

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.A 173 of 2019
With
CRAN 2 of 2019 (Old CRAN 2743 of 2019)

Bappa Paswan @ Bijoy
Vs.
The State of West Bengal

Amicus Curiae for the appellant:

Ms. Meenal Sinha.

For the State:

Mr. Ranabir Roy Chowdhury,
Ms. Faria Hossain,
Ms. Baishali Basu.

Heard on: 11 & 12 April, 2022.

Judgment on: 12 April, 2022.

BIBEK CHAUDHURI, J. : –

1. The judgment and order of conviction and sentence passed in Session Trial No.9(11) of 2017 arising out of POCSO Case No.25 of 2017 passed by the learned Additional Sessions Judge, 2nd Court and the designated court under the POCSO Act, Raiganj, Uttar Dinajpur is assailed in the instant appeal.

2. The accused was convicted under Section 341/342/120B/354/363/34/506/509 of the IPC, Section 3(1)(r)/ 3(1)(s)

of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act and Section 3/10/21 of the POCSO Act. The learned trial judge passed the following sentence which is recorded hereinbelow in tabular form:-

Section	Imprisonment	Fine	In default simple imprisonment
u/s 341 IPC	1 month	500	1 month
u/s 342 IPC	6 months	500	2 months
u/s 342/120 B IPC	6 months	500	2 months
u/s 354 IPC	2 years	1000	2 months
u/s 363 IPC	3 years	2000	2 months
u/s 506 IPC	6 months	500	2 months
u/s 509 IPC	6 months	500	2 months
u/s 3(1)(r)/3(1)(s) SCST	2 years (R.I)	3000	R.I 6 months
u/s 8 POCSO	3 years (R.I)	3000	R.I 6 months
u/s 10 POCSO	5 years (R.I)	3000	R.I 6 months
u/s 21 POCSO	6 months	500	1 month

3. At the time of hearing of the appeal the learned Advocate on record for the appellant did not take any step. Therefore, Ms. Meenal Sinha, learned Advocate was requested to assist the court in the hearing of the instant appeal on behalf of the appellant. The learned Advocate readily accepted the request made by this Court and she assists this Court on

behalf of the appellant diligently with full devotion. The court at the outset appreciates her effort on behalf of the appellant.

4. Having heard the learned Advocate for the appellant as well as the Mr. Ranabir Roy Chowdhury, learned P.P-in-Charge this Court concurs with the submission made by the learned Advocate for the appellant that the learned trial judge committed gross error in course of examination of the accused persons under Section 313 of the Cr.P.C. Mr. Roy Chowdhury, also submits that only on this score the appeal should be allowed and the case should be remanded back to the trial court for proper examination of the accused persons under Section 313 of the Code of Criminal Procedure and delivery of judgment.

5. Ms. Meenal Sinha refers to the decision of the Hon'ble Supreme Court in **Naval Kishore Sinha vs. State of Bihar** reported at **(2004) 7 SCC 502**, it is held by the Hon'ble Supreme Court that the questioning of the accused under Section 313 of the Cr.P.C is not a mere formality but a part of fair trial where the accused gets the opportunity to explain his version on the incriminating evidence adduced by the witnesses on behalf of the prosecution during trial. Under Section 313 of the Cr.P.C the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least the various items of evidence, which had been produced by the prosecution should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. The practice of putting the entire evidence against the accused put together in a single question and

giving an opportunity to explain the same, is deprecated as the accused may not be in a position to give a rational and intelligent explanation. The trial judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in slipshod manner, it may result in imperfect appreciation of evidence.

6. A Three Judges Bench of the Hon'ble Supreme Court in **Maheshwar Tigga vs. State of Jharkhand reported in (2020) 10 SCC 108** observed and held that the circumstanced not put to an accused under Section 313 Cr.P.C. cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. Therefore, it is important of put of relevant question to the accused. In **State of Punjab vs. Sawaran Singh** reported in **(2005) 6 SCC 101**, the Hon'ble Supreme Court had the occasion to deal with the scope and object of Section 313 of the Cr.P.C which may be summed up in the following words:-

- (1) 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.
- (2) 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 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 circumstances in the evidence.
- (3) Composite questions should not be asked to accused bundling so many facts together.
- (4) Where an omission, to bring the attention of the accused to an inculpatory material has occurred, that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission.
- (5) 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.

7. It is true that defective examination of accused under Section 313 of the Cr.P.C does not by itself vitiate the trial. Where the court finds that prejudice was caused to the accused by such defective examination under Section 313 of the Cr.P.C, the court can direct the trial court to examine the accused under Section 313 afresh. The omission to examine the accused under Section 313 by explaining incriminating circumstances to him will result in remission of the case for fresh trial. In support of my observation, I may refer a decision of the Hon'ble Supreme Court in the

case of **Nar Singh vs. State of Haryana reported in (2015) 1 SCC (Cri) 699.**

8. Therefore, the consistent view of this Court is that examination of the accused under Section 313 of the Cr.P.C is not a mere formality and incriminating circumstances must be asked to the accused. It is also clear that composite question or jumbled up question should not be asked to the accused bundling so many facts together.

9. In the instant case, it is found that the learned trial judge jumbled up of incriminating circumstance in one question and formulate the same and asked such question to the accused. The learned trial judge did not mention from whose evidence what incriminating circumstance was available against the accused. On the contrary, he went on asking questions in the following manner, "It is evidence against you..."

10. In question No.19 the learned trial judge asked, "Are you guilty or not?"

11. This question cannot be asked to an accused in course of examination under Section 313 of the Cr.P.C.

12. For the above reason, this Court has no other alternative but to set aside the impugned judgment and order of conviction and sentence with the following direction:-

The learned trial judge shall examine the accused persons under Section 313 of the Cr.P.C putting each and every incriminating circumstances appearing against him in the evidence on record.

After examination of the accused persons afresh, the learned trial judge shall right down the judgment afresh.

13. Since the appellants are in custody they are directed to be released on bail of Rs.1000/- each with one surety each to the satisfaction of the learned Additional Sessions Judge, 2nd Court and the designated judge under the POCSO Act, Raiganj. The learned trial judge is further directed to complete the entire process within three months from the date of communication of this judgment along with the lower court record.
14. The instant appeal is accordingly disposed of on contest.
15. A copy of this judgment along with the lower court record be sent down to the court below forthwith.

(Bibek Chaudhuri, J.)