HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Revision Petition No. 375/2025

Ishtiyaq Ahmed S/o Shri Maiunuddin, Aged About 44 Years, R/o Bhishtiyo Ki Gali, Navlakha Road, Pali, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through PP
2. Mohammed Imran S/o Shri Nek Mohammed, Aged About 29 Years, R/o Navlakha Road, Pali, Rajasthan.
3. Mohammed Saleem S/o Mohammed Aslam, Aged About 29 Years, R/o Charniyo Ka Bass, Pali, Rajasthan.
4. Mohammed Toufiq @ Farman S/o Mohammed Hussain, Aged About 20 Years, R/o Bhishtiyo Ki Gali, Pali, Rajasthan.
5. Mohammed Hussain S/o Alladin, Aged About 54 Years, R/o Bhishtiyo Ki Gali, Pali, Rajasthan.
6. Mohammed Irfan S/o Mohammed Aslam, Aged About 32 Years, R/o Charniyo Ka Bass, Pali, Rajasthan.
7. Nek Mohammed S/o Jamaluddin, Aged About 54 Years, R/o Bhishtiyo Ki Gali, Pali, Rajasthan.
8. Mohammed Aslam S/o Kalu Khan, Aged About 58 Years, R/o Charniyo Ka Bass, Pali, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Naman Mohnot
For Respondent(s)	:	Mr. Narendra Gehlot, PP Mr. Omprakash Choudhary Mr. Puma Ram for Mr. Ramdev Rajpurohit

HON'BLE MR. JUSTICE SANDEEP SHAH

Order

REPORTABLE

08/09/2025

1. The present criminal revision petition has been filed by the petitioner-complainant challenging the order dated 12.03.2025 passed by the learned Sessions Judge, Pali, District Pali, in Session

Case No.243/2023 *(State of Rajasthan v. Mohammed Imran & Ors.),* whereby the application filed by the learned Public Prosecutor under Section 311 of Cr.P.C. has been dismissed.

2. Succinct facts of the case are that, based upon a report submitted by the petitioner-complainant- Ishtiyaq Ahmed, an FIR, bearing No.277/2022, came to be lodged at Police Station, Kotwali, District Pali on 23.07.2022. In the FIR, it was asserted by the petitioner-complainant that he, along with his family-members were residing in a joint family in Bhishtiyo Ki Gali area, wherein Mohammed Hussain, also used to reside. It was asserted that on 22.07.2022 in the evening, at around 07:30 P.M., there was a verbal altercation between the children, upon which, Mohammed Haider, younger brother of the petitioner-complainant had requested Mohammed Hussain and Mohammed Saleem to settle the dispute between the children, so that they may not undertake the verbal altercation.

2.1 He further submitted that after some time, Mohammed Haider, along with Illmuddin and Mohammed Samsuddin were having a talk and suddenly Mohammed Hussain with sword in his hand, Aslam with pipe in his hand, Mohammed Saleem with *Dhariya* in his hand, Mohammed Ferman with a pipe in his hand, Nek Mohammed with a sword in his hand and Mohammed Imran with a *lathi* in his hand came upon the site and started assaulting all three persons namely Mohammed Haider, Illmuddin and Mohammed Samsuddin. It was further submitted that Mohammed Hussain caused injury on the head of Mohammed Haider with the sword, Mohammed Aslam also inflicted a head injury on Mohammed Haider with the pipe and Mohammed Saleem also inflicted injury on the parietal region of Mohammed Haider's head

with the *Dhariya.* Nek Mohammed caused injury on the face of Illmuddin with the sword and Mohammed Ferman also caused injury on the hand of Illmuddin with an iron rod. Rest all i.e. Bablu son of Mohammed Aslam and Imran son of Nek Mohammed, were having *Lathi* and they hit Mohammed Samsuddin on his head with the *Lathi.* It was submitted that thereafter, the neighbours and the other residents of the colony came upon the site and intervened to end the scuffle.

2.2 Based upon the FIR so lodged, the Police Officials started investigation and the injury reports of Mohammed Samsuddin, Illmuddin and Mohammed Haider were prepared and even X-ray Report was also prepared, based upon which, the Doctor gave the opinion with regard to the nature of injuries. Post that, the charge-sheet was filed and after committal of case, the charges were framed and the learned trial Court, thereafter proceeded with the trial.

