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**(2001) 08 AHC CK 0136**

**Allahabad High Court**

**Case No:** Criminal Revision No. 59 of 2001

Mustakeem

APPELLANT

Vs

The State of U.P.

RESPONDENT

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**Date of Decision:** Aug. 7, 2001

**Acts Referred:**

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 311
- Penal Code, 1860 (IPC) - Section 302, 364

**Citation:** (2002) CriLJ 1516

**Hon'ble Judges:** J.C. Gupta, J

**Bench:** Single Bench

**Advocate:** Samit Gopal, Rohit Agrawal and O.P. Agrawal, for the Appellant; A.G.A., for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

J.C. Gupta, J.

Heard Sri Samit Gopal holding brief of Sri Rohit Agrawal for the applicant in revision and the learned A.G.A. for the State.

2. This revision is directed against the order dated 21-12-2000 passed by VIth Addl. Sessions Judge, Meerut in S.T. No. 890/99 under Sections 364/302, I.P.C. and u/s 25 of Arms Act, allowing the application moved by the prosecution u/s 311, Cr.P.C. for summoning three witnesses namely Station Officer, Arvind Singh, Pundir, F.I.R. writer Noor Mohammad and the doctor who conducted post mortem examination of the deceased.

3. The order under revision is challenged merely on the ground that as witnesses of fact had turned hostile there was absolutely no need for the trial Court to summon

the aforesaid witnesses. It is further submitted that after the prosecution evidence had been closed the trial Court had no power to fill up lacuna in the prosecution case. After examining the facts and circumstances, this Court finds that this revision sans merits.

4. It is well settled that every criminal Court possesses power u/s 311, Cr.P.C. to summon or recall any witness at any stage of trial for a just decision of the case. In a case where the prosecutor fails to produce relevant material either on account of his oversight or mistake, it is the duty of every criminal Court to correct such laches or mistakes for a just decision of the case. If such a course is adopted by the Court, it cannot be said that it is filling up lacuna in prosecution case. A lacuna in prosecution is not to be equated with the fall out of an oversight committed by a public prosecutor during trial either in producing relevant materials or in eliciting relevant answers from witnesses. It should be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. 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 Courts 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. This Court, therefore, does not accept the contention of the learned counsel for the applicant that while summoning three witnesses u/s 311, Cr.P.C. the trial Court filled up lacuna in the prosecution case.

5. In the instant case murder of as many as three persons were committed and dead bodies were alleged to have been recovered from the house of the accused. There is also an allegation that a blood stained knife was recovered on the pointing out of accused Mustakeem, therefore, even if the witnesses of fact had not supported the prosecution story, it was still open for the prosecution to bring on record circumstantial evidence to establish the guilt of the accused. The impugned order of summoning was, thus, necessary for a just decision of the case.

6. For the above reasons, this revision is dismissed and the interim order dated 10-1-2001 is hereby vacated. The trial Court is directed to conclude the trial as expeditiously as possible on day to day basis.

7. Office is directed to communicate this order to Sessions Judge concerned forthwith.