

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.198 of 2004

1. Wakil Yadav, Son of Late Tenni Yadav
2. Gundeo Yadav, Son of Late Tenni Yadav
3. Suresh Yadav, Son of Late Gholti Yadav
4. Shobhin Yadav, Son of Late Maharaj Yadav
5. Butti Yadav, Son of Late Maharaj Yadav
6. Radhe Yadav, Son of Late Maharaj Yadav
7. Babulal Yadav, son of Late Gholti Yadav
8. Anandi Yadav, son of Late Tenni Yadav
9. Bilash Yadav, son of Late Tenni Yadav
10. Lakshmi Yadav, son of late Maharaj Yadav
11. Govind Yadav, son of Late Maharaj Yadav
12. Ghoghan Yadav, son of Govind Yadav, all village of Agarpur, P.S. Sabour(Lodhipur), District, Bhagalpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Satish Chandra Mishra, Advocate
		Mr. Nurul Hoda, Advocate
For the Respondent/State:		Mrs Anita Kumari Singh, APP

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 23-10-2024

1. The criminal appeal is arising out of the judgment in Sessions case No. 457 of 1986/ Trial No. 61 of 2002 on the file of Additional Sessions Judge Fast Track Court, Bhagalpur. Altogether there are 12 accused persons tried for the offences punishable under Sections 307, 147, 148, 323, 325, 380 read with Section 149 of the IPC. All the 12 accused persons i.e.



appellants herein tried for the charges for the offences punishable under Sections 307, 323 and 325 read with Section 149 and also under Section 380 of the IPC. The accused Suresh Yadav (A-3), Govind Yadav (A-11), Radhe Yadav(A-6), Ghoghan Yadav (A-12) were charged for the offence punishable under Section 147 of the IPC. Accused Lakshmi Yadav (A-10), Babulal Yadav(A-7), Bhutti Yadav (A-5), Shobhin Yadav(A-4), Bilash Yadav(A-9), Anandi Yadav(A-8), Wakil Yadav (A-1), Gundeo Yadav(A-2) are charged for the offence punishable under Section 148 of the IPC.

2. It is pertinent to note that apart from 12 accused there are two other accused, who died during the course of the trial, and the case against those accused i.e. Teni Yadav and Gholti Yadav abated on 17.02.1999 and 18.07.2000 respectively.

3. As per the Fardbeyan, the police recorded the statement of the informant i.e. Harangi Yadav, at Bhagalpur Medical College and Hospital Camp on 13.07.1984 at about 07:00 P.M. The contents of the Fardbeyan disclose that on 13.07.1984 between 05:00 and 06:00 A.M., the accused Gholti Yadav armed with Barchi, Babulal Yadav armed with Garasa,



Suresh Yadav armed with Lathi, Butti Yadav armed with Bhala, Somin Yadav armed with Garasa, Govind Yadav armed with Lathi, Teni Yadav armed with Lathi, Bilash Yadav armed with Farsa, Anandi Yadav armed with Farsa, Wakil Yadav armed with Bhala, Gundeo Yadav armed with Garasa, Radhe Yadav armed with Lathi, Ghoghan Yadav armed with Lathi and Lakshmi Yadav armed with Gupti came to his Basa and Gholti Yadav instigated his associates to kill the family of the informant and also instigated to loot all the articles. On that, Butti Yadav assaulted Banarsi Yadav (not examined) with Bhala, on his head as a result of which Banarasi Yadav sustained serious injuries on his head and fell down. When Harihar Yadav and Anarsi Yadav proceeded to save Banarsi Yadav, Gholti Yadav (dead) assaulted Dilip Yadav on his chest, who sustained an injury. Wakil Yadav assaulted Dilip Yadav on his neck for which Dilip Yadav warded off the attack with his hands, as a result of which his finger sustained cut injuries. Lakshmi Yadav ordered to kill him and he also assaulted Dilip Yadav with Gupti, for which Dilip Yadav fell down with bleeding injuries.



4. At that juncture, Anarsi Yadav protested, Babulal Yadav instigated to kill him and further Babulal Yadav also assaulted Anarsi Yadav on his head with Garasa with an intention to kill him, but Anarsi Yadav bow down his head, as a result he sustained injuries on the back portion of his head and fell down. Butti Yadav assaulted Harihar Yadav (not examined) with Garasa, on his neck but he warded off the attack with his hands and all the accused persons assaulted the informant. The informant Harangi Yada, Sundar Yadav and Horil Yadav were assaulted with Lathi, as a result injured persons fell down. Later all the accused persons committed loot of grains kept in Basa. On hearing screams, villagers, namely, Sushil Yadav, Umesh Yadav, Sakhachandra Yadav, Ramdeo Yadav and other villagers witnessed the occurrence, but due to fear of the accused persons, they did not speak about the high handedness acts of the accused persons. The injured persons were taken to Bhagalpur Medical College and Hospital, with the help of family members of the informant and other villagers. It was also mentioned in the Fardbeyan that Anarsi Yadav became unconscious and that the motive of the occurrence was said to be a land dispute and previous



litigation between the injured and accused. It is further mentioned in the Fardbeyan that all the accused committed the offence with conspiracy.