2.3 In total, 19 witnesses were examined by the prosecution and, out of the 19 witnesses, PW-15 was the Doctor i.e., Dr. Amit Kumawat, who was the author of the injury report and also the person, who had given the opinion with regard to the nature of injuries. During the course of his examination-in-chief itself, he admitted that he gave his opinion, based upon the X-ray report.

2.4 The above-mentioned fact was further fortified in his cross-examination, wherein, he admitted that he had not prepared the X-ray report and further admitted that he gave his opinion, based upon the X-ray and the report of the Radiologist, with regard to the nature of injury. Post examination of 19 witnesses, the statements of the accused-respondents under Section 313 Cr.P.C., were recorded, and thereafter, the learned Public Prosecutor filed

an application dated 12.03.2025, under Section 311 Cr.P.C., praying therein that the Doctor had opined with regard to the nature of injury, being grievous and dangerous, based upon the X-ray report, however, the Radiologist was not examined, although X-ray reports were part of record and in case, the Radiologist was not examined, then it will cause serious prejudice. He thus prayed that the Radiologist Dr. Son Singh, may be summoned to examine PW-20, failing which, the document Exh. PW-20, based upon which, the doctor had given his opinion, would not be sufficient to prove the nature of injury.

2.5 The above-mentioned application was opposed by the accused-respondents and the learned trial Court, thereafter, by way of order dated 12.03.2025, rejected the application on the ground that the examination of Radiologist was not necessary to prove the nature of injury. The learned Trial Court for the above-mentioned purpose had relied upon two different judgments; one "***Jaswant Singh & Ors. v. State of Punjab and Anr.***" passed by the "***Punjab and Harayana High Court,*** and the other one "***Ram Lakhan Mahto & Anr. v. State of Jharkhand***" passed by the ***Jharakhand High Court,*** and rejected the application, while observing that no reasons for filing the application at such a belated stage was given by the prosecution. Being aggrieved against the same, the present criminal revision petition has been filed.

3. Mr. Naman Mohnot, learned counsel for the petitioner submits that a bare perusal of language of Section 311 Cr.P.C., will reveal that the application can be filed at any stage, and therefore, the rejection of the application simply on the ground that it has been filed at a belated stage, is not at all justified. He

submits that the learned Trial Court was required to consider whether summoning of the witnesses was necessary or not for coming to a conclusion, whether it was essential for just decision of the case or not and as to whether his evidence appears to be essential or not. He further submits that in the present case, no such consideration has been dealt with by the learned Trial Court and the order in question has been passed simply, observing that there was no requirement of examining the Radiologist.

3.1 Learned counsel submits that as far as the application under Section 311 Cr.P.C. is concerned, recently, the Hon'ble Apex Court, in the case of ***"K.P. Tamilmaran v. The State By Deputy Superintendents Of Police in 2025 SCC OnLine SC 958"*** has dealt with the issue and held that it can be filed at a belated stage also and the same cannot be rejected on the ground of it being filed at a belated stage.

3.2 Further, the learned counsel, while placing reliance upon the judgment passed by the Single Bench of this Court, in *S.B. Criminal Revision Petition No.1134/2002 (Suresh Kumar v. State of Rajasthan & Ors.)*, decided on 01.08.2017, submitted that the examination of the Radiologist was necessary to prove the basis of nature of injury and, in absence of examination of Radiologist, the opinion of the doctor would not by itself be sufficient to bring home the guilt against the accused.

3.3 He further places reliance on the judgment passed by a Single Bench of Uttarakhand High Court, in the case of "***Omprakash Singh @ Papu Sapata v. State of Uttarakhand & Anr.";*** *Writ Petition (Criminal) No. 1018 of 2018*, decided on 18.04.2003, to emphasize that the examination of Radiologist and exhibiting of the X-ray film is must, along with the opinion of

Doctor to prove the guilt of an accused even under Section 325 of IPC.

3.4 He submits that the judgments relied upon by the learned trial Court are not applicable to the case in hand and the learned Trial Court has wrongly rejected the application, whereas the summoning of the witnesses i.e. the Radiologist was essential to prove the X-ray plates, which were already exhibited and further to fortify the opinion of Doctor, as the opinion of the Doctor was based upon the report given by the Radiologist in question.

