

**2022 LiveLaw (SC) 556**

**IN THE SUPREME COURT OF INDIA**

**C.T. RAVIKUMAR; SUDHANSU DHULIA, JJ.**

Special Leave to Appeal (Crl.) No(s). 5647/2022; 21-06-2022

**SAUD FAISAL versus STATE OF UTTAR PRADESH & ANR.**

**Code of Criminal Procedure 1973; Section 311 - Merely because a different statement given by the same prosecution witness in another case that itself would not be a reason for recalling the witness.**

(Arising out of impugned final judgment and order dated 16-05-2022 in APPLICATION U/S 482 No. 24933/2021 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. Bhuwan Raj, AOR

**O R D E R**

The petitioner before this Court had challenged the order dated 28.10.2021 which has been passed in Sessions Trial No.538 of 2013 before the High Court whereupon the impugned judgment and order was passed. By the said order (order dated 28.10.2021) an application, moved by the accused/petitioner before this Court, under Section 311 of the Cr.P.C., has been dismissed.

The petitioner who is one of the accused/petitioner facing the aforesaid trial inter alia for an offence related to Section 302 Indian Penal Code.

On 11.08.2014 prosecution witness no.1-Nausad gave a statement in his examination-in-chief stated that he had clearly identified the petitioner/accused Saud Faisal as one of the assailants who was carrying a rifle. This particular witness (that is PW1) was also put to a lengthy cross-examination but it could not contradict his testimony.

Relating to the same incident the petitioner/accused was also facing a case under the Gangsters Act. The same witness (PW1- Nausad) was examined in that proceeding as PW1 on 20.09.2021. He gave a statement that although he could identify the two other witnesses i.e. Shere and Rashid, the third assailant, that is the petitioner/accused, could not be identified as he was wearing a cloth on his face. Now, on the basis of this statement given by PW1 in the gangster's case in the year 2021 that is after he has given his statement as was also cross-examined at length in the present trial in the year 2014, an application was moved under Section 311 for recalling this witness. The trial court has rejected this application and in our view rightly so, for the reasons that merely because a different statement given by the same prosecution witness in another case that itself would not be a reason for recalling the witness and that too, after a period of seven years. It is not a case where a contradictory statement was given by some other witnesses in the present trial.

The petitioner/accused on the same has relied upon the judgment of this Court in **Sudevanand Vs. State Through Central Bureau of Investigation** reported in **2012(3) SCC 387**. He would contend that under the similar circumstances, the Court had allowed the recalling of a witness under Section 311, however, we do not agree with the same. The case relied upon by the petitioner/accused, that is, in **Sudevanand's** case (*supra*) is

on an entirely different factual matrix. In the said case, the witness had given two different versions that is one before the trial court and the different one before the Inquiry Commission, where he had turned into an approver. The operative paragraph 4 is quoted below:

“4. While on remand, Vikram made a confessional statement and requested to be allowed to become an approver. He was produced before a Magistrate on 14-8-1975, before whom he made a statement under Section 164 of the Code of Criminal Procedure (in short “CrPC”) giving the details of the conspiracy to kill the Chief Justice of India. He was again produced before the Chief Judicial Magistrate on 22-8-1975 before whom he made a similar statement for grant of pardon under Section 306 CrPC.”

Therefore, in our view the reliance by the petitioner on the above decision is entirely misplaced.

Under these circumstances, we are not inclined to interfere with the order impugned passed by the High Court.

Accordingly, the special leave petition is dismissed.

It is made clear that the observations, which we have made in this order will not be construed as our comments on the merits of the case.

Pending application(s), if any, shall stand disposed of.

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