



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8160-2026

BHARAT KUMAR Petitioner

Versus

STATE OF HARYANA Respondent

1.	Judgment reserved on	10.02.2026
2.	Judgment pronounced on	07.05.2026
3.	Judgment uploaded on	08.05.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced.	FULL
5.	The delay, if any of the pronouncement is full judgment and reason thereof.	NA

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Aman Pal, Sr. Advocate with
Mr. Rishabh Choudhary, Advocate and
Mr. Pratham Bali, Advocate for the petitioner.

Mr. Praveen Kumar, DAG, Haryana.

YASHVIR SINGH RATHOR, J.

1. The present revision petition has been instituted against the order dated 15.03.2022 passed by the Additional Sessions Judge, Panipat, whereby the application moved by the prosecution under Section 311 Cr.P.C has been allowed.

2. The brief facts of the prosecution case as per FIR No. 678 dated 09.08.2020, registered under Section 302 IPC at Police Station City



Panipat, are that on 09.08.2020 at around 8:00 PM, complainant Rani @ Priya was standing at Fatehpuri Chowk along with her sister-in-law Kavita and their children, namely Dhruvi and Gaurav. While they were purchasing household articles, accused Bharat Kumar who is husband of Rani @ Priya came from behind and questioned Kavita as to why she has kept his wife with her. Thereafter, accused pulled out a knife and repeatedly stabbed Kavita, causing her to fall on the ground. The victim was subsequently taken to the Government Hospital, Panipat, where she was declared dead. The matter was investigated. Accused was arrested and after completion of investigation, the final report under Section 173 Cr.P.C. has been presented in Court for trial.

3. During the pendency of the trial, an application was moved under Section 311 Cr.P.C. to summon PW Krishna, the minor son of the deceased, and to examine him, which has been allowed by the Trial Court vide the impugned order dated 15.03.2022.

4. Feeling aggrieved, the present petition has been instituted. Learned counsel for both the parties have been heard and the material placed on file has been perused.

5. Learned counsel for the petitioner argued that the application under Section 311 Cr.P.C was moved to examine a child witness, namely Krishna, who has neither been named in the FIR nor in the final report submitted under Section 173 Cr.P.C. It is submitted that none of the witnesses previously examined mentioned the presence of the said child at the spot. Learned counsel further submits that the prosecution is merely attempting to fill up a lacuna in the case after complainant, Rani @ Priya,



did not support the prosecution version during her examination as PW-1. Learned counsel further contended that the Trial Court has not appreciated the facts of the case in the correct perspective while allowing the application, which will seriously prejudice the accused.

6. On the other hand, learned counsel for the respondent-State has opposed the prayer and argued that the testimony of said Krishna is essential for the just decision of the case. During the trial, PW-7 Sunil Kumar deposed that he had received information regarding the incident from the said witness, Krishna, who was present at the spot with the deceased. Therefore, the examination of the said witness is necessary to elicit the truth of the occurrence and learned Trial Court has rightly allowed the application.

7. Before proceeding further, Section 311 Cr.P.C is reproduced as under:—

“311. Power to Summon material witness, or examine person present.— Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

8. Hon’ble Supreme Court in AIR 2013 SC 3081 ***Rajaram Prasad Yadav Vs. State of Bihar*** has laid down following guidelines and governing principles for exercising powers under Section 311 Cr.P.C to summon, recall or re-examine any person as a witness:-



“(i) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?”

(ii) The exercise of the widest discretionary power under Section 311, CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

(iii) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and reexamine any such person.

(iv) The exercise of power under Section 311, CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

(v) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

(vi) The wide discretionary power should be exercised judiciously and not arbitrarily.

(vii) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

(viii) The object of Section 311, CrPC simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

(xiv) The Court arrive at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.



(x) Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

(xi) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

(xii) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

(xiii) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

(xiv) The power under Section 311, CrPC must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

9. It is, thus, well settled that the power to be exercised by the Court under Section 311 Cr.P.C. ensures truth seeking and allows the Court to override procedural lapses. In the present case, most of the



material witnesses have turned hostile, including the complainant. However, one of the witness, namely PW-7 Sunil Kumar, has deposed that the child witness, namely Krishana, who is the son of the deceased, had informed him that the accused had committed the murder of his mother. The said witness was not examined by the police during investigation and he has also not been cited as a prosecution witness but this circumstance alone is not sufficient to disallow the application for his examination in exercise of power under Section 311 Cr.P.C. Rather, his testimony is material and will help the Court in ascertaining the truth. It is well settled that a witness who has not been examined by the police during the investigation can be summoned on an application under Section 311 Cr.P.C. and the Court has wide discretionary powers to summon any person as a witness at any stage, if his evidence appears to be essential for a just decision of the case. The term “any person” used in Section 311 Cr.P.C. allows the Court to summon witnesses not originally cited by the prosecution or examined by the police under Section 161 Cr.P.C. during the investigation. Besides this, the exercise of this power cannot be dubbed as filling up a lacuna merely because he was not cited earlier, provided his evidence is germane to the issue involved. No prejudice will also be caused to the accused as he will get an opportunity to cross-examine the witness and to shake his credibility. The learned Trial Court has, thus, rightly allowed his examination as a witness in order to arrive at a just decision of the case. No interference in the impugned order is, thus, called for.

10. Resultantly, the present petition is ordered to be dismissed.



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

(YASHVIR SINGH RATHOR)
JUDGE

07.05.2026
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No