

**CrPC, S. 311 - Evidence Act, S. 165 - A criminal court cannot remain a silent spectator - It has got a participatory role to play and having been invested with enormous powers under Section 311 CrPC, as well as Section 165 of the Evidence Act, a trial court in a situation like the present one where it was brought to the notice of the court that a flagrant contradiction in the evidence of PW 18 who was a statutory authority and in whose presence the test identification parade was held, who is also a Judicial Magistrate, ought to have risen to the occasion in public interest and remedied the situation by invoking Section 311 CrPC, by recalling the said witness with further direction to the Public Prosecutor for putting across the appropriate question or court question to the said witness and thereby set right the glaring error accordingly - It is unfortunate to state that the trial court miserably failed to come alive to the realities as to the nature of evidence that was being recorded and miserably failed in its duty to note the serious flaw and error in the recording of evidence of PW 18. [Para 31]**

Facts: The appellant was alleged to have been gang raped by the assailants who were arrayed as accused at the sessions trial. PW 18 was a Sub Divisional Judicial Magistrate before whom the Test Identification Parade<sup>13</sup> was held. PW 18 had recorded the proceedings in the prescribed format and certain documents were marked as Ext. The grievance of the appellant was that during the course of the examination in chief, an incorrect version was spoken to by PW18 as an authorized officer who conducted the TIP. However, the prosecution failed to confront him with the aforementioned Ext. 8 or to controvert the incorrect statement in order to remove any source of ambiguity which would otherwise prejudice the case of the prosecution. The appellant approached the Special Public Prosecutor to set right the error of PW18 in his evidence and to confront him *inter alia* with a document marked as Ext. 8. The public prosecutor not having taken any steps, the appellant moved the trial judge with an application for recalling PW18. The trial judge rejected the application on the ground of maintainability, holding that such an application could not have been filed at the instance of the victim. The High Court, placing reliance on the provisions of Section 301 CrPC observed that the informant had a limited role to play and it was not open to her to file an application for recalling witnesses.

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