5. As stated (Supra) charges were framed against all the 12 accused persons for the aforesaid offences for which all accused pleaded not guilty and claimed to be tried. During the course of the trial, prosecution has examined five witnesses, out of which, P.W. 2 Sushil Yadav was tendered and P.W. 4 Ramdeo Yadav and P.W. 5 Kapildeo Yadav turned hostile. The evidence on record is that of P.Ws. 1 and 3 i.e. Anarsi Yadav and Dilip Yadav who are said to be injured in the incident.

6. It is important to note that the informant Harangi Yadav was not examined as he died during the pendency of the trial.

7. Heard the Learned counsel for the appellants Sri Satish Chanra Mishra as well as the Learned Addition Public Prosecutor.

8. It is urged by the Learned counsel for the appellants that the trial Court erred in convicting the appellants for the charges, inspite of having no material on record, except for the oral evidence of P.Ws. 1 and 3. There is



no oral or documentary evidence on record to corroborate the occurrence. The injuries sustained by P.Ws. 1 and 3 were not proved by the prosecution. Further, the Doctor and the Investigating Officer were also not examined in the case so as to prove the offences, and therefore, prayed to set aside the conviction and sentence of the trial Court and to acquit the accused extending benefit of doubt.

9. On the other hand, the Learned Additional Public Prosecutor contended that P.Ws. 1 and 3 are injured and their testimony cannot be brushed away even if the Doctor and the Investigating Officer were not examined and, therefore, prayed to confirm the judgment of the trial Court.

10. It is brought to the notice of this Court that appellant No. 5, 9 and 11 died on 02.06.2024, 05.10.2023 and 30.03.2019 respectively and the case against these appellants shall stand abated.

11. As per the Criminal jurisprudence, the burden is always on the prosecution to prove that the guilt of the accused beyond reasonable doubt and the accused shall be presumed to be innocent till the guilt is proved. The point for determination which arose in the appeal is that, whether the



trial Court has rightly convicted the appellant for the charges levelled against them? and whether the prosecution is able to prove the guilt of the appellants beyond reasonable doubt? It is necessary to scrutinize the evidence of P.W. 1 and P.W. 3 who are said to be the injured in the case.

12. The evidence of P.W. 1 discloses that on 13.07.1984 between 05:00 - 06:00 A.M. The informant was returning to his house from Katariya river after taking bath and when he reached the Basa, he saw Gholti Yadav armed with Barchhi, Babulal Yadav armed with Garasa, Suresh Yadav armed with Lathi, Govind Yadav armed with Lathi, Butti Yadav armed with Bhala, Shobhin Yadav armed with Garasa, Radhe Yadav armed with Lathi, Ghoghan Yadav armed with Lathi, Teni Yadav armed with Lathi, Bilash Yadav armed with Farsa, Anandi Yadav armed with Farsa, Gundeo Yadav armed with Garasa, Wakil Yadav armed with Bhala, Lakshmi Yadav armed with Gupti attacked the informant/Harangi Yadav. His evidence further discloses that the Basa is situated between Katariya river and his house, and that the accused Gholti Yadav (dead) instigated others to kill all the family members of the Harangi Yadav. On such



instigation, Babulal Yadav attacked the informant with Garasa on his head and when Dilip Yadav protested the accused Gholti Yadav attacked with Barchhi, on the chest of Dilip Yadav and the accused Wakil Yadav also assaulted Dilip Yadav on his neck with Bhala and when he tried to ward off with his hands, his fingers were maimed. Thereafter, accused Lakshmi Yadav assaulted Dilip Yadav with Gupti on the stomach and after the assault, Dilip Yadav fell down. He further testified that when Banarsi Yadav came to save Dilip Yadav, Bhutti Yadav assaulted Banarsi Yadav with Bhala on his head, as a result of which Bhutti Yadav sustained injuries on his temple region, as he moved his head. He further testified that Banarsi Yadav/his full brother tried to save him, but Babulal Yadav assaulted Banarasi his head with Garasa. Accused Govind Yadav, Ghoghan Yadav and Radhe Yadav assaulted Harihar Yadav, Sundar Yadav, Horil Yadav and Harangi Yadav with Lathi. In the said incident, the informant fell down and all the accused persons assaulted him with Lathi due to which he became unconscious and when he regained conscious he found himself in the hospital. It is further stated by him that he was under treatment for 15 days and the Police



have recorded his statement, while he was undergoing treatment in the hospital. P.W. 1 identified all the accused in the open Court.

13. During cross-examination, P.W. 1 stated that he received injuries on his hands and was treated in Sadar Hospital, Bhagalpur and while under going treatment he saw the accused Gholti Yadav roaming in the Hospital.

