

**IN THE COURT PRINCIPAL DISTRICT & SESSIONS JUDGE
WEST DISTRICT : TIS HAZARI COURTS : DELHI**

**Sessions Case No. 654/2022
CNR No. DLWT01-009416-2022**

State

Versus

**1. Rajesh @ Ravi
S/o. Sh. Mitthu Lal Singh
R/o. H. No. B-20, Baprola Vihar
Najafgarh, Delhi.**

**2. Ajit @ Jitu
S/o. Sh. Ugma Ram
R/o. Village Soopaka
Tehsil Didwana
District Nagaur, Rajasthan.**

**FIR No. 788/2020
PS: Ranhola
U/s: 308/341/506/34 IPC**

ORDER

1. Vide this order I shall decide the application filed by the accused namely Rajesh @ Ravi under Section 348 of the Bharatiya Nagarik Suraksha Sanhita (for brevity 'BNSS') for recalling the injured/complainant Mukesh PW-1 for further cross-examination.
2. Briefly stated, the case of the prosecution is that on 16.08.2020 at about 2:50 PM at the Ganda Nala Road, near Kheri Baba Pul, Dass Garden, Delhi within the jurisdiction of police station Ranhola, both the accused persons in furtherance of their common intention with each other, wrongly restrained the complainant Mukesh and thereafter assaulted him with fists and

blows on his stomach and face which injuries were opined as dangerous by the doctor with such intention or knowledge and under such circumstances, that if they by their act had caused the death of Mukesh, both of them would have been guilty of culpable homicide not amounting to murder. Also, on the said date both accused persons in furtherance of their common intention with each other criminally intimidated the complainant Mukesh to kill him. Charges have been framed against both accused under Sections 341/34, 308/34 and 506/34 IPC to which they pleaded not guilty and claimed trial.

3. The application under Section 311 Cr.P.C has been filed at the stage of final arguments. The reason stated for recalling the complainant witness Mukesh PW-1 therein is that his cross-examination could not be done completely on certain questions. Also, that this witness is a material witness in this case and so irreparable loss would be caused if the opportunity to further cross-examine the said witness is denied and the cross-examination of the witness is essential for the just decision of the case. Thus, it has been prayed that the complainant Mukesh be recalled for further cross-examination in the interest of justice.

4. Arguments have been addressed by Mr. Pranay Abhishek, the Ld. counsel for the accused Rajesh @ Ravi and Mr. Atul Kumar Shrivastava, the Ld. APP for the State.

5. A perusal of the record shows that the complainant Mukesh PW-1 was examined-in-chief and cross-examined on 09.07.2024. The application is being moved belatedly now at the stage of final arguments. Also, it is important to note that the complainant Mukesh PW1 in his cross- examination has categorically stated about the accused persons committing the offence and he has also stated that the matter had been compromised between them, they had compensated him by giving money and that he did not want that they go to jail. The accused persons are stated to have filed a petition bearing CRL. M.C. 1217/2025 titled *Rajesh & Anr. v. State Govt. of NCT of Delhi & Anr.* for quashing of the proceedings before the Hon'ble High Court of Delhi, which petition was dismissed vide order dated 04.07.2025 and it is after this that the present application has been filed.

6. Section 348 of the BNSS reads:

“Section 348. Power to summon material witness, or examine person present - Any Court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call 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.”

7. In ***U.T. of Dadra and Haveli and Ors. v. Fatehsinh Mohansinh Chauhan*** MANU/SC/3471/2006, the Hon'ble Supreme Court with regard to the power of the Court to summon a

material witness under Section 311 Cr.P.C (akin to Section 348 BNSS) has held that:

*“In Mohanlal Shamji Soni v. Union of India and Anr. MANU/SC/0318/1991 : 1991CriLJ1521 it was observed that it is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides. It is the duty of a Court not only to do justice but also to ensure that justice is being done. It was further held that the second part of the Section does not allow for any discretion but it binds and compels the Court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case. **It was emphasized that power is circumscribed by the principle that underlines Section 311 Cr.P.C., namely, evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. Further, that the power must be used judicially and not capriciously or arbitrarily. It was further observed that evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties and the discretion of the Court must obviously be dictated by exigency of the situation and fair play and good sense appear to be the safe guides and that only the requirement of justice command the examination of any person which would depend on the facts and circumstances of each case.**”*

(Emphasis added)

8. Keeping in mind the above principles, on analysis of the case record one finds that the complainant/injured Mukesh PW-1 has already been cross-examined by the learned counsel for the accused persons way back on 09.07.2024 and the cross examination is not cryptic. The reason stated for recalling the

complainant Mukesh PW-1 being that his cross-examination could not be done completely on certain questions, does not seem plausible especially considering the nature of questions already asked and the belated stage at which this application is being filed. The present application is being filed after the complainant/injured Mukesh PW-1 has claimed in his cross-examination to have compromised the matter with the accused persons and having been compensated for the injury caused by them. In the facts and circumstances, I do not find that the further cross-examination of the complainant Mukesh PW-1 is essential for the just decision of the case and accordingly, the application under Section 348 BNSS is dismissed.

**Announced in the open Court
on 4th day of October, 2025**

**(Dr. Aditi Choudhary)
Principal District & Sessions Judge (West)
Tis Hazari Courts: Delhi**