4. *Per contra,* learned counsel for the respondent-accused, opposes the application and while taking support from the order impugned, submits that there was no requirement of examining the Radiologist as the Doctor was examined and further submits that no reason for delay in filing the application has been given by the prosecution and thus, the learned Trial Court had rightly rejected the application in question, which was filed at a very belated stage. He further submits that the right of the accused will be prejudiced in case the Radiologist is examined now at this stage. He, therefore, prays for dismissal of the criminal revision petition.

5. Learned Public Prosecutor, however, supports the revision petition and submits that the application under Section 311 Cr.P.C. filed by the prosecution was required to be allowed and the Radiologist Dr. Son Singh, should have been summoned by the learned Trial Court for the purpose of arriving at a just decision in the case in hand, as his evidence was very relevant for deciding the case. He thus, prays for allowing of the criminal revision petition.

6. Heard learned counsel for both the sides and perused the entire record.

7. As far as the provision of Section 311 Cr.P.C. is concerned, the same provides 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 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. [311 A. Power of Magistrate to order person to give specimen signatures or handwriting. [Inserted by Act of 2005, Section 27 (w.e.f. 23-6-2006).]- If a Magistrate of the first class is satisfied that, for the purposes of any investitgation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting: Provided that no order shall be made under this Section unless the person has at some time been arrested in connection with such investigation or proceeding.]"*

7.1 A perusal of the same will reveal that the word used "***At any stage of any inquiry, trial or other proceeding under this Code"*** will reveal that vast powers have been given to the Court to summon any person as a witness or to recall and re-examine any person already examined, if the Court comes to a conclusion that his evidence appears to be essential for the just decision of the case. It is further clear that the power to summon is not confined to any particular class of persons and even a person not named as a witness can be summoned and this power can be exercised even on its own motion by the Court concerned. While dealing with the power under Section 311 Cr.P.C., the Hon'ble

Apex Court, in the case of ***"Rajaram Prasad Yadav v. State of Bihar & Ors.", reported in 2013(14) SCC 461,*** has held as under:-

> *"23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:-*
>
> *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 Cr.P.C. 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 safe guard, 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."

8. In the case of ***"Varsha Garg v. State of Madhya Pradesh & Ors.", reported in 2023(19) SCC 646,*** the Hon'ble Apex Court has held as under:-

*"**47**. In the present appeal, the argument that the application was filed after the closure of the evidence of the prosecution is manifestly erroneous. As already noted above, the closure of the evidence of the prosecution took place after the application for the production of the decoding register and for summoning of the witness under Section 311 was dismissed. Though the dismissal of the application and the closure of the prosecution evidence both took place on 13 November 2021, the application by the prosecution had been filed on 15 March 2021 nearly eight months earlier. As a matter of fact, another witness for the prosecution, Rajesh Kumar Singh, was also released after examination and cross-examination on the same day as recorded in the order dated 13 November 2021 of the trial court.*

***48**. The Court is vested with a broad and wholesome power, in terms of Section 311 of the CrPC, to summon and examine or recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar. This Court in Zahira Habibulla H. Sheikh (supra) while dealing with the prayers for adducing additional evidence under Section 391 CrPC at the appellate stage, along with a prayer for examination of witnesses under Section 311 CrPC explained the role of the court, in the following terms: (para 43):-*

> ***43**. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence- collecting process. They have to monitor the proceedings in aid of justice in a*

manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

***49**. Further, in Zahira Habibullah Sheikh (5) (supra), the Court reiterated the extent of powers under Section 311 and held that: (para 27):-*

***27**. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas*

> *the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."*

9. A bare perusal of the provision as well as the judgments referred to supra, clearly points out that the application under Section 311 Cr.P.C. can be filed and considered at any stage of the trial, be it even at the stage of pronouncement of judgment. Further the provision in question can be resorted to by the learned Trial Court with the view to aid it to come to a just decision or for the purpose of finding out the truth or obtaining proper facts which lead to just and correct decision in the case. The Court in such a case can call the person concerned as a witness, even though his name is not entered in the list of witnesses or can even re-examine a witness, who has already been examined. It is further clear that calling a witness or re-examining a witness for the purpose of finding out the truth in order to enable the Court to arrive at a just decision cannot be said to be filling the lacuna in the present case, until and unless it is shown that serious prejudice would be caused to the accused resulting in miscarriage of justice.

