

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.565 of 2015

Arising Out of PS.Case No. -11 Year- 2013 Thana -ISHAKCHAK District- BHAGALPUR

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SUNIL MANDAL @ DABLU SON OF SHAMBHU MANDAL RESIDENT OF
VILLAGE- LALUCHAK BHATTA, P.S ISHAK CHAK, DISTRICT
BHAGALPUR.

.... APPELLANT/S

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Bimlesh Kumar Pandey, Adv.
Mr. Dilip Kumar, Adv.

For the APP : Mr. Z. Hoda, APP
Mr. Ajay Kumar Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. JUDGMENT

Date: 06-04-2017

Sole appellant Sunil Mandal @ Dablu has been found guilty for an offence punishable under Section 304B of the IPC and sentence to undergo R.I. for ten years as well as to pay fine of Rs.10,000/- and in default thereof, to undergo imprisonment for one year additionally by the Third Additional Sessions Judge, Bhagalpur vide judgment dated 15.07.2015 and order of sentence dated 22.07.2015 in Sessions Trial No.117/2014.

2. Shambhu Mandal (PW.3) had recorded his fardbeyan on 24.02.2013 at about 01:15 P.M. before the Officer-in-charge of Ishak Chak at village-Laluchak Bhatta, Sasural of his daughter Rita Kumari @ Lusi (since deceased) where dead body of his daughter was lying in burnt condition stating therein that his daughter Rita Kumari @ Lusi was married with Sunil Mandal @ Dablu in the year 2011 as per



Hindu rites and custom. Furthermore, at the time of marriage he had gifted according to his capacity. After marriage, she came to her Sasural where it was consummated, as a result of which, she begotten a son. It has further been alleged that just after Vidai when his daughter came at her Sasural, her husband Sunil Mandal, Debar, Nawal Mandal, mother-in-law, Meera Devi and father-in-law, Shambhu Mandal began to torture her for procurement of dowry. Whenever she was taken her Naihar he used to console her. She was staying her at Maika. Her husband Sunil Mandal @ Dablu took her Bidai on 20.02.2013. Even thereafter she was severely tortured which she informed over phone. He any how consoled her. Today, he received an information that his daughter has been murdered by burn whereupon he rushed and found the dead body in burnt condition.

3. Ishak chak P.S. Case No.11/2013 was registered on the basis of the aforesaid fardbeyan followed with investigation. However, during course of investigation only Sunil Mandal @ Dablu was apprehended, on account thereof, charge sheet was submitted against him only keeping the investigation pending against other co-accused on the basis of which, cognizance was taken and, after commitment, the trial commenced and concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial of the occurrence. Furthermore, it has



also been pleaded that deceased died of accidental fire and to substantiate the same four DWs, namely, Manju Devi, Shiv Kumari Devi, Nitesh Kumar and Suraj Kumar have been examined. Apart from this, plea of alibi has also been taken by way of stating that all the family members have gone to place of Anu Devi, sister as she had begotten a son and to substantiate the same, prescription has also been exhibited as Ext.-A.

5. In order to substantiate its case prosecution had examined altogether five PWs out of whom PW.1 is Sanjeev Kumar, PW.2 is Indu Devi, PW.3 Shambhu Mandal, PW.4 Dr. Yogesh Prasad Sao and PW.5 is Kare Ravidas as well as also exhibited Ext.1 Series-Signature of witnesses over inquest report, Ext.2 Series-Signature of informant over fardbeyan as well as FIR attesting witness, Ext.3-PM Report, Ext.4-Inquest report, Ext.5-Fardbeyan and Ext.6-Formal FIR.

6. As stated above defence had examined four DWs, DW.1-Manju Devi, DW.2-Shiv Kumari Devi, DW.3-Nitesh Kumar and DW.4-Suraj Kumar as well as also exhibited Ext.-A-Maternity Certificate relating to Anu Devi, sister of appellant Sunil Mandal.

