

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1228 of 1999

Judgment reserved on: 27-9-2016

Judgment delivered on: 6-12-2016

1. Sadhuraam, S/o Shri Chheruram Jaiswal, aged about 42 years.
2. Shyamlal, S/o Shri Radheshyam Jaiswal, aged about 32 years.
3. Bhagatram, S/o Shri Chheruram Jaiswal, aged about 38 years.
4. Budhwa, S/o Shri Radheshyam Jaiswal, aged about 28 years.
5. Radheshyam (Died)
6. Kariya alias Sammelal, S/o Shri Radheshyam Jaiswal, aged about 28 years.

All resident of Gram Bhatmahul, Police Station Jaijaipur, District Bilaspur.

----- Appellants

Versus

State of Madhya Pradesh (now State of Chhattisgarh), Through Police Station Jaijaipur, District Bilaspur.

----- Respondent

AND

Criminal Appeal No.1946 of 1999

Hakkad, S/o Ram Prasad, aged about 50 years, R/o Village Bhat Mahul, P.S. Jaijaipur, District Bilaspur, MP (now CG).

----- Appellant

Versus

State of M.P. (now State of C.G.)

----- Respondent

For Appellants in Cr.A.No.1228/1999: -

Mr. Abhishek Sinha, Advocate.

For Appellant in Cr.A.No.1946/1999: -
Mrs. Savita Tiwari, Advocate.
For Respondent / State: -
Mrs. Smita Ghai, Panel Lawyer.

Hon'ble the Chief Justice and
Hon'ble Mr. Justice Sanjay K. Agrawal

JUDGMENT (C.A.V.)

Sanjay K. Agrawal, J.

1. Fourteen persons namely Sadhuram (A-1), Shyamlal (A-2), Bhagatram (A-3), Budhwa (A-4), Radheshyam (A-5), Jambulal @ Jamuna Prasad (A-6), Bhuru (A-7), Raigadhiya @ Sitaram (A-8), Jambu @ Shivdayal (A-9), Jairam (A-10), Hakkad (A-11), Kisno (A-12), Gaurilal (A-13) and Kariya @ Sammelal (A-14) were tried by the Additional Sessions Judge, Sakti in S.T. No.207/92 and by the impugned judgment dated 23-3-99, six persons namely Jambulal @ Jamuna Prasad (A-6), Bhuru (A-7), Raigadhiya @ Sitaram (A-8), Jambu @ Shivdayal (A-9), Kisno (A-12) and Gaurilal (A-13) were acquitted from the charges, whereas eight persons namely Sadhuram (A-1), Shyamlal (A-2), Bhagatram (A-3), Budhwa (A-4), Radheshyam (A-5), Jairam (A-10), Hakkad (A-11) and Kariya @ Sammelal (A-14) were convicted for offence under Sections 148, 449 and 302 read with Section 149 of the IPC and sentenced to jail and fine as under: -

Conviction	Sentence
Section 148 of the IPC	RI for one year
Section 449 of the IPC	RI for five years and fine of Rs.2,500/- each, in default additional RI for six

	months
Section 302 read with Section 149 of the IPC	Imprisonment for life and fine of Rs.5,000/- each, in default additional RI for one year

2. Sadharam, Shyamlal, Bhagatram, Budhwa, Radheshyam (since deceased) and Kariya alias Sammelal have preferred Cr.A. No.1228/1999 whereas, Hakkad has preferred Cr.A. No.1946/1999. Accused / appellant Radheshyam died during the pendency of appeal, therefore, appeal of Radheshyam (A-5) abates.
3. The prosecution case as uncurtained during the course of trial are as under: -
- 3.1) Above-stated fourteen accused persons were charge-sheeted for formation of unlawful assembly armed with deadly weapons having its common object to commit murder of Duberam (since deceased). Wife of Duberam (deceased) namely Rangbai (PW-1) had lodged FIR (Ex.P-1) on 29-12-1991 at about 2.20 p.m. to the effect that her aunt-in-law (*fufu saas*) Birichh Bai was being taken care of by them after demise of her husband. It was further informed that Birichh Bai had gone to Village Madora four years back and after returning from there, she claimed a separate house, as she was not having good relation with them. Upon this, her deceased husband (Duberam) told her that instead of separate house, a separate door would be opened in his existing dwelling house for her which she did

