

2026.PHHC:049102



102-1 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(1). **CRM-M-49443-2021**
Date of Decision: 27.03.2026

State of Haryana ...Petitioner

Versus

Muni Ram and others ...Respondents

and

(2). **CRR-1650-2019**

Mohit ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY

Present: Ms. Shweta Nahata, DAG, Haryana
for the State-petitioner in CRM-M-49443-2021.

Mr. Vinod Bhardwaj, Advocate and
Mr. Nipun Bhardwaj, Advocate
for respondent Nos.1 to 5 in CRM-M-49443-2021.

Mr. Ankur Lal, Advocate
for the complainant in CRM-M-49443-2021 and
for the petitioner in CRR-1650-2019.

Mr. S.S. Momi, Advocate
for respondent Nos.4 to 6 in CRR-1650-2019.

AARADHNA SAWHNEY, J.

In the above mentioned petitions common question of law and facts are involved, so both the petitions are being disposed of by a common judgment. For brevity, facts are being taken from CRM-M-49443-2021 titled as “*State of Haryana Vs. Muni Ram and others.*”

1. Challenge in the present petition is to order dated 02.07.2019 (Annexure P-1) passed by the then Ld. Additional Sessions Judge, Kaithal vide

which an application u/s 311 Cr.PC moved by the prosecution, for recalling two prosecution witnesses namely Dr. Aman Sood and Dr. Aman Bansal, in case FIR No.25 dated 04.03.2017 u/s 148/149/302/323/342/356 IPC, PS Sadar Kaithal, Distt. Kaithal, was dismissed.

2. Relevant facts as emerging from documents on record be noticed hereinbelow:-

“On 04.03.2017 a telephonic message was received in police station vide which police authorities were intimated that a Brahman family of village Padla have murdered a young boy named Pardeep S/o Satbir Singh R/o Dillowali as also that another young boy namely Mohit S/o Randhir Singh R/o Malkheri, has been mercilessly thrashed by them. It also came to the notice of police authorities that dead body of Pardeep and injured Mohit have both been rushed to Govt. Hospital, Kaithal. Immediately thereafter, S.I. Subash along with other police officials reached hospital, collected ruqa and after seeking permission from the doctor on duty recorded the statement of Mohit, aged about 15-16 years, studying in class 9th and resident of village Malkheri. As per complainant on 03.03.2017, he along with his friend Pardeep (since deceased) S/o Satbir R/o village Dillowali were visiting village Sangan to attend wedding ceremony of elder brother of their friend Raju. He reached village Sangan at about 02:00 in the afternoon on the motorcycle bearing registration No.HR08W-8002 (make Splendor). One of friends of Pardeep, who was not known to him(c) was also attending the wedding. After attending the marriage ceremony in the late evening, on the asking of his friend Pardeep (since deceased), they headed for village Padla at about 11:000 p.m. as they had to leave Pardeep’s friend. The motorcycle was being driven by Pardeep, whose friend was dropped at his village at about 11:30 p.m. Thereafter, they halted in a street in front of the house of Neha, Pardeep who was on friendly terms called Neha, who came out of her house. While these two were exchanging notes with

each other, suddenly Neha told Pardeep to leave quickly as she had noticed her paternal uncle Muni Ram coming towards them. Before they could react, Muni Ram ran up to them and also called other members of his family namely Binder, Shri Bhagwan, Teeni, Sanjiv and Roshan etc. Immediately all the persons armed with dandas, lathis, etc. arrived at the spot and questioned them as to why they were talking with their daughter Neha. Before they could answer and explain themselves, the motorcycle was thrown down. He and Pardeep were dragged inside the house, where they were tied with ropes and later dragged to cattle shed opposite the house. They were mercilessly thrashed. Both, he and Pardeep begged for mercy and requested to pardon them, but no heed was paid. As a result of the onslaught unleashed by the above named persons, Pardeep breathed his last at the site. His body was picked up and kept on a cart in the courtyard. At about 6-7 in the morning his and family members of Pardeep namely Sh. Satbir Singh (father of Pardeep), his father Sh. Randhir Singh and others arrived. They untied him and Pardeep. He was rushed to Govt. Hospital, Kaithal. Dead body of Pardeep was also taken to Govt. Hospital, Kaithal. He was examined by doctor on duty. Medical treatment was provided. Complainant Mohit further pointed out that his friend Pardeep died due to merciless beatings given by the above mentioned persons i.e. Binder, Shri Bhagwan, Teeni, Sanjiv and Roshan etc. He further pointed out that these persons also tried to kill him but he was saved on account of some divine intervention. Request was made to police authorities to catch hold of the assailants as also to initiate appropriate legal proceedings against them.