7. From the record, it is apparent that charge was framed against the appellant under Section 304B/34 of the IPC as well as 302/34 of the IPC. When the judgment impugned has been gone through, it is apparent that in para-1st of the judgment, the learned lower court had acknowledged framing of charge against the



appellant /convict in an alternative, under Section 304B/34 IPC as well as 302/34 IPC. However, when it has been gone through in detail, it is apparent that learned lower court instead of making proper scrutiny of the evidence whether the same justify either of the two sections whereunder charge has been framed, proceeded in pre-determined manner whereupon convicted the appellant under Section 304B IPC and accordingly sentenced. However, no finding has been recorded relating to Section 302/34 of the IPC.

8. Keeping away, for the present, the question relating to application of Section 302/34, as the judgment impugned happens to be decumbent, the latter part of finding, as and found substantiated relating to Section 304(B) IPC is to be taken for consideration. For better appreciation, it should begin from charge. Charge so framed by the learned lower court, speaks as follows:-

“That you on or about the 24th May of February, 2013 Mohalla-Laluchak Bhatta near railway Line, P.S.-Ishakchak, Bhagalpur committed murder of Rita Kumari @ Lucy by burning her for the dowry within seven years of her marriage with common intention of you all and thereby committed an offence punishable under Section 304B/34 of the Indian Penal Code.”

9. From plain reading of charge, it is apparent that other ingredient of the dowry death has not been scribe consequent thereupon, might not been fairly stated to the appellant/accused though he contested the trial having evidence on that very score at the



end of prosecution, which he tested by way of cross-examination.

10. The Apex Court in *Main Pal v. State of Haryana* reported in 2010 CR.L.J. 4450 lucidly explained the event in expatiate manner, and for better appreciation relevant passage is quoted below:-

“7. Section 211 of the Code relates to the contents of the charge. It inter alia provides that every charge under the Code shall state the offence with which the accused is charged. Section 212 of the Code provides that the charge shall contain the particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. Section 215 of the Code however clarifies that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice. Section 464 of the Code relates to the effect of omission to frame, or absence of, or error in, charge. Sub-section (1) thereof provides that no finding, sentence or order of a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. Sub-section (2) of Section 464 provides that if the court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit.”

8. In *Willie (William) Slaney v. State of M.P.* [AIR 1956 SC 116] this Court explained the concepts of “prejudice to the accused” and “failure of justice” thus:-

“(6) Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of



endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is 'substantial' compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

(7) Now here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions.”

This Court then examined the question as to when a procedure adopted could be said to have worked actual injustice to the accused and held:

“Except where there is something so vital as to cut at the root of jurisdiction or so abhorrent to what one might term natural justice, the matter resolves itself to a question of prejudice. Some violations of the Code will be so obvious that they will speak for themselves as, for example, a refusal to give the accused a hearing, a refusal to allow him to defend himself, a refusal to explain the nature of the charge to him and so forth.

These go to the foundations of natural justice and would be struck down as illegal forthwith. It hardly matters whether this is because prejudice is then patent or because it is so abhorrent to well-established notions of natural justice that a trial of that kind is only a mockery of a  trial and not of the kind envisaged by the laws of our land, because either way they would be struck down at once.

Other violations will not be so obvious and it may be possible to show that having regard to all that occurred no prejudice was occasioned or that there was no reasonable probability of prejudice. In still another class of case, the matter may be so near the borderline that very slight evidence of a reasonable possibility of prejudice would swing the balance in favour of the accused.

... The Code is emphatic that ‘whatever’ the irregularity it is not to be regarded as fatal unless there is prejudice.



It is the substance that we must seek. Courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction.

Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

If all these elements are there and no prejudice is shown the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one.”

“In adjudging the question of prejudice the fact that the absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere; but if, on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand; also it will always be material to consider whether objection to the nature of the charge, or a total want of one, was taken at an early stage. ...But these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases however alike they may seem. There is no such thing as a judicial precedent on facts though counsel, and even Judges, are sometimes prone to argue and to act as if there were.”

(Emphasis supplied)

In *Gurbachan Singh v. State of Punjab* [AIR 1957 SC 623] following *Willie Slaney* this Court held:

“... in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair



trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.”