not accept and convened the meeting of Panchayat to settle the matter, and in the Panchayat so convened, Jairam Chandra - uncle-in-law of Rangbai and one Baiga Kalar had tried their level best to make Birichh Bai understand but all attempts did not yield any fruit and thereafter, Jairam Chandra had also expressed his willingness to take share in Birichh Bai's property which was opposed by Rangbai's husband Duberam (deceased) claiming that he has performed the last rites of Birichh Bai's husband, however, Jairam Chandra has quarrelled with Duberam and subsequently, the Panchayat meeting was closed without settling the dispute so raised. It was further informed by Rangbai (PW-1) that on the next day morning, when her husband was seated outside of her house and she was sweeping there, Hakkad of her village along with Jairam Chandra, Radhe Kalar, Baiga Kalar, Bhagat Kalar, Sadhu Kalar, Budaha Kalar, Kariya Kalar and Shyamlal Kalar came there and started abusing her husband in filthy language. Apprehending some further dispute violently, her husband rushed into house and locked the door from inside. The said accused persons threatening to kill her husband, entered the house after breaking the door and started mar-pit with him. Shyamlal having gaiti assaulted on head and eyes of her husband with gaiti. Sadhu assaulted from blunt side of raapa which was picked from her house. Remaining persons assaulted with lathi. She further narrated that she tried to save her husband by praying with folded hands but same was not

acceded to by the accused persons. When her husband became unconscious on account of assault made by accused persons, Sadhu pulled him out and on being opposed by her, they fled away. It was also stated by Rangbai (PW-1) that the incident was witnessed by Budhu Gond (PW-6), Babulal Lohar (PW-14), Mongra Bai (PW-2) and Odekerhin. Thereafter, she had taken her husband to hospital in a buffalo-cart along with Dubey Yadav, Mahadev (PW-12) and Konda. However, her husband breathed his last immediately after reaching hospital.

3.2) The first information report Ex.P-1 and morgue intimation Ex.P-2 were taken down by K.R. Karsaal (PW-21), the investigating officer. Inquest report Ex.P-4 was prepared by him and he found injuries on head, forehead, right cheek, chin, both hands, both legs and back of the dead body. Dead body of the deceased was sent for postmortem vide Ex.P-47. Rangbai (PW-1) was also sent for medical examination vide Ex.P-46. Investigating officer K.R. Karsaal (PW-21) recorded memorandum of accused Sadhram, Shyamlal, Bhagatram, Budawa, Radhe Shyam, Jammulal @ Jamuna Prasad, Bhuru, Raigaria @ Sitaram, Jammu @ Shivdayal, Jairam and Hakkad on 30-12-1999 vide Exs.P-9 to Ex.P-19, respectively, in presence of witnesses Shiv Prasad (PW-8) and Bhagirathi, and as per their discloser statements, articles have been seized vide seizure memo Exs.P-23 to P-33, respectively. Memorandum of accused Kariya Ex.P-41 was recorded in presence of witnesses

Meghnath (PW-9) and Mahadev (PW-12) and seizure of knife was made pursuant thereto vide seizure memo Ex.P-42. Seized articles were sent for examination by Station House Officer S.S. Raj (PW-17) under the covers Exs.P-51 to P-65. Seized articles were also sent for chemical examination to FSL, Sagar as per list Ex.P-48 and receipt Ex.P-49 was obtained. Seized articles were examined vide Exs.P-51 to P-65 by Dr. V.P. Singh who also conducted autopsy and had given postmortem report Ex.P-69.

