

**(2010) 10 AHC CK 0327**

**Allahabad High Court**

**Case No:** Criminal Revision No. 4613 of 2010

Kishan and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

---

**Date of Decision:** Oct. 25, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 311
- Penal Code, 1860 (IPC) - Section 304B

**Citation:** (2011) 1 ACR 959 : (2011) 2 DMC 44

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

**Bench:** Single Bench

**Final Decision:** Allowed

---

### **Judgement**

@JUDGMENTTAG-ORDER

S.C. Agarwal, J.

Heard learned Counsel for the revisionists, learned A.G.A. for the State and perused the material available on record.

2. No notice is issued to private opposite party in view of the order proposed to be passed today, however, liberty is reserved for private opposite party to apply for variation or modification of this order if he feels so aggrieved.

3. This revision is directed against the order dated 7.10.2010, passed by Additional Sessions Judge, Court No. 3, Bulandshahr in Sessions Trial No. 693 of 2009, State v. Kishan and Ors. u/s 304B, I.P.C.. P.S. Salempur. district Bulandshahr, whereby application u/s 311, Code of Criminal Procedure moved by the revisionists - accused was rejected.

4. Application u/s 311, Code of Criminal Procedure was moved by the revisionist before the trial court for recalling P.W. 1 and P.W. 2 for further cross-examination on the ground that few relevant questions and contradictions have been left to be

asked from the witnesses. Fifteen specific questions regarding P.W. 1 and ten questions regarding P.W. 2 were specifically mentioned in the application. Learned trial court rejected the application on the ground that P.W. 1 and P.W. 2 had been fully cross-examined in detail and they need not be recalled for further cross-examination and also that learned Counsel for the accused - revisionist failed to show the provisions under which the witnesses could be recalled for cross-examination.

5. Had the trial Judge perused the provisions of Section 311, Code of Criminal Procedure under which the application was moved, there would not have been any necessity for such observation, which reflects upon the knowledge of the Judge himself. Such naviate cannot be accepted from a senior officer of the rank of Additional Sessions Judge. Specific questions have been mentioned in the application u/s 311, Code of Criminal Procedure Learned trial court should have perused the statements of P.W. 1 and P.W. 2 to find out whether these questions have already been replied by the witnesses or not and whether such questions were necessary for Just decision of the case or not. Learned trial court has not put in any such exercise and straightaway rejected the application without sufficient reasons. In these circumstances, the order passed by

learned Additional Sessions Judge cannot be sustained and is liable to be set aside.

6. Revision is allowed.

Impugned order dated 7.10.2010 is set aside. Learned Additional Sessions Judge shall hear the parties, i.e., the revisionists and the State on the questions mentioned in the application u/s 311, Code of Criminal Procedure and peruse the statements of P.W. 1 and P.W. 2 in that light and thereafter he must decide whether the questions to be asked are necessary or not. If the questions are necessary, then P.W. 1 and P.W. 2 must be recalled for further cross-examination. On the other hand, if the trial Judge finds the questions to be unnecessary or mala fide, the application may be rejected. Learned Additional Sessions Judge is expected to make a fresh decision on the application u/s 311, Code of Criminal Procedure within a month from the date of which a certified copy of this order is produced before him.