

1 SC 297/2017  
STATE Vs. ARVIND PAL & ORS.  
FIR No. 164/2017  
PS Sonia Vihar

20.03.2025

Present: Sh. Kamal Akhter, Ld. Addl. PP for the State.  
Sh. Ramesh Sarraf and Sh. D. S. Chauhan, Ld. Counsels for  
accused Arun and Sonu alongwith accused Arun.  
Sh. C. B. Singh, Ld. Amicus Curiae for accused Arvind Pal  
alongwith accused.  
Accused Sonu produced from JC. (On bail in the present  
case).

Today the matter is fixed for consideration of the application  
filed on behalf of the State u/s 348 BNSS, 2023.

The reply to the aforesaid application is filed. Same is taken  
on record. Copy supplied.

Arguments heard.

It is submitted by the Ld. Counsels for accused Arun and  
Sonu that the present application is nothing but an abuse of process of  
law and the prosecution is trying to fill the lacuna in their case and the  
same has been belatedly filed on behalf of the prosecution.

It is submitted by the Ld. Counsels for accused Arun and  
Sonu that PW HC Vijender Shukla was already dropped by this Court  
vide order dated 22.03.2024, after the submissions of the then Ld. Addl.  
PP for the State was recorded and as per the said submissions, the  
prosecution had not wanted to examine the said witness, since, his  
testimony was merely formal in nature.

It is submitted by the Ld. Counsels for accused Arun and Sonu that the State has not been able to point out as to why the testimonies of the concerned doctors, who are supposed to be called on behalf of the prosecution and there is no justification or reasonable grounds explained in the application, as to why they may be called as witnesses in the present case.

It is submitted by the Ld. Counsels for accused Arun and Sonu that there is no requirement to examine the then Ld. MM, who had conducted the TIP proceedings in the present case.

The Ld. Amicus Curiae for the accused Arvind Pal has adopted the above submissions made on behalf of the other accused persons.

It is trite law that the powers u/s 348 BNSS, 2023, can be exercised at any point of time by this Court, prior to pronouncement of judgment, however, the only caveat attach is that the testimony of such person appears to be essential for the just decision of the case.

As per the records, the Ld. Addl. PP for the State is seeking calling of the medical witnesses, namely Dr. Saikat Jana, Dr. Rahul, Dr. Jitender Bansal and Dr. Avani. The said doctors had either prepared the MLCs of the injured victims or they had given the opinion as to the nature of the injury. The State is not seeking to bring on record any additional document in evidence and the said medical documents were already filed alongwith the chargesheet. Therefore, the accused persons were already aware of the said documents, since the copy of the same was supplied to them alongwith the chargesheet. Therefore, there is no question of them being taken by surprise, since, no additional or new evidence is being brought on record.

There is no merit in the submissions made by Ld. Counsels for the accused persons that the testimony of the then Ld. MM, who conducted the TIP proceedings is not relevant, since, the accused persons are not ready to admit the said TIP proceedings by making their statements u/s 294 Cr.PC. The TIP proceedings are relied upon by the prosecution and by no stretch of imagination, it could be held that the concerned judicial officer, who had conducted the said proceedings is not a relevant witness.

There is merit in the submissions made by Ld. Counsels for the accused persons, wherein, they had duly objected to recalling of HC Vijender Shukla, after he was earlier dropped by the prosecution vide order dated 22.03.2024.

Therefore, the present application moved on behalf of the State is partly allowed and let fresh summons be issued to (1) Dr. Saikat Jana, Senior Ortho, who had given the opinion as to the nature of injury on MLC, Ex. PW1/A; (2) Dr. Rahul, CMO, who had prepared the MLC, Ex. PW1/A of patient Manish Chauhan and also the MLC of injured Kiran Pal; (3) Dr. Jitender Bansal, SR, Lok Nayak Hospital, who had prepared the X-ray report qua the injured Manish Chauhan and Kiran Pal; (4) Dr. Avani, Senior ENT, who had given the opinion as to the nature of the injury on the MLC of injured Kiran Pal through IO/SHO concerned for **29.04.2025 at 02:00 PM**.

The Ahlmad is directed to ensure that the copy of the MLC no. 8797/17 and 8786/17, the X-ray Department records of MLC No. 8797/17 and 8786/17, are annexed with the summons at 2.00 PM. The said summons shall contain the direction to MS Lok Nayak Hospital to depute some other Doctor who had worked with Dr. Saikat Jana, Dr.

Rahul, Dr. Jitender Bansal and Dr. Avani in case, she/he is no longer working with them, so that the said Doctor can identify the handwriting and signatures of Dr. Saikat Jana, Dr. Rahul, Dr. Jitender Bansal and Dr. Avani. In case no such doctor is available, then the MS concerned shall ensure that the record clerk shall appear alongwith all the relevant original records.

Let, a letter of request be issued to Ms. Preeti Aggarwal, the then Ld. MM, North East District, who had conducted the TIP proceedings in the present case, to appear before this Court on **30.04.2024 at 02:00 PM**, so that her testimony may be recorded in the present case.

Now to come up for PE on **29.04.2025** and **30.04.2025** at **02:00 PM**.

(ATUL AHLAWAT)  
ASJ (FTC)/North-  
East/KKD Courts/  
Delhi/20.03.2025