3.3) From the place of occurrence, investigating officer K.R. Karsaal (PW-21) made seizure under cover Ex.P-22 and seized one iron gupti having bloodstains on its edge. As per Ex.P-20, he had seized plain soil and bloodstained soil from the place of occurrence. The investigating officer had sent the seized axe for medical examination vide Ex.P-19A. Spot map Ex.P-72 was got prepared by the investigating officer. He had recorded statements of witnesses under Section 161 of the CrPC.

3.4) Upon completion of investigation, the jurisdictional police submitted charge-sheet against the accused persons except two juvenile accused namely Gauri Shankar and Kisna. The accused persons abjured guilt and claimed to be tried. The prosecution examined as many as 21 witnesses in support of its case and exhibited documents Exs.P-1 to P-76. On behalf of the accused, they took the plea of innocence and false implication in their statements under Section 313 of the CrPC and four defence witnesses namely Bhogilal (DW-1), Tulsiram (DW-2), Ramlal

Chandra (DW-3) and Birichhram (DW-4) were examined.

3.5) The trial Court by its impugned judgment acquitted Jambulal @ Jamuna Prasad (A-6), Bhuru (A-7), Raigadhiya @ Sitaram (A-8) and Jambu @ Shivdayal (A-9) by giving them benefit of doubt, however, convicted the accused/appellants against which they have preferred appeals under Section 374(2) of the CrPC.

3.6) Sadharam, Shyamlal, Bhagatram, Budhwa, Radheshyam (since deceased) and Kariya alias Sammelal have preferred Cr.A.No.1228/1999 and Hakkad has preferred Cr.A. No.1946/1999. Since common question of law and fact is involved in these two appeals, they were clubbed together and heard analogously and are being disposed of by this common judgment.

4. Mr. Abhishek Sinha and Mrs. Savita Tiwari, learned counsel appearing for the respective appellants, would submit that statements of eyewitnesses namely Rangbai (PW-1), Mongra Bai (PW-2) and Brinda Kumari (PW-3) are not reliable, safe and trustworthy to base conviction without any corroboration by independent witnesses as there is significant departure and material improvement by Rangbai (PW-1) from her version of incident in FIR Ex.P-1. There are contradictions and inconsistencies in the testimony of Rangbai (PW-1), Mongra Bai (PW-2) and Brinda Kumari (PW-3) as regards role of the

accused persons. He would further submit that chronology of incidents renders the entire prosecution evidence untrustworthy and unsafe to base conviction and the accused / appellants have been falsely implicated. In the prosecution story, it has been found that the prosecution witnesses have made false allegations. There is non-compliance of mandatory provisions contained in Section 157 of the CrPC which is fatal to the prosecution because, the prosecution has failed to prove its case beyond all reasonable doubts and accused are entitled for benefit of doubt. The accused persons cannot be saddled with guilt, as the learned trial Court in their examination under Section 313 of the CrPC has not put any question with regard to offences under Sections 147 and 149 of the IPC because Section 313 of the CrPC is mandatory in nature and without putting incriminating question to the accused, conviction under Sections 147 and 149 of the IPC cannot be sustained. Lastly, learned counsel for the appellants would submit that the prosecution has failed to prove its case beyond all reasonable doubts and accused are entitled to benefit of doubt.

5. On the other hand, Mrs. Smita Ghai, learned Panel Lawyer appearing on behalf of the State/respondent, would vehemently oppose the appeals as also the submissions advanced on behalf of learned counsel appearing for the appellants and would submit that the prosecution has brought sufficient material to bring home the offence. The prosecution case cannot be thrown

out and evidence of Rangbai (PW-1), Mongra Bai (PW-2) and Brinda Kumari (PW-3) are sufficient to establish the fact that the appellants have formed unlawful assembly having its common object to kill Duberam and in furtherance of common object, members of unlawful assembly i.e. the appellants herein along with other juvenile offenders have caused the murder of Duberam. Lastly, learned State counsel would support the conviction and sentences as awarded by the trial Court.