In *Shamnsaheb M. Multtani v. State of Karnataka*, 2001 (2) SCC 577: (AIR 2001 SC 921:2001 AIR SCW 432), this Court considered the meaning of the expression “failure of justice” occurring in Section 464 CrPC. This Court held thus:

“The crux of the matter is this: Would there be occasion for a failure of justice by adopting such a course as to convict an accused of the offence under Section 304-B IPC when all the ingredients necessary for the said offence have come out in evidence, although he was not charged with the said offence? ...

... a conviction would be valid even if there is any omission or irregularity in the charge, provided it did not occasion a failure of justice ... The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage.

One of the cardinal principles of natural justice is that no man should be condemned without being heard, (*audi alteram partem*). But the law reports are replete with instances of courts hesitating to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. However, if the aspect is of such a nature that non-explanation of it has contributed to penalising an individual, the court should say that since he was not given the opportunity to explain that aspect there was failure of justice on account of non-compliance with the principle of natural justice.”

The above principles are reiterated in several decisions of this Court, including *State of W.B. v. Laisal HaquE* AIR 1989 SC 129; *State of A.P. v. Thakkidiram Reddy* 1998 (6) SCC 554: (AIR 1998 SC 2702: 1998 AIR SCW 2750); *Dalbir Singh v. State of U.P.* [2004(5) SCC 334]: (AIR 2004 SC 1990: 2004 AIR SCW 2119); *Dumpala Chandra Reddy v. Nimakayala Balireddy* 2008 (8) SCC 339: (AIR 2003 SC 3069:2008 AIR SCW 5151) and *Sanichar Sahni v. State of Bihar* 2009 (7) SCC 198

9. The following principles relating to Sections 212, 215 and 464 of the Code, relevant to this case, become evident from the said enunciations:

(i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.



(ii) The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.

(iii) In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself.”

11. In *Vijay Pal Singh v. State of Uttarakhand* reported in (2014) 15 SCC 163, it has been held:-

“16. Since, the victim in the case is a married woman and the death being within seven years of marriage, apparently, the Court has gone only on one tangent, to treat the same as a dowry death. No doubt, the death is in unnatural circumstances but if there are definite indications of the death being homicide, the first approach of the prosecution and the Court should be to find out as to who caused that murder. Section 304-B IPC is not a substitute for Section 302 IPC. The genesis of Section 304-B IPC introduced w.e.f. 19-11-1986 as per Act 43 of 1986 relates back to the 91st Report of the Law Commission of India. It is significant to note that the subject was taken up by the Law Commission suo motu. Para 1.3 of the Report reads thus:

“1.3. *The approach to be adopted.*—If, in a particular incident of dowry death, the facts are such as



to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. In practice, however, two main impediments arise—

(i) either the facts do not fully fit into the pigeon-hole of any known offence; or

(ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult.

The first impediment mentioned above is aptly illustrated by the situation where a woman takes her life with her own hands, though she is driven to it by ill-treatment. This situation may not fit into any existing pigeon-hole in the list of offences recognised by the general criminal law of the country, except where there is definite proof of instigation, encouragement or other conduct that amounts to ‘abetment’ of suicide. Though, according to newspaper reports, there have been judgments of lower courts which seem to construe ‘abetment’ in this context widely, the position is not beyond doubt.

The second situation mentioned above finds illustration in those incidents in which, even though the circumstances raise a strong suspicion that the death was not accidental, yet, proof beyond reasonable doubt may not be forthcoming that the case was really one of homicide. Thus, there is need to address oneself to the substantive criminal law as well as to the law of evidence.”

17. In the Statement of Objects and Reasons for Act 43 of 1986, in the Bill, it is stated as follows:

“**1.** The Dowry Prohibition Act, 1961 was recently amended by the Dowry Prohibition (Amendment) Act, 1984 to give effect to certain recommendations of the Joint Committee of the Houses of Parliament to



examine the question of the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organisations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

