

COURT OF DISTRICT & SESSIONS JUDGE-II, JAMUI
ST 53/2013

16.02.2026 The record is today put up for order on petition dated 23.01.2025 filed on behalf of the accused persons to recall the prosecution witness no. 5 Marwa Devi, the rejoinder to which has been filed by the prosecution on 27.08.2025.

The Id. Counsel for the accused persons has submitted that on 02.01.2025 the examination-in-chief of PW 5 Marwa Devi was conducted by the prosecution but the cross-examination could not be held by the defence. It is further submitted that by mistake the Advocate Clerk had wrongly entered the date of this trial due to which neither the pairvi could be done nor the witness could be cross-examined. It was due to lack of knowledge and was not deliberate. The Id. Counsel in such view prayed to recall the prosecution witness no. 5 Marwa Devi in the interest of justice so that the cross-examination could be conducted by the defence.

The Id. Additional P.P. for the State vide rejoinder dated 27.08.2025 has opposed the petition dated 23.01.2025 and has submitted that it is not maintainable either in law or on facts. The witness, Marwa Devi was examined by the prosecution on 02.01.2025 but no one appeared on behalf of accused persons to cross-examination the witness, she was hence discharged. In such view the Id. Prosecution prayed to reject the petition dated 23.01.2025 filed on behalf of the accused persons.

I have heard both the parties.

On perusal of the record it transpires that on 02.01.2025 the prosecution witness no. 5 Marwa Devi was produced before the Court, her examination was done by the Id. Prosecution and despite repeated calls no one appeared on behalf of accused persons for cross-examination, as such the witness was discharged. The Court has heard the plea by the defence that they had no knowledge of the date of the trial. The very purpose of Court in a trial is to arrive at a just decision of the facts in issue. For which it is essential that both parties be given opportunity to lead their evidences. The evidence is complete when the opposite party is given the opportunity to cross-examine the witness to test his veracity and to draw out contradiction if any from his statement. The un-crossed testimony of such witness can not be taken into evidence for appreciation.

In such view the petition dated 23.01.2025 filed on behalf of accused persons is allowed. The Id. Addl. P.P. is directed to produce the witness no. 5 Marwa Devi who is recalled for cross-examination by the defence.

Next date is fixed on 06.03.2026 for evidence on part of prosecution.

Dictated

DASJ II