6. We have heard learned counsel for the parties, considered their rival submissions and gone through the record with utmost circumspection.
7. First question for consideration is whether the death of Duberam was homicidal in nature and secondly, whether the death of Duberam was caused by the appellants.
8. Rangbai (PW-1) is wife of deceased Duberam. She has deposed that her husband Duberam died five years back and he was beaten with deadly weapons by the accused persons by which he sustained dangerous injuries on his head, chest, face, hands, legs and back. Her evidence has been corroborated by the statements of Mongra Bai (PW-2) and Brinda Kumari (PW-3). Postmortem was conducted by Dr. V.P. Singh and he has given his postmortem report vide Ex.P-69, but during the pendency of trial, he died. In his place, Dr. P.R. Dewangan (PW-18) has been examined. He has proved the postmortem report Ex.P-69. He

has deposed that he is acquainted with the signature of deceased Dr. V.P. Singh. He further states that deceased Duberam died of cerebral haemorrhage as shock resulted from head injury with the duration of 24 to 28 hours prior to the postmortem examination and nature of death was homicidal. However, it is duly established that death of Duberam is homicidal in nature. Even it has not seriously been disputed, what is disputed is that the appellants have not caused death of deceased Duberam.

9. Non-examination of a doctor who conducted postmortem is not fatal, as he died during the course of trial. In the matter of **Prithvi Chand v. State of H.P.**¹ in a case of rape where the attendance of a lady doctor, who had examined the prosecutrix, could not be procured without undue delay, as she had proceeded on long leave, the Supreme Court has held that “Section 32 of the Evidence Act provides that when a statement, written or verbal, is made by a person in the discharge of professional duty whose attendance cannot be procured without an amount of delay, same is relevant and admissible in evidence”. Thus, the postmortem report Ex.P-69 is clearly admissible in evidence to establish the homicidal nature of death of deceased Duberam.

10. Now, coming to the second question, the place of occurrence though not disputed has been proved by the statements of

¹ AIR 1989 SC 702

Rangbai (PW-1), Mongra Bai (PW-2), Brinda Kumari (PW-3) and Tulsiram (DW-2) who deposed that the incident took place inside the house of the deceased.

11. Rangbai (PW-1) – wife of the deceased in her examination-in-chief clearly states that she knows the accused persons. Panchayat was convened by Birichh Bai (*fufu saas*) who was residing in her house. She further states that Birichh Bai had asked her husband Duberam to construct a separate house for her residence and Duberam had also agreed for the same. However, her uncle-in-law Jairam had claimed share in Birichh Bai's land which was turned down by deceased Duberam as he had performed last rites of Birichh Bai's husband. She further deposed that next day thereafter, at 8 a.m. she was sweeping in front of her house and her husband Duberam was thrashing paddy. Hakkad had kept *kanda* (dried cow dung) in his stockyard (*kothar / khaliyan*). Duberam asked Hakkad to remove kanda so that he can thrash paddy as the stockyard belongs to him. Hakkad refused to follow the word of Duberam and upon this, Duberam told that he will thrash paddy after removing kanda by himself, then Hakkad shouted to kill her husband. Radhe, Shyamlal, Budaga, Kariya, Kisno and Gauri were present there. She further stated that Sadhu, Bhagat, Bhuru, Jammulal Kalar, Jairam, Raigadhiya, Jammulal Chandra and Hakkad came along with them to kill her husband. Rangbai (PW-1) further deposed that Shyamlal had gaiti, Sadharam had raapa, Kariya

