasim (P.W.-6) and Gul Mohd. (P.W.-7) equally to defray their expenses in coming to the Court as well as compensation.