

Order below Exh. 124 in Sessions Case No.28/2020
(CNR No. MHRT010007182020)

(1). On 31/07/2026 after completion of cross-examination of PW17 learned APP Smt. Deepalee Patil prayed to grant permission to re-examine the witness.

(2). Learned advocate Shri. S. G. Sutar for accused submitted he is having strong objection for re-examination. Both the advocates i.e., learned prosecutor as well as defence Counsel requested to defer the matter for deciding this issue and both of them were willing to argue the said issue elaborately with the help of judgment of Hon'ble Supreme Court.

(3). Today learned APP filed written statement at Exh.132 wherein she has formulated two points as regards to questions to be put during re-examination. She relied upon the judgment of Hon'ble Apex Court in case of **Rammi @ Rameshwar Vs. State of Madhya Pradesh reported in AIR 1999 SC 3544** and invited my attention towards the paragraphs 16 to 21 and submitted that the Hon'ble Apex Court observed that if the party who called the witness feels that explanation is required for any matter referred to in cross-examination, he has the liberty to put any question in re-examination to get the explanation. Public Prosecutor should formulate his question for that purpose. Explanation may be required either when ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation

from the witness, he has freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the Court in accordance with the other provisions.

(4). She also relied upon the judgment of Hon'ble Calcutta High Court in case of **State of West Bengal Vs. Arunesh Pathak and Ors., 2000CRILJ1039** wherein the principle of section 138 of Indian Evidence Act have been elaborately discussed and laid down that the right to re-examine appears to be absolute so far as it is directed to the explanation of matters referred to in the cross-examination. It is further observed that the question of taking the permission of the Court would arise only if new matter is introduced in re-examination and if the occasion so arises for seeking such permission and if new matter is, by the permission of the Court, introduced during re-examination, then the adverse party gets a right to further cross-examine the witness upon the matter which is introduced at the stage of re-examination.

(5). Section 138 of the Evidence Act clearly provides that re-examination shall be directed to the explanation of matters referred to in cross-examination and if new matter is, by the permission, introduced for re-examination, then the adverse party may further cross-examine upon that matter. In the present matter, learned APP wish to put the questions in respect of points that during cross-examination, witness admitted that there has been five hours delay for reaching to the spot of incident after receiving information of incident. She submitted that the witness simply stated that there has been five hours delay. So that delay

could have been explained. However, it is not explained by the witness and it is required to be bring on record.

(6). Next point is in respect of reason for not conducting formal inquiry during two hours waiting period for ambulance when the said officer was present at the spot of incident.

(7). She submitted that the prosecution does not wish to introduce any new matter and seek permission to bring on record the explanation from the mouth of witness for said delay and for not inquiring at the spot of incident during waiting period.

(8). Learned advocate Shri. Sutar vehemently submitted that the prosecution cannot use the section 138 of the Indian Evidence Act as a tool to fill up the lacunas. He further submitted that the prosecution cannot wash out the admissions given by the witness during cross-examination as regards to any fact. He submitted that the prayer of re-examination be rejected.

(9). As far as the points in respect of which learned APP seek permission to re-examination are the explanations for delay to reach at the spot. It is clear from the point raised by leaned APP that there is no any adverse admission as such on the part of witness which can be said to be fatal to the prosecution case. The witness is police witness who was present at the outpost, who received information of some beating and he did not left the outpost immediately after receiving information and reached there after about five hours. As per his further answer during cross-

examination he reached there and waited for ambulance for about two hours and during that period he has not made an inquiry with the people gathered there. Here it is necessary to note that this witness is not the Investigating Officer. He simply attended the spot of incident after receiving information from somebody and till that period FIR was also not lodged. So question pertains to preliminary inquiry which has no relevance as per the scheme of lodging FIR and its investigation prescribed in CrPC.. However, the time consumed for reaching at the spot remained unexplained and that cannot be said to be any admission and there is no question of washing out the said admission. What is sought by learned APP is the explanation in respect of delay and the waiting period of two hours. Therefore I am of opinion that the judgments cited by learned APP are squarely applicable to the present matter and the prayer of learned APP is worthy to be allowed. Hence, I proceed to pass following order.

ORDER

- 1) Prayer made by learned APP is allowed.
- 2) Re-examination is permitted.
- 3) Learned Advocate for accused may re-cross examine the witness.
- 4) Inform the concerned accordingly.

Date :- 14/08/2026.

(A. M. Ambalkar)
Judge, Special Court, Ratnagiri.

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Case Number		Special Case No.28/2020
Name of Stenographer	:-	Shri. Rajesh G. Rahate
Name of Court	:-	Judge, Special Court, Ratnagiri
Date of Dictation	:-	14.08.2026
Order signed by the P.O. on	:-	14.08.2026
Order uploaded on	:-	14.08.2026