Gupta had knife, Raigadhiya & Jammulal Chandra had axe and rest of the accused persons had lathi. The incident took place in front of her house. She prayed with folded hands in front of as many as 18 persons to let her husband go but they did not accede to it and had started abusing her in filthy language. After seeing them armed with lathi-bidaga (thick wooden stick), her husband rushed inside the house which was locked by her from outside. Shyamlal broken the door with gaiti and she was thrown away while she was trying to cover the door. With the stroke of gaiti, handle-hook of door was broken and thereafter, Shyamlal, Bhuru and Kariya entered into the house and caused injury to her husband on head by assaulting him with lathi-budaga. She has further stated that upon this, her husband ran away and hide himself in kothar of her brother-in-law Mohan (PW-4). Her husband was beaten-up there also, however, she had not seen as to who had assaulted her husband, with which weapon and on which part of the body he was assaulted. She has also stated that thereafter, Sadhu had pulled her husband out holding his legs and fled away after leaving him on the way. At the time of incident, Babulal (PW-14) and Budhram (PW-6) were present. Madho and Tulsi had brought her husband inside the house. She had taken her husband to hospital in a buffalo-cart along with Duberam Yadav (PW-19), Kaushal and Konda. Her brother-in-law (devar) Mohanlal (PW-4) met her on the way and had taken the deceased to hospital by bus. Her husband was treated

in the hospital. Meanwhile, she went to the police station and lodged report Ex.P-1 and when she returned to hospital, her husband was found dead.

12. A careful perusal of the FIR Ex.P-1 lodged by Rangbai (PW-1) reveals that the version of incident given by Rangbai (PW-1) in the FIR Ex.P-1 materially differs from the one given in the court by her. In the FIR Ex.P-1, she had not mentioned that Sadhuran had raapa, Kariya Gupta had knife, Raigadhiya and Jammulal Chandra had axe. Even the names of Raigadhiya and Jammulal Chandra along with Bhuru, Jammu Kalar, Gauri and Kisno have not been mentioned in the FIR. In the FIR, it is mentioned that Sadhu had picked up raapa from the house of the deceased, whereas she has deposed in the court that Sadhu had come with raapa. There is no whisper in the FIR about the dispute arose between the deceased and Hakkad on the fateful day. As per FIR Ex.P-1, the deceased was watered by Mohanlal (PW-4) on his way to hospital and he died just after reaching hospital, whereas in the court statement, Rangbai (PW-1) has stated that the deceased was treated in the hospital and meanwhile, she went to the police station and lodged report. In the FIR it is mentioned that she locked the door from outside and handle-hook of the door was broken. It is also not mentioned in the FIR that her husband entered in the kothar of her brother-in-law's house. It has also not been mentioned in the FIR that Hakkad had called other accused persons by shouting. As per FIR Ex.P-

1, Mahadev (PW-12) was in the buffalo-cart, whereas in the court statement Rangbai (PW-1) has stated that Mahadev's sons were in the buffalo-cart.

13. Apart from the above-stated discrepancies, Rangbai (PW-1) in paragraph 23 of her cross-examination has stated she had not attended the Panchayat; in paragraph 35, she has stated that she had not seen as to who had entered in the room; in paragraph 36, she has stated that she had not seen the accused persons assaulting her husband; and in paragraph 55, she has stated that earlier, three times her husband and the accused persons had fight with each other which was reported to the police.

14. From the above discussion, it is quite evident that the testimony of Rangbai (PW-1) suffers from exaggeration, improvement and contradiction. She was examined in the court on 18-2-1997 i.e. after more than five years and two months from the date of incident and as such, her evidence does not inspire confidence and is not reliable as held by the Supreme Court in the matter of **Anil v. State of Maharashtra**² in which it has been held as under: -

“10. In view of the above, in our opinion, the evidence of PW-3 Meena does not inspire confidence. It is unsafe to make allowance for the discrepancies and improvements made by her in her evidence. It is true that being the wife of the deceased, she is the most natural witness. But, after reading her evidence, we feel that she has not

² (2013) 12 SCC 441

come out with the whole truth. We feel that the unwarnished truth is not placed before us either by the prosecution or by the defence. As earlier noted by us, in the FIR she has only referred to A-1 Anil, A-2 Ashok and A-5 Shankar. In the examination-in-chief she has referred to these three persons and A-4 Kishore. In cross-examination her version has drastically changed. ...”