2. It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective. ...”

18. However, it is generally seen that in cases where a married woman dies within seven years of marriage, otherwise than under normal circumstances, no inquiry is usually conducted to see whether there is evidence, direct or circumstantial, as to whether the offence falls under Section 302 IPC. Sometimes, Section 302 IPC is put as an alternate charge. In cases where there is evidence, direct or circumstantial, to show that the offence falls under Section 302 IPC, the trial court should frame the charge under Section 302 IPC even if the police has not expressed any opinion in that regard in the report under Section 173(2) CrPC. Section 304-B IPC can be put as an alternate charge if the trial court so feels. In the course of trial, if the court finds that there is no evidence, direct or circumstantial, and proof beyond reasonable doubt is not available to establish that the same is not homicide, in such a situation, if the ingredients under Section 304-B IPC are available, the trial court should proceed under the said provision. In *Muthu Kutty v. State* (2005) 9 SCC 113, this Court addressed the issue and held as follows: (SCC pp. 122-23, para 20)

“20. A reading of Section 304-B IPC and Section 113-B, Evidence Act together makes it clear that law authorises a presumption that the husband or any other



relative of the husband has caused the death of a woman if she happens to die in circumstances not normal and that there was evidence to show that she was treated with cruelty or harassed before her death in connection with any demand for dowry. It, therefore, follows that the husband or the relative, as the case may be, need not be the actual or direct participant in the commission of the offence of death. For those that are direct participants in the commission of the offence of death there are already provisions incorporated in Sections 300, 302 and 304. The provisions contained in Section 304-B IPC and Section 113-B of the Evidence Act were incorporated on the anvil of the Dowry Prohibition (Amendment) Act, 1984, the main object of which is to curb the evil of dowry in the society and to make it severely punitive in nature and not to extricate husbands or their relatives from the clutches of Section 302 IPC if they directly cause death. This conceptual difference was not kept in view by the courts below. But that cannot bring any relief if the conviction is altered to Section 304 Part II. No prejudice is caused to the accused-appellants as they were originally charged for offence punishable under Section 302 IPC along with Section 304-B IPC.”

19. In a recent decision, this Court in *Jasvinder Saini v. State (Govt. of NCT of Delhi)* (2013) 7 SCC 256, observed thus: (SCC p. 262, para 15)

“15. It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court



can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in *Rajbir case*(2010) 15 SCC 116. The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in *Rajbir case* (2010) 15 SCC 116, but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court.”

20. Though in the instant case the accused were charged by the Sessions Court under Section 302 IPC, it is seen that the trial court has not made any serious attempt to make an inquiry in that regard. If there is evidence available on homicide in a case of dowry death, it is the duty of the investigating officer to investigate the case under Section 302 IPC and the prosecution to proceed in that regard and the court to approach the case in that perspective. Merely because the victim is a married woman suffering an unnatural death within seven years of marriage and there is evidence that she was subjected to cruelty or harassment on account of demand for dowry, the prosecution and the court cannot close its eyes on the culpable homicide and refrain from punishing its author, if there is evidence in that regard,



direct or circumstantial.”

12. The worst part of the trial relates with statement of the appellant/convict. Before analyzing the same, the same is quoted below in verbatim.

प्रश्न:—आपने गवाहों का बयान सुना है?

उत्तर— जी हाँ

प्रश्न:—गवाहों का कहना है कि दिनांक 24.2.13 को आप आने घर में अपनी पत्नी तीता कुमारी उर्फ लूसी को अन्य अभियुक्तों के साथ मिलकर दहेज मांगते थे नहीं मिलने पर प्रताड़ित करते थे तथा जलाकर हत्या कर दिया?

उत्तर— जी नहीं।

प्रश्न:—सफाई में क्या कहना है?

उत्तर— निर्दोष है।

13. From perusal of the same, it is evident that the learned lower court during course of recording statement of the appellant failed to locate incriminating material which has been found on record, having adduced against the appellant by the prosecution, and thus failed to exercise its legal obligation with due diligence. That means to say, the incriminating circumstances having placed on record by the prosecution, due to casual conduct of the learned lower court, could not be confronted, and due to such lapses, the appellant, perhaps would have been ignorant of the same. That being so, it could be perceived serious lacuna persisting on the record, whereupon there happens to be miscarriage of justice.

