

CRR 30 of 2020

In the matter of: Md. Ramjan

....Petitioner.

Mr. Kushal Paul

... for the Petitioner.

Mr. Prasun Kr. Datta

Md. Kutubuddin

Mr. Santanu Deb Roy

... for the State.

Ajoy Kumar Mukherjee,J.(Oral):

Affidavit of service filed by the petitioner in Court today be kept with the record.

Being aggrieved by and dissatisfied with the impugned examination of the petitioner under Section 313 of the Code of Criminal Procedure by the learned Additional District & Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur in POCSO Case No.60 of 2014, the present revisional application has been preferred.

The petitioner has contended that the petitioner is an accused in the aforementioned case. The allegation leveled in complain is that the defacto complainant and the present petitioner were in love affair and taking advantage of such intimate relationship, it is alleged that the petitioner herein committed rape upon her on several occasions. It is further alleged that the parties decided to marry on 02.5.2013 and accordingly, they married each other by way of swearing an affidavit in Raiganj Court. The complainant further alleged that the petitioner initially used to make contact with her at her residence but after sometime the petitioner stopped making contact with her and as such, she has lodged complain that the petitioner committed rape upon her on the promise to marry.

After completion of investigation, police submitted charge-sheet against the petitioner. The evidence of prosecution completed on 06.8.2018 by recording the deposition of PW-7. After completion of deposition of prosecution witnesses, the learned trial court examined the petitioner under Section 313 of the Code of Criminal Procedure vide the impugned examination on November 14, 2018.

Mr. Kushal Paul, learned counsel appearing on behalf of the petitioner, submits that the examination of the accused person has not been done in accordance with law and the principles laid down under Section 313 of the Code of Criminal Procedure. Only ten questions were put to the petitioner and it appears that each question covered almost half page and in each question several questions were jotted down.

Mr. Paul further submits that due to such lengthy and complex questions, it became difficult for the petitioner to give answer to such questions and learned trial court recorded the answer given by the petitioner in one line in Bengali vernacular stating “*onekguli prashna. Jayaga com. Ki kore uttar debo. Sob mithya are baje katha*” (There are so many questions to answer. There is less space. How can I give the answers? All are false and rubbish).

It is further submitted that in answer to all the questions, the learned trial court more or less recorded the same statement. He further submits that learned court below failed to appreciate that the examination of the accused under Section 313 of the Code of Criminal Procedure should be done in clear and unambiguous manner and he ought not to put question which are lengthy and complex or which are difficult to understand by the accused person.

Mr. Prasun Kr. Datta, learned counsel appearing on behalf of the State, submits that recording itself shows that without complying the provisions as laid down under Section 313 of the Code, learned Magistrate has recorded the statement of the accused and such recording is not fair and caused prejudice to the accused and accordingly, appropriate direction may be given to the learned trial court for examining of the accused strictly in accordance with law laid down in Section 313 of the Code.

I have gone through the examination of the accused as done by the learned Magistrate vide order dated November 14, 2018. Out of six similar type questions put to the petitioner /accused, question No. 2 and answer given may be quoted for better understanding of the issue:

“Q 2. *It is evidence against you emanating from PW-1, VG in her examination-in-chief has deposed that she lodged complaint to the O/C Chakulia PS and has signed on the complaint which was submitted by her. She knows how to read both English and Bengali writing. She has further deposed that the complaint was written as per her statement/instruction and it bears her signature. The complaint was written by the scribe in her presence and the written complaint including the signature of the VG is marked Ext. 1 on proof She has further deposed that her father is agriculturalist and they are four brothers and two sisters and VG was still reading. The name of her school is Sakuntala High School situated at Hatimara and was a student of class (X). She was brought before the Magistrate for recording her statement of the incident occurred upon her and the statement of the VG recorded u/s 164 of Cr.P.C. by the Ld. Magistrate is marked Ext.2 and put her signatures on the recorded statement and the signatures of VG on the recorded statement are marked Ext.2(1), 2(2), 2(3), 2(4) & 2(5) on proof. She was brought for medical*

examination at Islampur Hospital and the signature of the VG on the medical examination report is marked Ext.3. At the time of incident, Ramjan was learning computer at Hatimara and the incident occurred since 2012 and continued. She has further deposed that Rarmjan developed love-affairs with her in the year 2012 and she did not want to love him but he created disturbances. She told him that she is the daughter of a poor family and he is a son of moneyed man so she cannot marry him. He told her that in love-affair there is no difference between a poor and moneyed man. He also told her that if she refused the love affair with him he will die. In the month of May of the year 2013 she herself and Ramjan came to Raiganj Court for Court marriage and Ramjan gave her a paper where she has signed and by doing that he earned her confidence. She has further deposed that after that he called her at the bamboo groves with situated near to the ICDS Anganwari Centre of their village at night at 10:00 pm and he committed sexual assault on her repeatedly as per his will. She told him to bring her to their house and Ramjan answered that she has to stay to her house and to continue her study and he will complete computer learning and thereafter he will bring her to their house. She continued her studies as he told her but in the month of May 2014 she learnt that Ramjan was going to marry. She therefore tried to contact with him but she failed to contact with him as he did never meet with her and after that and on query from local people she learnt that really he was going to marry the daughter of his aunt and knowing about all those facts she lodged the complaint against Ramjan to the O/C, Chakulia PS and these are the Xerox copies of 7 love letters given to her by Ramjan, the original of which are lying in her custody. She is acquainted with the handwriting of Ramjan. She also may produce the certificate of her school to show her age and also to that on class she was studying. Police seized one notarized marriage declaration and seven love letters written by accused to her and the seizure list bears her signature which is marked Ext.4 and the original notarized marriage

declaration and seven love letters which are returned by police under zimmanama and the zimmanama is marked Ext. 5 and the her signature at zimmanama is marked Ext.5/1. She has brought original ove letters including greeting consisting of seven sheets which are marked Ext.6 series and the Xerox copy of the notarized declaration of marriage is marked Ext. X for identification.”