9.1 Fairness of a trial is sacrosanct as far as our judicial system is concerned. Thus, the denial of consideration of the application can be only in the circumstances, where there is an apprehension of prejudice to the accused or that examination/re-examination of a witness was not required for a just decision of the case in hand. In the present case, no such prejudice has been shown or pleaded by the respondents. Inasmuch as, even if, the witness is examined, the accused will get an opportunity to cross-examine

him. Further, the trial would not be delayed as only a single witness is to be examined. Not only this, the opinion of the witness is already part of record as Exh.20 and his presence would further be beneficial for the Court to arrive at a just decision to find out as to on what basis the doctor gave the opinion about the nature of the injury. Thus, considering the above-mentioned circumstances, the ground of delay in filing the application or any prejudice being caused to the accused, cannot be sustained in the present case.

10. As far as the second ground for rejection of the application being that there was no requirement of examination of the Radiologist is concerned, the same is also without any justifiable basis. A bare perusal of Exh.20 as well as Exh.18 will clearly reveal that the Radiologist has given his opinion upon the X-ray and based upon his opinion, the medical jurist (i.e. PW-15 Dr. Anil Kumawat) has given his opinion with regard to the nature of injury. Dr. Anil Kumawat, PW-15 has himself admitted that, he has given his opinion, based upon the X-ray report and the X-ray report was prepared by the Radiologist. He has further fortified the fact that his opinion is based upon the report of the Radiologist. It is thus, clear that in case the Radiologist is not examined, then the same will lead to miscarriage of justice as the nature of injuries would not be proved.

11. In this regard, the judgment passed by this Court, in the case of "***Dholiya v. State of Rajasthan & Ors. in 2013 SCC OnLine Raj 2142"*** in S.B. Criminal Revision Petition No.613/2000, dated 11.07.2013 will be relevant, wherein this Hon'ble Court has held as under:-

> *"It is true that P.W. 4, Kishan, who is the injured, has stated that he received a cut in his finger and other witnesses have also stated so. To put an injury in the*

> *definition of grievous injury, the relevant provision is Section 320 IPC. Section 320 sub-clause (7) says that if there is a fracture of a bone, it will designate as grievous injury. Admittedly, case of the prosecution is that the injured Kishan has suffered fracture of the finger bone. The prosecution has not placed the case of grievous injury in any other way contained in Section 320, but P.W. 1 Dr. Prakash Chand has not stated anything that Kishan has suffered any fracture over his finger and he has only deposed that he advised X-Ray for injury No. 1, meaning thereby, in absence of X Ray, he could not ascertain the nature of the injury and Radiologist, X-Ray Plates have not been produced before the Court below and Appellate Court has rightly considered the fact that in absence of Radiologist and X-Ray Plates, the fact of causing fracture could not be established."*

12. Similarly, the Andhra Pradesh High Court (Amrawati Bench), in the case of "***Vunnam Babu v. State of Andhra Pradesh, reported in 2025 SCC OnLine AP 2186,*** in S.B. Criminal Revision Case No.2658/2017, decided on 16.06.2025, held as under:-

> *"**22**. Therefore, in the facts and circumstances of present case, non-examination of the radiologist and not marking the radiologist report and X-rays are fatal to the case of the prosecution to prove the guilt of the Petitioner for the offence under Section 326 of 'the I.P.C.' However, there are injuries which were caused by the Petitioner by using Material Object No.1. Therefore, the Petitioner is liable for punishment under Section 324 of 'the I.P.C.' Hence, the conviction under Section 326 of 'the I.P.C.,' imposed by the learned Trial Court and confirmed by the learned Appellate Court is liable to be interfered and set aside. However, the Petitioner is convicted for the offence punishable under Section 324 of 'the I.P.C'."*

13. Furthermore, this Court, in the case of "***Soma v. State of Rajasthan, reported in 2020 SCC OnLine Raj 2016*** in Criminal Appeal No.501/1997, decided on 04.01.2020, has clearly held that the examination of the Radiologist and exhibiting of the X-ray

plates is must to prove an offence under Sections 326 and 307 of IPC, and held as under:-