15. Now, we shall discuss the testimonies of other eyewitnesses namely Mongra Bai (PW-2) and Brinda Kumari (PW-3).

16. Mongra Bai (PW-2) is also eyewitness. She was also examined in the court on 18-2-1997 i.e. after more than five years and two months from the date of incident. She has deposed in paragraph 6 that she, Rangbai (PW-1) and Brinda Kumari (PW-3) had brought Duberam in the veranda (aangan) by lifting him, whereas Rangbai (PW-1) has stated in paragraph 8 that Madho and Tulsi had brought Duberam inside the house as she and Mongra Bai (PW-2) were unable to lift him. As per Rangbai (PW-1), as many as eighteen persons had assaulted her husband, whereas in para 33 of her evidence, Mongra Bai (PW-2) has stated that only fourteen persons were there. In para 22, she has deposed that only three persons entered into the house and remaining persons were standing outside the room and were beating the ground hardly with their lathis while threatening the deceased. From a bare perusal of paragraphs 45, 47, 48, 49, 52, 53 and 54 of the evidence of Mongra Bai (PW-2), it is evident that she had made contradictory statement in the court as stated in her dairy statement Ex.D-2. In paragraph 59, she has

admitted that there is a pending case against her husband for committing rape with the wife of Bhagat. Therefore, the statement of Mongra Bai (PW-2) suffers for exaggeration, improvement and contradictions, and is not liable to be relied upon.

17. Brinda Kumari (PW-3) is daughter of the deceased who was also examined in the court on 18-2-1997 i.e. after more than five years and two months from the date of incident. In her statement, her age was mentioned to be 16-17 years, as such, at the time of incident i.e. on 29-12-1991, she was around 10-11 years old. After such a long time, she has deposed about the incident very elaborately, however, from paragraphs 8 to 11, 13, 19, 20, 21, 36 and 37 of her statement, it is clear that her police statement Ex.D-1 does not contain what she had stated before the Court. In para 17, she had made absolute contradictory statement by stating that her father was taken to police station first, where he breathed his last. In para 22, she has stated that 14 persons had entered into the room, thereafter, she improved it and stated that only Bhagat entered into the room and assaulted on right hand of her father, as her statement also does not inspire confidence and is not liable to be acted upon.

18. Mohanlal (PW-4) and Jhitoram (PW-20) have admitted that they have not seen the incident. Rest of the witnesses, either prosecution or defence, do not throw any light over the prosecution story, rather they contradict each other. Therefore, it

will not be appropriate to refer to their statements.

19. As per Rangbai (PW-1), Shyamlal had gupti and Kariya had knife, however, as per their memorandum Exs.P-10 and P-41, respectively, gaiti and chhari (small lathi) were seized vide Exs.P-24 and P-42, respectively. Apart from that, Shiv Prasad (PW-8), witness of memorandum Exs.P-9 & P-19 and seizure memo Exs.P-23 to P-33, admitted his signature on the said documents, however, denied the fact that the concerned accused persons had told the police about the concealment of seized articles and admitted the seizure of seized articles as per seizure memo Exs.P-23 to P-33 from the concerned accused persons.
20. Station House Officer S.S. Raj (PW-17) has proved sending of seized articles for chemical examination vide Exs.P-48 and P-49 to FSL, Sagar. FSL report Ex.P-66 shows that blood stains found on articles were either disintegrated or insufficient, as such, it is not useful for the prosecution. He had also sent the seized weapons for examination which were examined by late Dr. V.P. Singh and his examination report Exs.P-51 to P-65 have been proved by Dr. P.R. Dewangan (PW-18).
21. K.R. Karsaal (PW-21) – Investigating Officer had denied that copy of FIR was not sent to the jurisdictional Magistrate, however, he had admitted that there is no record mentioned in the case diary about sending the copy of FIR to the jurisdictional

