

SC. 160/13 (CIS 745/14)

(Arising out of Samuktala PS case No. 2/2013 dated 11.01.2013)

Order dated 23.07.2025

Today is fixed for evidence of CSW 13 and 14.

Accused Binod Kharia is produced from DCH.

Ld. P.P. in charge and Ld. Advocate for the accused are present.

Prosecution witness CSW 13 SI Praveen Pradhan and CSW 14, Ld Judicial Magistrate, 1st Court Alipurduar are present before the court and examined as PW 10 and 11 respectively. The formal FIR is marked as Exhibit 6 and signature marked as Exhibit 6/1. and Signature of PW 11 in the statement of the VG marked as exhibit 7, 7/1 and 7/2.

Ld PP in charge files an application and submits that witness PW 9 is required to be recalled to put question to the witness to make it clear if the victim girl Rupa and Rupanti are the same and identical person. Such application has been filed under section 311 Cr PC.

The order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr PC. It is imperative that the invocation of Section 311 Criminal Procedure Code and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case.

The Hon'ble Apex Court in Rajaram Prasad Yadav vs State of Bihar and another 2013 (14) SCC 461 has laid down the principles while dealing with an application under section 311 Cr PC read with 138 of the Evidence Act:

“a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Criminal Procedure Code should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Criminal Procedure Code must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

Keeping the above principles in mind, we need to examine the case on hand. It is found that the Ld the witness PW 9, the father of the victim girl had been examined at a length. Now, it is submitted by the Ld PP in charge that it is required to be examined if the victim girl Rupa and the person Rupanti refer to in various documents in this case are the same and identical person, so PW 9 is required to be recalled for the purpose of fair trial. It is the task of the court to provide substantial justice to both the accused and the complainant and to balance the interest of accused and complainant. Thus, the prayer of the prosecution is required to be allowed for the purpose of the fair trial.

Considering the above aspect, the prayer of the prosecution under section 311 Cr PC is allowed.

Fixing 19.08.2025 for evidence of PW 9, Mohan Kharia son of Ghulu Kharia of Chepani Chowpathi, Samuktala, Alipurduar under section 311 Cr PC on recall.

Issue summons.

Accused as before

The trial of the instant case is pending for more than ten years.

Issue summons through Nodal Officer, Alipurduar.

Let a copy of the order be sent to the Nodal Officer, Alipurduar

Addl. Dist. & Sessions Judge,
FTC-I, Alipurduar.

Additional Dist. & Sessions Judge,
1st Fast Track Court, Alipurduar.

