



**ORDER ON EXH. 21 IN SESSIONS CASE No.08/2025**

**(State Vs. Kunal)**

**Introduction :-**

The present application is moved by the prosecution under Section 311 of the Code of Criminal Procedure seeking recall of the prosecutrix (PW-1) for a limited and specific purpose. The prosecution seeks permission to recall the prosecutrix in order to show her an attested copy of the hotel register allegedly maintained by Hotel Panchratna, to record her identification of the entries therein, and to enable the said document to be brought on record.

**02.** The application has been opposed by the accused by filing a detailed say, raising objections on both factual and legal grounds.

**Submissions and Rival Contentions :-**

**03.** The prosecution has contended that during the deposition of the prosecutrix, she had specifically stated that the accused had taken her to Hotel Panchratna and had established physical relations with her at that place. It is further submitted that the hotel register maintained in the said hotel contains entries reflecting the stay of the accused along with the prosecutrix, and that the said register bears the signatures of the prosecutrix and, on certain occasions, even her Aadhaar details.

**04.** It is the specific case of the prosecution that, due to inadvertence, the attested copy of the said register was not

shown to the prosecutrix at the time of her examination-in-chief, and consequently her identification of the said document could not be recorded and the document could not be exhibited. According to the prosecution, the said document is material and relevant, and its identification by the prosecutrix is essential for proper adjudication of the case.

**05.** On the other hand, the accused has strongly opposed the application contending that the document sought to be introduced is merely an attested copy and not the original register. It is further contended that the prosecutrix is neither the author nor the custodian of the said document and, therefore, cannot prove the same. The accused has also urged that the application is an attempt to fill lacuna in the prosecution case and that such recall is impermissible in law.

**Scope and Object of Section 311 CrPC :-**

**06.** At this stage, it is necessary to advert to the scope and ambit of Section 311 of the Code of Criminal Procedure. The provision confers very wide powers upon the Court to summon any person as a witness, or to recall and re-examine any person already examined, at any stage of the trial, if the Court considers that such evidence is essential for the just decision of the case.

**07.** The underlying principle of this provision is that the Court is not merely an umpire between the prosecution and the defence, but is under a solemn obligation to ensure that truth emerges and that justice is done. The power under Section 311 is thus intended to serve the cause of justice and not to be constrained by technicalities, provided its exercise does not

cause serious prejudice to the accused.

**Appreciation of the Present Application :-**

08. Upon careful consideration of the rival submissions and the material placed on record, this Court finds that the prosecutrix, in her substantive evidence, has already spoken about her presence with the accused at Hotel Panchratna and about the incident in question. The document sought to be shown to her, namely the hotel register, is not an altogether new piece of evidence introduced for the first time, but is stated to be part of the investigation record and is directly connected with the factual narrative already brought on record.

09. The purpose for which the recall is sought is limited in nature, namely, to enable the prosecutrix to identify her signatures and entries in the said register. Such identification, if proved, would have a bearing on the aspect of presence of the prosecutrix along with the accused at the relevant place and time, and may lend corroboration to her version.

**Whether It Amounts to Filling Lacuna :-**

10. The objection of the accused that the application is an attempt to fill lacuna cannot be accepted in the facts of the present case. It is true that the power under Section 311 cannot be invoked to fill up deliberate gaps left by a party. However, there is a clear distinction between a lacuna and a procedural omission or inadvertence.

11. In the present matter, the omission to show the document to the prosecutrix during her examination-in-chief appears to be a lapse on the part of the prosecution, rather than a deliberate withholding of evidence. The document itself is not

new, nor is the fact sought to be proved alien to the prosecution case already on record. Therefore, permitting recall in such circumstances would amount to curing an inadvertent omission, and not filling a lacuna in the strict sense.

**Objection Regarding Mode of Proof :-**

**12.** The objection raised by the accused that the prosecutrix is neither the author nor the custodian of the hotel register, and therefore cannot prove the document, pertains essentially to the mode of proof and admissibility of the document. Such objection is not without substance in law; however, it is premature at this stage.

**13.** The present application is confined to recalling the prosecutrix for the purpose of identification of entries and signatures. Whether such identification is sufficient to prove the document, or whether the prosecution would be required to examine the proper custodian of the record, is a matter which can be considered at the stage of appreciation of evidence. At this stage, the Court is not called upon to finally adjudicate upon the evidentiary value of the document, but only to determine whether recalling the witness is necessary for a just decision.

**Prejudice to the Accused :-**

**14.** It is equally important to consider whether allowing the application would cause any prejudice to the accused. In this regard, it is clear that the accused will have full and effective opportunity to cross-examine the prosecutrix on the said document after her recall. No right of defence is curtailed. On the contrary, the recall would enable a more complete and fair adjudication of the issues involved.

### **Nature of Offence and Duty of Court :-**

15. The present case pertains to a serious offence. In such matters, the Court is required to adopt a cautious but justice-oriented approach. The endeavour of the Court must be to ensure that all material evidence having a bearing on the truth of the allegations is brought on record, so that the final adjudication is based on a complete and comprehensive appreciation of evidence.

16. To shut out relevant material merely on account of a procedural lapse would not be in consonance with the duty of the Court to arrive at the truth.

### **Conclusion :-**

17. Having regard to the nature of the evidence sought to be brought on record, its direct relevance to the prosecution case, the stage of the trial, and the absence of any serious prejudice to the accused, this Court is of the considered opinion that the recall of the prosecutrix is necessary for the just decision of the case. The application, therefore, deserves to be allowed, albeit with appropriate safeguards.

### **:: ORDER ::**

1. The application filed by the prosecution under Section 311 of the Code of Criminal Procedure is hereby allowed.
2. The prosecutrix (PW-1) is permitted to be recalled for limited purpose only, namely to show her the attested copy of the hotel register,

to record her identification of the entries and signatures therein, and to mark the said document, subject to proof and admissibility.

**3. It is clarified that :-**

- a. The admissibility and evidentiary value of the said document shall be decided at the stage of final appreciation of evidence.
- b. The accused shall have full opportunity to cross-examine the prosecutrix on all aspects relating to the said document.

Pronounced in open Court

Alibag,  
Dt. 06/04/2026

(S.D.Bhagat)  
Addl. Sessions Judge,  
Raigad-Alibag.