> *"**10**. Shri Bhagat Dadhich, Advocate, representing the appellant fairly did not dispute the fact that the incident actually took place, wherein Shanker received injuries, which have been enumerated above. However, his contention was basically focused at the right of private defence being available to the accused-appellant. In this regard, I have perused the evidence of injured Shanker (PW/4); the Investigating Officer Shri Kamla Shanker, ASI (PW/9); the Medical Jurist Dr. Rakesh Verma (PW/1) and the evidence of the defence witnesses. It is clear from the material available on record that the injured Shanker was caused seven injuries, of which, three were opined to be grievous in nature. Another accused Amrit found responsible for causing grievous injury by a blunt weapon to the injured Shanker was convicted for the offence under Section 325 IPC and was extended benefit of probation. The appellant allegedly inflicted a sword blow on the leg of the injured Shanker. Though, the injured claimed that his leg was chopped off by impact of the blow, but a perusal of the medical evidence as deposed by Dr. Rakesh Verma (PW/1) indicates otherwise and there is nothing which can satisfy the Court that the leg of the injured was actually chopped off. Thus, all that can be concluded is that the injured was caused an injury on the leg by a sharp weapon which is attributed to the appellant. For proving that the injury caused to Shanker was grievous, the prosecution was required to prove the X-Ray plates and the X-Ray reports by examining the Radiologist, but no such effort was made at the trial. The Medical Jurist Dr. Rakesh Verma (PW/1) did not claim in his evidence that he conducted the X-Ray examination of the (6 of 7) [CRLA-501/1997] injured or issued the X-Ray report. Therefore, the finding recorded by the trial court that the prosecution duly proved the fact that the injured Shanker received grievous injury on the leg is not based on any legal evidence. In addition thereto, this court is conscious of the fact that as per the injury report of the accused Soma (Ex.D/6), he was found suffering from a grievous injury on the left hand. A specific suggestion regarding the cross case (FIR No. 30/1997) was given to the injured Shanker, who admitted that the cross case was indeed registered against him. The Investigating Officer Shri Kamla Shanker (PW/9) also admitted that a charge*

sheet (Ex.D/5) was filed against Shanker in the cross case for the offences under Sections 447, 324, 325/34 IPC. The prosecution has offered no explanation whatsoever for the injuries caused to the injured-accused."

14. Considering an identical situation, the Andhra Pradesh High Court, in the case of "***Palacharla Rama Rao v. State of Andhra Pradesh", decided on 12.11.2001, reported in 2001 SCC OnLine AP 1186*** has held that the learned Trial Court was justified in summoning the Radiologist under Section 311 of Cr.P.C., as his evidence was necessary to prove the nature of injury and as to whether it constituted the necessary ingredients of the offence in question, the Court, held as under:-

*"**18**. In the instant case also non-summoning of the Radiologist for production of his information and the X-rays cannot be said that it is a lacuna on the part of the prosecution as the prosecution has summoned the concerned Doctor who has treated the injured persons and gave the wound certificates is expected to produce all the relevant information/reports in respect of the said treatment of the injured persons. Therefore, the learned Judge thought it fit to examine the Radiologist and for production of X-rays to come to a just decision and summoned the Doctor to adduce evidence and produce the X-ray reports and therefore it cannot be said that summoning of the Radiologist for giving his evidence and producing the X-rays is a lacuna sought to be filled by the prosecution.*

***19**. For all the reasons and in view of the afore said latest decision of the Hon'ble Supreme Court in Rajendra Prasad Supra, explaining the meaning of lacuna in the prosecution, the cases cited by the learned counsel appearing for the petitioner which are the cases dealt on an application filed by the prosecution to fill up the lacuna, have no application to the facts of the case as here is the case where the proper evidence was not adduced and the relevant material was not brought on record by the concerned Doctor examined by the prosecution."*

15. In the case of, "***Pokar Ram & Ors. v. State of Rajasthan, reported in 2016 SCC OnLine Raj 6495",*** in S.B. Appeal

No.508/1997, decided on 30.06.2016, this Court, while considering the fact that the Radiologist and the X-ray plate were not examined, upheld the acquittal, set aside the conviction of the appellant therein for offence punishable under Section 307 IPC and held as under:-

> *"**15**. It is an admitted fact that neither the Radiologist nor the Technician in relation to the X-ray Plates, which were exhibited, were examined.*
>
> ***20**. In view of the aforesaid discussion, this appeal is partly allowed. The conviction of appellant No.1–Pokar Ram under Section 307 IPC is set aside and his conviction under Sections 147 and 323 IPC along with appellant No.2 to 5 is sustained. As noticed herein before, the appellant No.1 has undergone substantial sentence and, therefore, the sentence awarded to the appellant No.1 is reduced to the period already undergone."*