What you have to say

Ans. “ ONEKGULI PROSNO. JAIGA KOM. KI KORE UTTOR DIBO. SOB MITTHA AR BAJE KATHA.”

Before going to further details, Section 313 of the Code is reproduced herein below:-

“313. Power to examine the accused. – (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court –

- (a) may, at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;
- (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

The methodology to record examination of accused has been stated in section 281 of the code of criminal procedure

“281. Record of examination of accused.

(1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.

(2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or

where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

[\(3\)](#) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable, in the language of the Court.

[\(4\)](#) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

[\(5\)](#) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

[\(6\)](#) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.”

Needless to say that , the main object of the section 313 of the code is to ensure fair trial which is granted under Article 20 of the constitution of India. Examination of accused under section 313 is not an empty formality, it has to be carried out in the interest of justice and fair play to the accused.

Supreme Court in **Asraf Ali Vs. State of Assam** reported in **(2008) 16 SCC 328** explained the object of such examination paragraph 15 :-

“15. What is the object of examination of an accused under [Section 313](#) of the Code? The section itself declares the object in explicit language that it is "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him". In *Jai Dev v. State of Punjab* (AIR1963 SC 612) Gajendragadkar, J. (as he then was) speaking for a three-Judge Bench has focussed on the ultimate test in determining whether the provision has been fairly complied with. He observed thus:

"The ultimate test in determining whether or not the accused has been fairly examined

under [Section 342](#) would be to inquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity."

Again in **Sanatan Naskar and another vs. State of west Bengal** reported in **(2010) 8 SCC 249**, Apex Court discussed in detail the scope and object of section 313 of the code.

10. The answers by an accused under [Section 313](#) of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of [Section 313](#) of the Cr.PC is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of [Section 313](#) of the Cr.PC. As already noticed, the object of recording the statement of the accused under [Section 313](#) of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain.”

In ***Dharnidhar vs. State of U.P. and others***, reported in **2010 AIR SW 5658**, Supreme Court made it clear that the proper methodology to be adopted by the court while recording the statement of the accused under section 313 of the Cr.P.C. is to invite the attention of the accused to the circumstances and substantial evidence in relation to the offence for which he has been charged and invite his explanation. In other words, it provides an opportunity to an accused to state before the court, as to what is the truth and what in defence, in accordance with law.

In ***State of Punjab Vs. Swaran Singh*** reported in **(2005) 6 SCC 101**, it was observed:-

“10. The questioning of the accused is done to enable him to give an opportunity to explain any circumstances which have come out in the evidence against him. It may be noticed that the

entire evidence is recorded in his presence and he is given full opportunity to cross-examine each and every witness examined on the prosecution side. He is given copies of all documents which are sought to be relied on by the prosecution. Apart from all these, as part of fair trial the accused is given opportunity to give his explanation regarding the evidence adduced by the prosecution. However, it is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. If there were circumstances in the evidence which are adverse to the accused and his explanation would help the court in evaluating the evidence properly, the court should bring the same to the notice of the accused to enable him to give any explanation or answers for such adverse circumstance in the evidence. Generally, composite questions shall not be asked to the accused bundling so many facts together. Questions must be such that any reasonable person in the position of the accused may be in a position to give rational explanation to the questions as had been asked. There shall not be failure of justice on account of an unfair trial.”

In view of aforesaid line of precedents it is clear that it is not sufficient compliance to string together long series of facts and asked the accused what he has to say about them as has been done by the court herein. He must be questioned simply and separately about each material circumstance which is intended to be used against him in a way an illiterate person can appreciate and understand. The practice of putting the entire evidence against the accused in a single question and ask him to answer the same is improper as the accused may not be in a position to give a rational and intelligent explanation and as above such examination cannot be done in a slipshod manner as it may result in impugned appreciation of evidence.

The practice of Trial Court of putting the entire evidence against the accused in a single question and given an opportunity to explain the same has been seriously deprecated by the Supreme Court in **Satbir Sing Vs. State of Haryana** (decided on 28th May, 2021) in the following words:-

“20. *It is a matter of grave concern that, often, Trial Courts record the statement of an accused under Section 313, CrPC in a very casual and cursory manner, without specifically questioning*

the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This provision incorporates the valuable principle of natural justice “audi alteram partem”, as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the part of the Court to question the accused fairly, with care and caution. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense, since the inception of the trial, with due caution, keeping in consideration the peculiarities of Section 304B, IPC read with Section 113B, Evidence Act”.

For the above reason, I have no other alternative but to set aside the impugned examination of the petitioners under section 313 of the code on November 14, 2018 by the learned Judge Special Court (POCSO), Additional District & Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur along with order no. 42 dated 14.11.2018 passed in POCSO-61/2014 with the direction that the learned Trial Judge shall examine the accused person under Section 313 of the Code of Criminal Procedure putting separately each and every incriminating circumstances appearing against him in the evidence on record, in strict compliance with guidelines as discussed above as precedents and also following methodology laid down in section 281 of the Cr.P.C.

CRR 30 of 2020 is accordingly allowed.

However, there will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Ajoy Kumar Mukherjee, J.)