

**ORDER ON APPLICATION FILED BY PUBLIC
PROSECTOR UNDER SECTION 311 Cr.P.C.**

It is seen from the records that when the matter was set down for arguments on merits, the learned Public Prosecutor has filed this application under section 311 of Cr.P.C to recall PW.14-Dr.Sreenath, who treated the injured in this case for further examination-in-chief.

2. In the application, it is contended by the prosecution that while going through the records, it was learnt that in the examination-in-chief of PW.14, he has not deposed about the opinion given by him regarding the weapon used by the accused,

which was produced before him by the investigating officer and said opinion is got marked through the investigating officer as Ex.P13 and thus the evidence of PW.14 regarding issuance of Ex.P13 is material to the prosecution in order to prove its case beyond reasonable doubt and Ex.P13 speaks about the possibility of injuries by the weapon. It is also stated that if the application is not allowed, the prosecution would be put to irreparable loss and therefore, the learned Public Prosecutor sought for allowing the application to meet the ends of justice.

3. The learned counsel for the accused Nos.1 to 3 and 5 to 7 has resisted said application by filing statement of objection by contending that when the matter was set down for final arguments, the prosecution has come with this application and PW.14 was examined long back on 12.04.2017 and at that point of time, the prosecution has failed to get marked said document and it shows the negligence and laches on the part of prosecution and the said document got marked as Ex.P13 through PW.17, investigating officer and after a long gap of 5 years, the prosecution want to recall and reexamine PW.14, which is not permissible in law. PW.14 in his evidence deposed that the injury Nos.1 to 3 have not been caused by katti (sickle), but those might have been caused by knife and sickle has been recovered as per MO.5, but knife is not recovered and according to PW.14, injury No.3 is not caused by chopper. After recording of

statement of accused under section 313 of Cr.P.C, the prosecution cannot be recalled to fill up any lacuna and said application does not show the specific reason for not marking it through PW.14 and not filing any application to recall the medical witness at the earliest point of time. PW.14 without opening the seal has given opinion that the injuries caused to PW.1 as per wound certificate are possible with the above seized weapon, which may not help the prosecution even if the said witness is recalled. The case is of the year 2015 and the prosecution is not interested for successful termination of the case. With these objections, the accused sought for rejection the application.

4. The counsel for accused No.4 filed memo and adopted the aforesaid objections filed by said accused persons.

5. In this case, the accused have facing trial for the offences punishable under sections 143, 147, 148, 341, 307, 504, 109 and 212 of IPC r/w section 149 of IPC. During trial, CW.15-Dr.Sreenath, who treated injured CW.1 and issued wound certificate was examined by the prosecution as PW.14. Subsequently, when the matter was set down for arguments on merits, the prosecution has come up with application to recall PW.14 for further examination-in-chief on the ground that while going through the records to address arguments on merits, it was learned that PW.14 had issued

opinion regarding the weapon used in the commission of offence by examining the same, but PW.14 has not deposed anything about the same in his evidence. It is also stated that though said opinion has been marked in the evidence of investigating officer as Ex.P13, the evidence of PW.14, who is the author of said report is material for the prosecution to establish its case.

6. In the case on hand, admittedly, the prosecution is not seeking production of any additional document at this stage. It appears that though the opinion as per Ex.P13 was available on record as on the date of examination of PW.14, the same was not marked in his evidence by the prosecution. Hence, said inadvertence on the part of prosecution cannot be considered as filling of the lacuna in its case.

7. Moreover, recently in the case of **V.N.Patil Vs. K.Niranjan Kumar and others** reported in **2021 (3) SCC 661**, the Hon'ble Supreme Court, while reiterating the provisions envisaged in Section 311 of Cr.P.C., and by allowing the application filed by the prosecution under Section 311 of Cr.P.C., at the fag end of the trial, it has been held that the aim of every court is to discover the truth and Section 311 of Cr.P.C., is one of many such provisions which strengthens the arms of a court in its effort to unearth truth by the procedure sanctioned by law.

8. By applying the provision envisaged in Section 311 of Cr.P.C., and the proposition held in the above said decision to the facts of the case, this court is of the humble opinion that no doubt, the said opinion issued by PW.14 has been marked in the evidence of prosecution as Ex.P13 through investigating officer, who is examined as PW.17. It is the settled position of law that mere marking of a document does not amounts to its proof and it has to be proved by its author. Further in the cases of this nature, the opinion of medical officer, who treated the injured and examined the weapon allegedly used in the commission of offence plays a vital role and therefore, his evidence would be material for the prosecution in establishing its case. Hence, the witness sought to be recalled is a material witness. As stated above, the trial is a quest for truth. Hence this court is of the considered opinion that the present application needs to be allowed to meet the ends of justice. Accordingly, I proceed to pass the following:-

ORDER

The application filed under Section 311 of Cr.P.C. by the prosecution is hereby allowed.

Sd/-

(BHANUMATHI. B.C.,)

***II Addl. District & Sessions Judge
Chikkamagaluru.***