16. The Hon'ble Apex Court, in the case of ***"Akula Raghuram v. State of Andhra Pradesh",*** decided on 11.02.2025, reported in ***2025(4) SCC 209,*** while dealing with an issue of ossification test of a minor girl, has observed that non-examination of the Radiologist and not exhibiting his report puts to serious peril the prosecution case to prove that the victim was minor. The Hon'ble Apex Court, has held as under:-

> *"**13**. In this context, we have to examine Annexure A-9-evidence of the Medical Officer who claimed that the age of the victim was between 16 to 17 years. The doctor specifically said that he referred PW 7 to a Radiologist and based on the report, he issued certificate at exhibit P-7 certifying her age to be between 16 to 17 years. Even in the case of ossification test, it was trite that there could be a difference of two years, either way and in that circumstance, the age determination by the doctor as between 16 to 17 years does not conclusively establish that the victim was a minor child at the time of the alleged abduction. We cannot also but notice that the Radiologist was neither examined nor was the his report marked in evidence. This seriously puts to peril the prosecution case that the victim was a minor."*

17. This Court, in the case of "***Bhanwar Singh & Ors. v. State of Rajasthan", reported in 2009 (2) RLW 1085,*** decided on 04.09.2008, has held as under:-

> *"**7**. Although injuries on the person of injured-Rampratap have been proved by the evidence of PW4 Dr. B.D. Lahoti but it is based on the injury report Exh.P.2 which he prepared on visual examination of injured-Rampratap. In that report, he reserved his opinion in respect of Injuries No.1 & 2 untill after the injured was subjected to x-ray examination. X-ray Plate Exh.P.3 and x-ray report Exh.P.4 were produced on record but none of them have been proved by production of Radiologist. In order to prove that those injuries were in the nature of grievous hurts, non-production of Radiologist would certainly be detrimental to the case of the prosecution. It was Radiologist, would had to prove that he subjected injured-Rampratap to examination and in this manner, x-ray plate Exh.P.3 could be linked to the injured and on that basis, it was Radiologist alone who could further prove that Exh.P.4, the x-ray report was prepared under his signature in which he found injuries in the nature of fractures. Contention of the learned Public Prosecutor is that such injuries should be treated to be grievous hurt on the mere statement of PW4 Dr.B.D. Lahoti because he was capable of giving such opinion upon examination of x-ray plate. But in the first case, perusal of statement of Dr. B.D. Lahoti does not indicate any such assertion made by him and secondly this could not be so opined by Dr.B.D. Lahoti unless x-ray plate itself was proved to be that of injured Rampratap. Though on the basis of statement of Dr. B.D. Lahoti, PW4, injuries No.1 and 2 merely proved as simple hurt but those injuries in absence of examination of Radiologist, cannot be accepted as grievous hurts in the meaning of Section 320 IPC. In Naraindas supra also such was the question where this court due to non-production of Radiologist did not find injury proved as grievous hurt and same view was taken in Ganpatlal supra."*

18. Thus, taking guidance from the above-mentioned judgments, it is clear that for the purpose of determining the nature of injury, examination of the medical jurist, simplicitor would not be

sufficient and the Radiologist, based upon whose X-ray report, the medical jurist has given his evidence, will be required to be examined and the X-rays will be required to be exhibited for determining the actual nature of injury. Thus, the examination of Radiologist is essential when the offence alleged is under Sections 326 and 307 IPC as it is only post his examination that the details of the X-ray and the nature of injury, based upon the X-ray can be brought on record.

19. As an upshot of the above-mentioned discussion, the present criminal revision petition is **allowed.** The order impugned dated 12.03.2025 passed by the learned Session Judge, Pali, District Pali, in Session Case No.243/2023 *(State of Rajasthan v. Mohammed Imran & Ors.),* is quashed and set aside. The application filed by the prosecution under Section 311 Cr.P.C. is also **allowed** and the learned Trial Court is directed to summon and examine Dr. Son Singh, Radiologist at the earliest and also give an opportunity to the accused to cross-examine the witness. The learned Trial Court shall proceed to adjudicate the matter at the earliest, preferably within a period of three months, from the date of passing of this order.

20. All pending applications, if any, stand disposed off.

(SANDEEP SHAH),J

186-devrajP/-