

MHST010021582020



**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, SATARA
SESSIONS CASE NO.144 of 2020**

State of Maharashtra

... Complainant.

Vs.

Rajesh Budhan Tudu & Ors.

... Accused.

**Coram: Mr. S. R. Tamboli,
The Addl. Sessions Judge, Satara,**

:: ORDER BELOW EXH.99 ::

01. In the instant application, the prosecution has prayed to examine/recall P.W.4, the Medical Officer, and Shailendra Kamble, P.W.8, as per Section 348 of the BNSS.

02. Ms. G. M. Lakade, A.P.P for the State, submitted that, inadvertently, the medical opinion given by P.W.4 has not been tendered in his evidence. Hence, in order to prove the said opinion, P.W.4 be recalled. Further, the photographs of the dead body were not shown to P.W.8, who was acquainted with the deceased. Hence, he be recalled in order to establish the identity of the deceased. The accused will get the right to cross-examine the witnesses. Hence, there will be no prejudice to the right of the accused. Therefore, she prayed to recall the witnesses for re-examination.

03. The application is objected to by the Ld. Counsel for the accused on the ground that the prosecution is trying to fill up the lacuna. The prosecution had every opportunity to prove the documents at an earlier stage. Hence, he prayed to reject the application.

04. The prosecution has come forward with the case of an inadvertent error. There is no inherent weakness in the prosecution case. The prosecution is not producing any new document. Hence, for a just decision of the case, the evidence of the above-said witnesses is necessary.

05. In this context, it would be fruitful to refer to the decision of the Hon'ble Supreme Court in **Rajendra Prasad v. The Narcotic Cell Through its Officer in Charge, Delhi** MANU/SC/0397/1999, wherein it has been observed as under:

“8. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act by saying that the Court could not 'fill the lacuna in the prosecution case'. A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are proved. A corollary of any such latches or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up.

9. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an over sight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can before-closed from correcting errors. If

proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.

06. The ratio laid down in the aforesaid case clearly shows that a “lacuna” in the prosecution case must be understood as an inherent weakness or latent defect in the prosecution’s case, and not merely an oversight or inadvertent omission on the part of the Public Prosecutor in producing material evidence or eliciting relevant answers during trial. The Court held that human errors in the conduct of a case cannot be treated as irreparable lacunae and that no party should be foreclosed from correcting such mistakes. It was emphasized that the primary function of a criminal court is to administer justice and not to count the errors of parties; therefore, if relevant evidence was not brought on record due to inadvertence, the court should exercise its powers to permit rectification in order to ensure a just decision of the case, provided that no prejudice is caused to the accused.

07. In the present case, the evidence of the witnesses is relevant. The accused will get an opportunity to cross-examine the witnesses. Hence, there will be no prejudice to the right of the accused. Accordingly, the application is allowed. P.W.4 and P.W.8 are hereby recalled for further examination and cross-examination. Issue summons accordingly.

Date- 16/02/2026.

(S.R.Tamboli)
District Judge-2 & A.S.J.,Satara.