



REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2848 OF 2026

THE STATE OF TRIPURA

...APPELLANT(S)

VERSUS

PANNA AHMED

...RESPONDENT(S)

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. The present appeal arises out of the judgment and order dated 14.03.2024 passed by the High Court of Tripura at Agartala (*hereinafter referred to as the “High Court”*) in Criminal Petition No. 07 of 2024, whereby the High Court set aside the order dated 06.02.2024 passed by the learned Additional Sessions Judge, West Tripura, Agartala (*hereinafter referred to as the “Trial Court”*) in Sessions Trial (Type-1) No. 38 of 2017 and allowed the application filed under Section 311 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the*

“CrPC”), permitting the recall of the prosecutrix (PW-1) for further cross-examination.

2. The facts necessary for adjudication of the present appeal are as follows:

2.1. On the basis of a written complaint dated 27.06.2016 lodged by the prosecutrix, FIR No. 2016 WAW 052 was registered against the Respondent-accused, alleging commission of offences punishable under Sections 342, 376(1) and 506 of the Indian Penal Code, 1860 (*hereinafter referred to as the “IPC”*).

2.2. The allegation in the complaint is that on the morning of 27.06.2016, after the husband of the prosecutrix left for Sonamura Court in connection with his professional work, she visited the residence of the Respondent at about 10:30 a.m. for discussions relating to house rent. It was alleged that the Respondent forcibly confined her inside the room, tore her clothes and committed rape upon her. It was further alleged that the Respondent threatened to kill the prosecutrix if she disclosed the incident to anyone. Thereafter, the prosecutrix, in a distressed condition, returned to her rented house and informed her husband about the incident.

2.3. Upon the registration of the FIR, investigation was undertaken and statement of the prosecutrix was also recorded under Section 164 CrPC. Thereafter, upon completion of investigation, chargesheet was filed and charges were framed on 09.08.2016. The trial commenced in 2017.

2.4. During the course of trial, the prosecutrix (PW-1) was first examined in chief and cross-examined on 04.06.2018, followed by further cross-examination on 10.07.2018. Thereafter, the prosecution filed an application under Section 311 CrPC seeking recall and re-examination of the prosecutrix. The said application initially came to be rejected by the Trial Court. Aggrieved thereby, the prosecution approached the High Court of Tripura by filing Criminal Petition No. 02 of 2019. The High Court, by judgment dated 30.05.2019, set aside the order passed by the Trial Court and permitted re-examination of the prosecutrix. Pursuant thereto, prosecutrix was further examined and re-cross examined on 08.08.2019 and 02.11.2019.

2.5. During the course of trial, and after approximately four years from the re-examination of the prosecutrix (PW-1), on 14.12.2023 the Respondent filed an application under Section 311 of the CrPC seeking recall of PW-1 for

further cross-examination. The application set out 94 questions. The principal ground urged in the application was that due to an oversight, certain aspects emerging from the Call Detail Records (*hereinafter referred to as “CDRs”*) of the mobile number of the prosecutrix and the Respondent could not be brought on record.

2.6. The prosecution opposed the said application contending that the prosecutrix had already been extensively examined, cross-examined, re-examined and re-cross-examined, and that the application was nothing but an attempt to protract the proceedings in a case pending since the year 2017.

2.7. The learned Additional Sessions Judge, by order dated 06.02.2024, rejected the application filed by the Respondent under Section 311 CrPC. The Trial Court observed that the application is filed after 4 years from the completion of the cross-examination of the prosecutrix and that the trial had been pending for more than seven years, that the prosecutrix had already undergone detailed examination and cross-examination, and that no sufficient ground existed for recalling the prosecutrix after such prolonged delay. The Trial Court further held that the application appeared to be an attempt to delay the conclusion of the trial.

3. Aggrieved thereby, the Respondent approached the High Court by filing Criminal Petition No. 07 of 2024 under Section 482 CrPC. The High Court, by the impugned judgment and order dated 14.03.2024, allowed the petition, set aside the order of the Trial Court, and directed that an opportunity be granted to the Respondent to further examine PW-1, with reference to the call detail records. The High Court observed that both the parties shall cooperate to ensure speedy trial, since the matter pertains to 2016. Aggrieved thereby, the Appellant has approached this Court.

4. Learned counsel appearing on behalf of the Appellant-State submitted that the prosecutrix had already been examined and extensively cross-examined on multiple occasions and that the accused had been afforded ample opportunity to cross-examine the prosecutrix. It was contended that the application under Section 311 CrPC was filed after an unexplained delay of more than four years and was merely an attempt to fill lacunae in the defence case and prolong the trial. It was further submitted that the Call Detail Records (CDRs), on the basis of which recall was sought, had already been filed by the prosecution and were always within the knowledge of the defence.

5. Per contra, learned counsel appearing on behalf of the Respondent-accused submitted that the CDRs relied upon by the defence were important as they allegedly reflected the frequency,

timing, and nature of telephonic contact between the prosecutrix and the Respondent around the relevant period, which according to the Respondent had a material bearing on the prosecution case. It was contended that due to inadvertence, certain relevant questions arising from the said CDRs could not be put to the prosecutrix during her earlier cross-examination and therefore further cross-examination was necessary for a just decision of the case. It was further submitted that the power under Section 311 CrPC is intended to enable the Court to discover the truth and ought to be exercised where the proposed examination is essential for fair adjudication.