Magistrate. Admittedly, receipt of FIR to show the compliance of Section 157 of the CrPC is not produced before the trial Court. It is well settled that non-sending of intimation under Section 157 of the CrPC by itself is not sufficient to discard the entire evidence or the case of the prosecution. However, since in this case, evidence of eyewitnesses has not been found reliable and trustworthy, this lacuna on the part of the prosecution of non-sending and establishing the copy of FIR to the jurisdictional Magistrate creates doubt about the prosecution version of the incident as held by the Supreme Court in the matter of **Pratap Chauhan v. Ram Naik**³ in which Their Lordships of the Supreme Court have held as under: -

“14. ... No record has been produced to show when the copy of the FIR was despatched to the jurisdiction Magistrate in compliance with Section 157 CrPC. We are not recording any finding that the FIR in the case was made belatedly and then ante-timed; we are only pointing out at a few likely holes left unplugged by the prosecution and hence perceptible in the facts and circumstances of the case at hand.”

22. We also find force in the submission of learned counsel for the appellants that no question with regard to incriminating evidence / substantial implication of the appellants relating to offences under Sections 147 and 149 of the IPC was put to the accused under Section 313 of the CrPC. There is no specific question put to the accused as to who made assault to the deceased and with which weapon the assault was made; which

3 (2001) 9 SCC 266

weapon was kept by whom; about the presence of accused persons on the spot; about the place of occurrence; who entered into the house and where the deceased was assaulted. No question was put with regard to inquest report Ex.P-4, postmortem report Ex.P-69, query reports Exs.P-51 to P-65, which article(s) was seized from which accused person and whether the injuries sustained by the deceased were caused by the seized articles. Multiple and vague facts have been put to the accused persons in single question by which they have suffered prejudice seriously in their defence.

23. In a recent decision in the matter of **Nar Singh v. State of Haryana**⁴, the Supreme Court while highlighting the object of Section 313(1)(b) of the CrPC has held that the object of such provision is to bring the substance of accusation to the accused to enable the accused to explain each and every circumstance appearing in the evidence against him. It has been further held that the provisions of Section 313 of the CrPC are mandatory and cast a duty on the court to afford an opportunity to the accused to explain each and every circumstance and incriminating evidence against him. It has also been held that the examination of the accused under Section 313(1)(b) of the CrPC is not a mere formality.

24. Further, in the matter of **Nagaraj v. State**⁵ it has been held that

4 (2015) 1 SCC 496

5 (2015) 4 SCC 739

Section 313 of the CrPC is of seminal importance in criminal law jurisdiction and is imperative to enable an accused to explain away any incriminating circumstances proved by the prosecution. It has further been held that it is intended to benefit the accused, its corollary being to benefit the court in reaching its final conclusion; its intention is not to nail the accused, but to comply with the most salutary and fundamental principle of natural justice i.e. *audi alteram partem*.

25. In **Nar Singh** (supra), where material evidence of forensic science laboratory report and ballistic expert opinion were not put to the accused / appellant in his statement under Section 313 of the CrPC and such material evidence was relied upon by both trial Court and High Court for convicting the accused / appellant, the Supreme Court has held that the accused / appellant suffered prejudice and conviction of the appellant therein was set aside.

26. In conclusion, we are of the opinion that the prosecution has failed to bring home the offences charged to accused persons and the trial Court has convicted the accused persons on the basis of statements of eyewitness which suffer from material contradictions and same is untrustworthy and unsafe to base conviction. There is non-compliance of the provisions of Section 157 of the CrPC, incriminating materials have not been put to the accused persons under Section 313 of the CrPC and four accused persons have been acquitted on same set of facts. Therefore, we are of the opinion that the appellants are also entitled

for benefit of doubt.

27. Consequently, both the appeals are allowed. The impugned judgment dated 23-3-1999 passed by the Additional Sessions Judge, Sakti in S.T.No.207/92 is hereby set aside. The appellants are acquitted of all the charges alleged against them. They are on bail. They need not surrender. However, their bail bonds shall remain in force for a period of six months in view of the provision contained in Section 437A of the CrPC.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge