

**In the Court of Additional District and Sessions Judge,  
Gangarampur at Buniadpur, Dakshin Dinajpur.**

**Sess. Case No. 403 of 2008**

**S.T No. 54 of 2009**

**Com. Reg. No. 244 of 2014**

**CNR No. WBDD05-000017-2014**

**Present- Smt. Melissa Gurung  
Addl. Dist. & Sess. Judge  
Gangarampur at Buniadpur,  
Dakshin Dinajpur.**

**Order no. 148 dated 08-09-2023**

Out of four accused persons on C.B are absent by an application praying for representation u/s 317 of the CrPC, which is heard and allowed.

Subsequently accused Mannan Sk appears by filing late hazira.

The Ld. Addl. P.P-in-charge is present on behalf of the State.

The record is now taken up for passing order in respect of the petition of the prosecution u/s 311 of the CrPC dated 07-09-2022.

The prosecution has prayed for recalling the witnesses No. 9 and 12, Mafijur Rahaman and Kafilon Khatun respectively on the ground that the two witnesses did not support the case of the prosecution and the prosecution at that time failed to submit an application praying for cross-examining the said witnesses. They now seek to recall the witnesses for declaring them hostile to the prosecution and will thereafter cross-examine the witnesses u/s 154 of the Evidence Act.

I have gone through the evidence of the witnesses and find that they do not state anything against the accused persons.

The prosecution case is that the victim was murdered by the accused persons by sleeting her throat with a knife but the witness have given a different story in their evidence. If in the examination u/s 161 of the CrPC, they had supported the prosecution case then their evidence in court was diametrically opposite to what they stated to the Police, therefore, it was the duty of the prosecution to immediately declare the witnesses hostile to the prosecution and seek permission to ask leading questions to them, but the prosecution fails to take necessary steps on that point of time. Thereafter several more witnesses were examined. The prosecution case was closed. The accused were examined u/s 313 of the CrPC and then when the argument was being heard the prosecution came up with the first application u/s 311 of he CrPC on 06-12-2021.

Be it mentioned here that the witnesses whom the prosecution seeks to recall were examined in the year 2018.

This application for recall was partly allowed by this Court by order dated 06-12-2021, where the prayer for examining the scribe (who had not been examined) was allowed but the prayer for recalling P.W.9 and P.W.12 was rejected.

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The prosecution was however, given the liberty to file fresh application in respect of P.W.9 and P.W.12.

In pursuance of this liberty an application for recall of witnesses No.9 and 12 was filed on 17-12-2021, which was posted for hearing but finally on 17-06-2022, the prosecution decided to not press the application and the application was rejected as “*Not Pressed*” by order No. 161 dated 17-06-2022.

During the rejection of this application no fresh liberty was granted to the prosecution but thereafter the prosecution again file an application praying for recall of same witnesses on 07-09-2022.

On comparison of the applications dated 17-12-2021 and the application dated 07-09-2022 (which is under disposal today), it appears that the prayer in both the applications is same and the cause for seeking such prayer is also the same. Therefore, this Court is unable to understand why the prosecution chose to not press the earlier application and then file fresh application. While, liberty had been granted to prefer the application dated 17-12-2021, no such liberty was granted in respect of application dated 07-09-2022 and when the prosecution chose to withdraw from the earlier application by not pressing it, it chose to give up the opportunity to recall the witness for examination because there is no reason given in the order dated 17-06-2022.

The fact that the prosecution failed to declare hostile to the prosecution case when the witnesses were examined reflects either its intention not to declare them hostile or their negligence.

What benefit has enured to the accused by the examination of the witnesses cannot at this late stage be made up by the prosecution by recalling the witnesses because they are unable to show due diligence on their part.

In the effort to make up what their lack of diligence has resulted in the prosecution in this late stage cannot be expected to fill the lacuna because this would prejudice the accused.

Hence, the application u/s 311 of the CrPC is rejected.

Fix 16-10-2023 for argument.

**D/C by me**

**Addl. Dist. & Sess. Judge,  
Gangarampur at Buniadpur,  
Dakshin Dinajpur.**

**(Melissa Gurung)  
(WB-00842)  
Addl. Dist. & Sess. Judge,  
Gangarampur at Buniadpur,  
Dakshin Dinajpur.**