



REPORTABLE

**MAYANKKUMAR NATWARLAL
KANKANA PATEL & ANR. ...APPELLANT(S)**

STATE OF GUJARAT AND ANR. ...RESPONDENT(S)

VIKRAM NATH, J.

1. Leave granted.
2. These appeals arise from the common judgment and order dated 27th November, 2024 passed by the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 5648 of 2024 and Special Criminal Application No. 10715 of 2024. By the impugned order, the High Court set aside the order dated 30th March, 2024 passed by the learned Sessions Judge in Sessions Case No. 22 of 2018 and allowed the application filed under Section 311 of the Code of Criminal Procedure, 1973¹, permitting the prosecution to examine the minor child, Aashvi, as a witness.

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3. The facts necessary for adjudication of the present appeals are as follows:
- 3.1 The Appellant No.1 and the deceased were married in the year 2010. A daughter, Aashvi, was born from the wedlock in 2013. Respondent No. 2, the father of the deceased, is the complainant who lodged a complaint on 1st December, 2017, registered as FIR No. 224 of 2017, for offences punishable under Sections 498A, 306, 323, 504, 506(2) and 114 of the Indian Penal Code, 1860² and Sections 3 and 7 of the Dowry Prohibition Act, 1961.
- 3.2 The allegation in the FIR is that the complainant's daughter committed suicide on 5th November, 2017 by hanging herself with a dupatta. The FIR came to be registered nearly one month after the incident. It was alleged that the accused-appellants had subjected the deceased to mental and physical cruelty in connection with demands for money for purchase of a car, house, and motorcycle. It was further alleged that Appellant No. 1 had an extra-marital relationship, abused the deceased verbally, and threatened her, thereby driving her to commit suicide.
- 3.3 Upon completion of investigation, a chargesheet was filed on 23rd February, 2018. Charges were framed, and the trial commenced.

² In short "IPC"

- 3.4 During the course of trial, after examination of 21 prosecution witnesses, the respondents filed an application dated 6th September, 2023 under Section 311 CrPC seeking permission to examine the minor daughter of the deceased, Aashvi, as a prosecution witness. The application was founded on the assertion that the child was present in the house at the time of the incident. At the relevant time, the child was approximately 4 years and 9 months old.
- 3.5 The Trial Court rejected the application. It held that at no earlier stage had the complainant disclosed that the minor child was present at the time of the incident. The Trial Court noted that neither the FIR nor the statements recorded during investigation, including the complainant's statement, contained any such averment. It was further observed that despite a delay of nearly one month in lodging the FIR, no such fact was disclosed. Considering the tender age of the child and the unexplained delay, the Trial Court declined to permit her examination.
- 3.6 Aggrieved thereby, the respondents approached the High Court.
4. The High Court, by the impugned common order, allowed the petitions. The order of the Trial Court was set aside, and the prosecution was permitted to examine the minor witness. The High Court directed the Trial Court to ensure adequate opportunity of

cross-examination to the defence and to take due care of the mental and emotional well-being of the child during deposition.

5. The High Court proceeded on the basis that the minor could be treated as a material witness, and possibly an eyewitness, having regard to Section 118 of the Indian Evidence Act, 1872. It further observed that the complainant had attempted to have the child's statement recorded during investigation but was allegedly denied by the police. On these considerations, the Trial Court's order was interfered with. Aggrieved thereby, the Appellants are before this Court.
6. We have heard Mr. Mayank Kshirsagar, learned counsel for the Appellants; Mr. Pradhuman Gohil, learned counsel for Respondent No. 2-complainant; and Ms. Swati Ghildiyal, learned counsel for the Respondent-State.
7. Learned counsel for the Appellants submitted that the child was only 4 years old at the time of the incident and her statement was never recorded contemporaneously. It was argued that the child is now about 11 years old and has been residing with her maternal grandparents since the incident. Given the lapse of over seven years, it was contended that the child cannot be expected to recall the incident reliably. The possibility of tutoring was emphasized, particularly in view of her prolonged separation from Appellant No.

1, her father. It was further urged that neither the FIR nor any prosecution witness has stated that the child was present at the time of the incident. According to the Appellants, permitting her examination at this stage would cause serious prejudice.

8. Per contra, learned counsel for the Respondents submitted that attempts were made to have the child's statement recorded during investigation but were ignored by the police. It was contended that the application under Section 311 CrPC was moved to bring the best available evidence on record and that the testimony of the child is necessary for a just decision of the case.
9. Having considered the rival submissions and examined the record, we are of the considered view that the High Court was not justified in interfering with the order of the Trial Court. The respondents have failed to establish that examination of the minor witness, at this belated stage, is essential for the just decision of the case.
10. Our conclusions rest on the following grounds:
 - 10.1 First, there is no material on record to substantiate the claim that the minor child was present at the time of the incident. The FIR, statements recorded during investigation, and the testimony of the complainant do not disclose such presence. The reliance placed on a statement made during re-examination of the

complainant does not establish that the child witnessed the incident. At best, it suggests that the child was in the house and not in the room where the incident occurred. The assumption that she is an eye-witness is, therefore, speculative.

10.2 Second, the child was of a very tender age at the time of the incident. More than seven years have elapsed since then. Memory at such a young age is vulnerable to distortion and external influence. The fact that the child has been residing with her maternal grandparents throughout this period raises a reasonable apprehension of tutoring. This significantly affects the reliability and evidentiary value of her proposed testimony.

10.3 Third, the application under Section 311 CrPC was filed after examination of 21 prosecution witnesses and at an advanced stage of trial. Though the power under Section 311 is wide, it is to be exercised sparingly and only when the evidence sought is indispensable for arriving at the truth. The present case does not satisfy this requirement. Allowing the examination of the child witness would only protract the trial and cause prejudice to the accused.

11. In view of the foregoing discussion, we hold that the High Court committed an error in law in setting aside the order of the Trial Court and permitting the examination of the minor witness.

12. Accordingly, the appeals are allowed. The impugned common order dated 27th November, 2024 passed by the High Court is set aside. The order dated 30th March, 2024 passed by the learned Trial Court in Sessions Case No. 22 of 2018 is restored.
13. The Trial Court shall proceed with the trial in accordance with law.

.....J.
[VIKRAM NATH]

.....J.
[AUGUSTINE GEORGE MASIH]

**NEW DELHI;
DECEMBER 19, 2025**