6. We have heard the learned counsels appearing for the parties and perused the material placed on record.

7. Section 311 of the CrPC confers wide discretionary power upon the Court. The said provision states that “*any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon 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 re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.*”

8. This Court has, through a consistent line of decisions, expounded upon the nature, scope, and limits of the power conferred by Section 311 CrPC.

9. This Court in ***Natasha Singh v. Central Bureau of Investigation*, (2013) 5 SCC 741**, observed as under:

“15. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party”

10. The Supreme Court, in ***Swapan Kumar Chatterjee v. Central Bureau of Investigation*, (2019) 14 SCC 328**, reiterated that the power under Section 311 CrPC is to be exercised with great caution and only for strong and valid reasons. It was observed as under:

“11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be

exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

11. Similarly, the Supreme Court in the case of ***Vijay Kumar v. State of Uttar Pradesh & Anr.***, 2011 (8) SCC 136, observed that,

“14. There is no manner of doubt that the power under Section 311 of Code of Criminal Procedure is a vast one. This power can be exercised at any stage of the trial. Such a power should be exercised provided the evidence which may be tendered by a witness is germane to the issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. It hardly needs to be emphasized that power under Section 311 should be exercised for the just decision of the case. The wide discretion conferred on the court to summon a witness must be exercised judicially, as wider the power, the greater is the necessity for application of the judicial mind. Whether to exercise the power or not would largely depend upon the facts and circumstances of each case. As is provided in the Section, power to summon any person as a witness can be exercised if the court forms an opinion that the examination of

such a witness is essential for the just decision of the case.”

12. In ***State (NCT of Delhi) v. Shiv Kumar Yadav & Anr.***, (2016) 2 SCC 402, this Court further emphasised that recall of witnesses cannot be permitted as a matter of course and that the Court must balance the requirement of a fair trial with other relevant considerations. It was observed:

“27.Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including un-called for hardship to the witnesses and un-called for delay in the trial. Having regard to these considerations, we do not find any ground to justify the recall of witnesses already examined.”

13. Tested on the aforesaid principles, we are of the considered view that the High Court was not justified in interfering with the

order passed by the Trial Court. The power conferred under Section 311 of the CrPC is undoubtedly wide; however, such power is required to be exercised sparingly and in judicious manner, and not arbitrarily.

14. In the instant case, the record reveals that the prosecutrix was first examined in chief and cross-examined on 04.06.2018. Her cross-examination thereafter continued on 10.07.2018. The proceedings further disclose that thereafter the prosecutrix was again recalled, re-examined and re-cross-examined on 08.08.2019 and 02.11.2019. It is thus clear that the prosecutrix was subjected to detailed and extensive cross-examination by the defence across several hearings spread over a considerable period of time. The Respondent got ample opportunity to examine the prosecutrix and to test the veracity of her deposition.

15. Furthermore, the application under Section 311 CrPC came to be filed on 14.12.2023, after an inordinate lapse of nearly four years from the completion of the cross-examination of the prosecutrix and approximately seven years after the registration of the FIR. No satisfactory explanation has been offered for this delay. The stage at which the application came to be filed is also of considerable significance. By the time the recall application was moved, 19 other prosecution witnesses had already been examined and the trial had substantially progressed. The trial has already been prolonged unduly, and the Court has a duty to

ensure its expeditious conclusion. The trial in this case has been pending for over eight years.

16. Secondly, the principal ground urged in support of the application under Section 311 CrPC is that certain facts arising from the CDRs of the relevant mobile numbers could not be brought on record during the earlier cross-examination due to inadvertence. However, it is an admitted position that the said CDRs were filed by the prosecution itself along with the charge-sheet and formed part of the record throughout the course of the trial. The defence was thus aware of the said material and had adequate opportunity to examine the prosecutrix with reference thereto. The power under Section 311 CrPC cannot be exercised merely to fill up lacunae in the defence case.

17. Lastly, it is important to mention that the prosecutrix has already been subjected to the ordeal of deposition and cross-examination on four separate occasions before the Trial Court, in addition to having her statement recorded during investigation and before the learned Magistrate under Section 164 CrPC. Directing recall would inflict further and unjustifiable hardship upon the prosecutrix. The witnesses cannot be expected to face hardship of appearing in court repeatedly, particularly in sensitive cases. It can result in undue hardship for the victims, especially so, of heinous crimes, if they are required to repeatedly appear in Court to face cross-examination.

18. In view of the foregoing discussion, we hold that the High Court erred in setting aside the order of the Trial Court and allowing the application under Section 311 CrPC.

19. Accordingly, the appeal is allowed. The impugned judgement and order dated 14.03.2024 passed by the High Court is set aside. The order dated 06.02.2024 passed by the Trial Court in Sessions Trial (Type-1) No. 38 of 2017 is restored.

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

21. The Trial Court, subject to its convenience, will conclude the trial by the year end.

.....J.
[DIPANKAR DATTA]

.....J.
[SATISH CHANDRA SHARMA]

New Delhi
May 26, 2026.