14. In similar circumstance where there was inappropriate mode of recording of statement in a case *Nar Singh v. State of Haryana* reported in (2015) 1 SCC 496, the matter has been culled



down under para-30; though the matter was remitted back to the lower court to proceed afresh from the stage of recording statement of accused.

“30. Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under:

30.1. Whenever a plea of non-compliance with Section 313 CrPC is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer.

30.2. In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

30.3. If the appellate court is of the opinion that non-compliance with the provisions of Section 313 CrPC has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 CrPC and the trial Judge may be directed to examine the accused afresh and defence witness, if any, and dispose of the matter afresh.

30.4. The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the



facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.”

15. Whether, the aforesaid deficiency could be found sufficient to acquit the appellant, has also been answered under para-34:

“**34.** In our view, the accused is not entitled to acquittal on the ground of non-compliance with the mandatory provisions of Section 313 CrPC. We agree to some extent that the appellant is prejudiced on account of omission to put the question as to the opinion of the ballistic expert (Ext. P-12) which was relied upon by the trial court as well as by the High Court. The trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions under Section 313 CrPC cannot ensure to the benefit of the accused.”

16. The same view has also been followed by the Division Bench in *Jai Sao @ Ajay Sao Vs. State of Bihar* reported in **2016(3) PLJR 441** while remitting the matter to the learned lower court on the score of deficiency found relating to recording of statement under Section 313 Cr.P.C.

“**13.** In the case at hand, the incriminating circumstances, spoken to by each prosecution witness, on which the learned trial Court has relied upon, ought to have been put to the accused-appellant, when he was being examined under Section 313(1)(b) of the Code of Criminal Procedure and the same having not been done, learned trial Court ought not to have based its findings on such incriminating pieces of evidence. In fact, it appears to us that the learned trial Court had not put to the accused-appellant, in the present case, even the



sum-total of the prosecution's case, which, in our considered view, does not satisfy the requirements of law.

14. Situated thus, one has no option but to conclude that if the accused-appellant is not examined under Section 313(1)(b) of the Code of Criminal Procedure as warranted by law, it will deny to the accused-appellant a valuable right vested in him by law to properly and effectively project his defence. At the same time, prosecution, to our mind, cannot be made to suffer solely for the lapse on the part of the learned trial Court in properly examining the accused-appellant under Section 313(1)(b) of the Code of Criminal Procedure. We are, therefore, clearly of the view, if we may reiterate, that this case needs to be remanded to the learned trial Court.”

17. Judgment is the expression of the Court’s opinion arrived at the consideration of the evidence and the arguments. Furthermore, from plain reading of Section 354(1)(b) of the Cr.P.C it is evident that judgment should contain the point of consideration/determination. Furthermore, it is obvious from sub-section (2) of Section 354 Cr.P.C that in case court is found confused over proper identification of the relevant provision of penal law then in that event, the court is required to elaborately dealt with the same, in order to facilitate rightful conclusion.

18. As is apparent from the judgment impugned that though lower court had perceived framing of charge under Section 302/34 IPC as well as 304B/34 IPC, and in the aforesaid background, should have properly dealt with the issue with definite conclusion based upon proper reasoning, which has been found completely lacking. So, the judgment impugned is found inconsistent with the mandate as laid down under Section 354 Cr.P.C.



19. In the aforesaid facts and circumstances of the case, as well as perceiving legal infirmities seriously affecting over property of the trial on account of miscarriage of justice rendering the trial defective, incurable as is not found amenable in terms of Section 464 Cr.P.C., the judgment of conviction and sentence impugned could not be acceded with. As such, same is set aside. Appeal is allowed. However, the matter is remanded to the learned lower court with a direction to retrial from the stage of 313 Cr.P.C. Incriminating pieces of the evidence as drainable from the evidence on record be confronted and further, giving an opportunity to the appellant in their defence will pass judgment in accordance with law preferably within the period of three months from the date of receipt of lower court record. Registry to take proper step for getting the lower court record before the learned court below. Appellant, who is under custody will remain till further eventuality. It is made clear that no finding has been recorded over merit of the case.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	NAFR
CAV DATE	23.03.2017
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Transmission Date	07.04.2017