On the basis of the said complaint, medico-legal report which indicated that complainant Mohit had suffered 13 injuries, a formal case vide FIR No.25 dated 04.03.2017 u/s 148/149/302/307/323/342/365 IPC, PS Sadar Kaithal, Distt. Kaithal, was registered. Inquest proceedings were conducted, special report was sent to the Illaqa Magistrate, post-mortem examination on the dead body was also got conducted from the

Civil Hospital. During the course of the investigation, statements of witnesses were recorded, Section 307 IPC was deleted. Supplementary statement of the complainant was recorded, who stated that Roshan S/o Banwari Lal and Ranbir @ Teeni S/o Ram Kumar had left the place of occurrence. Facts of the case were verified by the then DSP (HQ), Kaithal, who was also of the opinion that Roshan Lal, Renu, Daiya and Teeni did not participate in the incident. Three of accused Binder, Shri Bhagwan and Sanjiv were arrested, who during the course of the investigation, confessed to their involvement. Weapons of offence recovered at their instance were taken into possession.

Medico-legal opinion was also sought with regard to the nature of injuries suffered by injured Mohit. Section 307 IPC was deleted and Section 302 IPC was added. On culmination of investigation, challan was prepared and filed in the Court. The case was committed to the Court of Session. Accused Muni Ram, Shri Bhagwan, Subhash, Sanjeev and Davender were charge-sheeted u/s 302, 323, 342, 356, 148, 149 IPC.”

3. During the course of trial, apart from examining the other witnesses, prosecution examined Dr. Aman Bansal and Dr. Aman Sood, who appeared as PW9 and PW11, respectively. Dr. Aman Bansal, had medico-legally examined complainant-injured Mohit on 04.03.2017 vide MLR (Ex.P30). Dr. Aman Sood, had conducted the post mortem examination on the dead body of Pardeep. While the case remained pending for recording the evidence of remaining prosecution witness, an application u/s 311 Cr.PC was moved by prosecution for recalling both the aforementioned witnesses namely Dr. Aman Sood and Dr. Aman Bansal on following grounds:-

It was stated in the application that Dr. Aman Bansal, who had examined complainant Mohit on 04.03.2017, while appearing as PW9 had tendered his affidavit Ex.P29, deposing therein that on medico-legal examination, injured was found to have suffered 13 injuries, their dimension,

location, body parts etc. were also mentioned. However, inadvertently only duration of injury No.1 was pointed out, as having occurred within 24 hours of examination but the duration for the rest of the injuries were not specified. Dr. Aman Bansal also did not point out the exact time of examination of injured Mohit in his affidavit Ex.P29. Somehow these facts were also missing in his oral deposition made before the Court. Further, due to lapse on the part of Investigating Officer, the weapons recovered at the instance of the accused were also not produced before the doctor, while seeking his opinion with regard to nature of injuries as also whether these could have been caused by the said weapons. Similarly the weapon of offence recovered at the instance of the accused were not produced before Dr. Aman Sood, who had conducted post-mortem examination on the body of the deceased Pardeep, to seek his opinion as to whether deceased could have suffered injuries with the said weapons. Primarily with this backdrop, an application u/s 311 Cr.PC was moved praying therein that the evidence sought to be adduced on record being very relevant for the just and proper decision of the case, be allowed. Both the above mentioned doctors be recalled and certain clarifications in the light of submissions made hereinabove be sought from them.

Notice of the application was given to the respondent-accused. Detailed reply opposing the same was filed, on the ground that the application having been moved at a belated stage is a clear deliberate attempt to delay the conclusion of trial. Further, if allowed the same would tantamount to filling in gaps/loopholes in the prosecution story, as also that it was the duty of the I.O. to produce weapons before the doctors and thereafter to seek their opinion. Further if at this stage, the application is allowed, the same would amount to collecting fresh evidence. It was next pointed out that the evidence sought to be brought on record, being not essential for the just decision of the case,

application having been moved at a belated stage, being devoid of merit deserves dismissal. Impugned order being well reasoned and in consonance with the scope of Section 311 Cr.PC, does not warrant any interference.

4. Learned counsel for the complainant contends that a bare perusal of the impugned order reveals that the application has been dismissed with the observations that the same having been moved at a belated stage, only with an aim to fill in gap/lacuna in the prosecution story and secondly that both the doctors were subjected to rigorous cross-examination by learned defence counsel. However, to improve upon the shortcomings in the prosecution story, the application in hand was moved.

Continuing further, learned counsel contends that as per settled law on the subject in issue, though an application u/s 311 Cr.PC can be moved at any stage before passing of the judgment, but while allowing the same the Court should bear in mind that the evidence sought to be adduced in additional evidence should be relevant for the just decision of the case and in the garb of same, no party should be allowed to fill in gaps/loopholes in their story. Here in the instant case immediately after the horrifying incident occurred wherein complainant was beaten black and blue by the accused party and his friend was thrashed to death, family members of both the boys arrived. Injured was rushed to the hospital, wherein he was examined by Dr. Aman Bansal, who prepared the detailed medico-legal report mentioning therein the number, dimension and location etc. of injuries. Dr. Bansal appeared in the witness-box as PW9, tendered an affidavit Ex.P29, wherein apart from mentioning the details of the injuries, their size, location, nature, further course of treatment etc, he also mentioned about the probable duration of injury No.1 as having occurred within 24 hours but did not specify the duration with regard to the other 12 injuries. Neither did he (Dr. Bansal) point out the exact time when he examined

the complainant/injured. Surprisingly enough, on account of lapse on the part of I.O. the weapons which were recovered at the instance of the accused and were later sent to FSL, were never produced either before Dr. Bansal, who medico-legally examined complainant-injured or before Dr. Aman Sood, who had prepared the post-mortem examination of deceased Pardeep.

It is further the submission of learned counsel that victim should not be made to suffer on account of any lapse on the part of I.O., as also that if both the doctors are re-examined, in the light of the submissions advanced hereinabove, no prejudice would be caused to the accused, who would again be afforded an opportunity to cross-examine both these witnesses. In the light of factual scenario of the case, allowing the application for recalling the two medical witnesses would not tantamount to collecting fresh evidence. Prayer for allowing the petition has been made.

5. *Per contra*, while opposing the petition, learned counsel appearing on behalf of the respondent-accused submit that the present application is nothing but a clever deliberate attempt to delay the conclusion of the trial as also to fill gaps/lacune in the prosecution story. Recalling both the doctors i.e. Dr. Aman Sood and Dr. Aman Bansal, at this stage of the case would further delay the proceedings. It is further the submission of learned counsel that though the discretionary power vested u/s 311 Cr.PC is wide but the same must be exercised judicially and not arbitrarily. The application being devoid of merit deserves dismissal.

6. I have heard the learned counsel for the parties and have gone through the documents on record.

7. Hon'ble Supreme Court in **Rajaram Prasad Yadav Vs. State of Bihar, AIR 2013 SC 3081** laid down following guidelines and governing principles for exercising powers u/s 311 Cr.PC to summon, recall or re-

examine any person as witness:

- a) 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?*
- b) 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.*
- c) 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 re-examine any such person.*
- d) The exercise of power under Section 311 Cr P C 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.*
- e) 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.*
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.*
- g) 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.*
- h) The object of Section 311 Cr P C simultaneously imposes a duty on the court to determine the truth and to render a just decision.*
- i) The court arrives 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.*
- j) 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.*
- k) 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.

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

m) 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.

n) The power under Section 311 Cr.P.C. 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."

In the case of ***The State represented by the Deputy Superintendent of Police Vs. N. Seenivsagan, (2021) AIR SC 2441***, the Apex Court has held that if it appeared to the Court that the evidence of a person who is sought to be recalled is essential to the just decision of a case, the Court could do so under Section 311 Cr.P.C. The relevant extract is as under:-

"13. In our view, having due regard to the nature and ambit of Section 311 of the Cr.P.C., it was appropriate and proper that the applications filed 6 of 11 by the prosecution ought to have been allowed. Section 311 provides that any Court may, at any stage of any inquiry, trial or other proceedings under the CrPC, 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". The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case."

In the case of ***K. P. Tamilmaran Vs. The State by Deputy***

Superintendent Of Police, the Hon'ble Supreme Court has held as under:-

“47. Before moving further, we consider it necessary to deal with the law relating to section 311 CrPC under which PW-49 was summoned as a witness.

Section 311 CrPC reads as follows:

“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.”

This Section 311 of CrPC provides wide powers to a Criminal Court, to do the following:

- i. Summon any person as a witness, or
- ii. Examine any person present in court, though not summoned as witness, or
- iii. Recall and re-examine any person already examined.

The above powers can be exercised ‘at any stage of any inquiry, trial or other proceeding’ under the CrPC. The provision can be divided into two parts. The word ‘may’ is used in the first part of the section which grants the Court the discretion to summon a witness. In contrast, the second part of the Section uses the word ‘shall’ which casts a duty on the Court to summon and examine or recall or re-examine any such person as a witness when it appears to the Court that it is essential to do so for a just decision in the case. In other words, the second part is mandatory, and Courts are obligated to exercise their powers under Section 311 CrPC when the evidence of any person is essential for a just decision of the case. (See: **Jamatraj Kewalji Govani v. State of Maharashtra 1967 SCC OnLine SC 19**).

48. As is clear from the language of the provision itself, there is a wide discretion with the Courts under Section 311 CrPC. These powers can be exercised suo moto or on an application moved by either side. After all, the object is that the Court must not be deprived of the benefit of any valuable evidence. It is absolutely necessary that the Court must be apprised of the best evidence available. Thus, Courts have been given wide powers to decide on their own if a witness is required to be called or recalled for examination or re-examination. This power under Section 311 CrPC can be invoked at any stage of the trial, even after the closing of the

evidence. Section 311 CrPC can also be read along with Section 165 of the Evidence Act, as the powers of the Court under Section 165 of the Evidence Act are complementary to Section 311 of CrPC. As discussed above, powers under Section 311 CrPC can either be exercised on an application moved by either side to the case or suo moto by the Court. In case a person is not listed as a witness in the charge-sheet but later, the prosecution desires to bring that person as an additional prosecution witness, then the prosecution can move an application to bring this person as a prosecution witness. It is then for the Court to decide whether such a person is required as a witness or not. If the Court finds that such a person should have been examined as a prosecution witness and he/she was omitted from the list of witnesses due to some oversight, mistake or for any other reason, the Court may allow the application and such a person can be examined as a prosecution witness. Thereafter, the normal course of examination-in-chief, cross examination, etc. would follow as per the procedure. On the other hand, when the Court calls a person as a Court witness, there are some restrictions regarding the cross-examination of such witness.”

8. Having gone through the scope and spirit of Section 311 Cr.PC it is thus clear that the same confers a wide power on the Courts to summon witnesses and accordingly the discretion so conferred has to be exercised judiciously; the only object being that any evidence so essential for the just decision of the case should be allowed to be brought on record at any stage of the case; the precaution to be kept in mind is that in the garb of the said application, none of the parties should be allowed to fill in gaps/loopholes in their stand.

Reverting back to the facts of the case in hand, which have already been noted in para 2 of this order, as per case set up by prosecution, one Pardeep S/o Satbir and Mohit (complainant) S/o Randhir Singh were mercilessly thrashed by the accused party. Unfortunately, one of them namely Pardeep died, whereas Mohit suffered multiple injuries. The post-mortem

examination on the dead body of Pardeep was got conducted on 04.03.2017 at Govt. Hospital, Kaithal by Board of Doctors comprising of Dr. Meenakshi Goel, Dr. Aman Bansal (PW9) and Dr. Aman Sood (PW11). The doctors mentioned all the eight injuries noticed by them on the body of the deceased, apart from mentioning the condition of the internal organs and also gave their opinion with regard to cause of death, the probable time between injuries and death, between death and post-mortem examination.

On the same day i.e. 04.03.2017, injured Mohit was medico-legally examined by Dr. Aman Bansal (PW9), who prepared medico-legal report (Ex.P30). Dr. Bansal while appearing in the witness box tendered his affidavit (Ex.P29) deposing therein the number, the location, the size etc. of all 13 injuries, noticed by him on the person of the injured, the further course of treatment including advising x-ray examination for almost all the injuries. He also specifically pointed out that all the injuries are 'Blunt in nature'. Surprisingly, however, he only expressed his opinion with regard to the probable duration of injury No.1, but did not specify the duration for rest of the injuries. Copy of the affidavit (Ex.29) also does not mention about the exact time of examination of injured Mohit. Even the investigating officer for reasons best known to him, did not produce the weapons of offence recovered at the instance of the accused either before Dr. Aman Bansal or Dr. Aman Sood, therefore none of them could give any opinion as to whether the injuries could have been caused by the recovered weapons.

It is in this backdrop that re-examination of both the doctors has been sought. Their re-examination in the opinion of the Court, is very relevant for just decision of the case, as their opinion, as to whether the injuries could have been caused by the weapons recovered at the instance of the accused is very material and would help the Court in arriving at the just decision of the

case. Re-examination of Dr. Aman Bansal, who also needed to clarify the probable duration of the other 12 injuries suffered by Mohit.

When appreciated in the light of the discussion made hereinabove, agreeing with the submissions of the learned counsel for the petitioner, the Court is of the opinion that re-examination of the above mentioned two doctors would not tantamount to collecting fresh evidence by the prosecution. This Court is further of the opinion that none of the parties should be made to suffer on account of any lapse on the part of Investigating Officer. Hence, keeping in view the object, scope and spirit of Section 311 Cr.PC, **present petition is allowed** with the observation that prosecution shall be afforded not more than two opportunities to re-examine both doctors i.e. Dr. Aman Sood, who had conducted the post-mortem examination of the body of the deceased Pardeep as also Dr. Aman Bansal, who had medico-legally examined the injured Mohit.

27.03.2026
Parveen kumar

(AARADHNA SAWHNEY)
JUDGE

Whether speaking/reasoned :Yes/No
Whether reportable :Yes/No