14. It is specifically admitted by P.W. 1 that the accused filed a counter case was filed in which they were acquitted. He specifically testified that Dilip Yadav, Banarsi Yadav, Sundar Yadav, Gholit Yadav, Hariya Yadav and Tarangi Yadav were also admitted in the Hospital. The motive for the incident was that a she-goat of the accused Babulal Yadav had entered into the field of the informant/Harangi Yadav and had grazed the standing crop of the informant upon which the informant lodged a complaint against Babulal Yadav, for which Babulal Yadav abused him.

15. The evidence of P.W. 3 is also in the same line as that of the evidence of P.W. 1. But there were minor contradictions in the in evidence as to the nature of weapons and as to the manner of attack. As per the evidence of P.Ws. 1



and 3 five others were also injured, apart from there. Banarsi Yadav, Harihar Yadav, Sundar Yadav, Horil Yadav, and Harangi Yadav were also treated in the said hospital.

16. But these injured persons were not examined before the Court for the best reasons known to the prosecution. Except the oral evidence of P.Ws. 1 and 3, there is no other corroborating evidence on record to prove that they sustained injuries in the alleged occurrence in the hands of the appellants and that they were treated in the hospital for a period of 15 days for the said injuries.

17. The Injury Reports of these two persons were also not marked before the Court, to prove that they sustained injuries. The Investigating Officer was also not examined before the Court. Prosecution has failed to make documents i.e., the FIR, Injury Reports, the Scene Observation Panchnama

18. Basing on the oral evidence of P.Ws. 1 and 3 who are said to be the injured, the trial Court has convicted all the appellants for the alleged charges framed against them.

19. The non-examination of the Doctor and the Investigation Officer are fatal to the case of the prosecution.



In the present case, the injuries which were alleged to have been inflicted against P.Ws. 1 and 3 were also not proved by the prosecution. The trial Court ought to have brought on record the Injury Reports of the injured to corroborate with the oral evidence of P.Ws. 1 and 3.

20. In a criminal case, the accused is always entitled for benefit of doubt and it is for the prosecution to establish the presence of the accused at the time of occurrence. As to why Banarsi Yadav, Harihar Yadav, Sundar Yadav, Horilal Yadav and Harangi Yadav were not examined before the Court for the best reasons to the prosecution. It is the case of the prosecution that they are also said to be injured persons in the said incident.

21. The intention of the accused is also not established before the Court. On the one hand, Fardbeyan disclose that there was a land dispute between the family members of the informant and that of the accused, since long time.

22. Contrary to it, the evidence of P.Ws. 1 and 3 disclose that she-goat of the accused entered into the field of the informant and had grazed the standing crops for which the



informant has abused the accused which was the motive for the incident.

23. It is for the prosecution to establish the intention, motive, or the knowledge in order to attract the offence under Section 307 of the IPC.

24. Admittedly, no weapons were recovered in this case Section 307 of the IPC would be applicable in a situation where the accused has intention, knowledge and that the said act may cause death or hurt to the informant.

25. In Sukhwant Singh Vs. State of Punjab reported in 1995 3 SCC 367 there the Lordships have held as follows:-

19. In State of U.P. v. Jaggo [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] which has been referred to and relied upon by the prosecution and the trial court for adopting the procedure of tendering PW 4 and PW 5 for cross-examination only in our opinion, has not been properly appreciated and has been misapplied. That judgment cannot be read to lay down, as a matter of legal proposition, that a witness can be 'tendered' for



cross-examination even without there being any examination-in-chief. If there is some earlier statement of the witness recorded by a competent court or an affidavit filed in the trial court and the witness testifies to the correctness of that earlier statement at the trial, it may (in certain cases of witnesses of a formal nature) as noticed earlier be permissible to tender him for cross-examination after he is sworn to the correctness of the earlier statement, because in that event that earlier statement is treated as the examination-in-chief of the witness but that is not the same thing as tendering a witness for cross-examination only, without there being any examination-in-chief on the record. In Jaggo case [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] a Bench of this Court was considering the question whether the mere presentation of an application by the prosecution to the effect that a certain witness had been “won over” was conclusive of the allegation that he had been so “won over” and the prosecution was therefore relieved of its



obligation to examine him at the trial. The proposition was negatived and it was in that context, that this Court observed:

“On behalf of the appellant it was said that Ramesh Chand was won over and therefore the prosecution could not call Ramesh. The High Court rightly said that the mere presentation of an application to the effect that a witness had been won over was not conclusive of the question that the witness has been won over. In such a case Ramesh could have been produced for cross-examination by the accused. That would have elicited the correct facts. If Ramesh were an eyewitness the accused were entitled to test his evidence particularly when Lalu was alleged to be talking with Ramesh at the time of the occurrence.”

20. The Division Bench, therefore, was considering a peculiar fact situation in that case and even in that context it was observed that the witness “could have been produced for cross-examination by the accused” and that “the accused were entitled to test his evidence”. The



observations of the Division Bench in Jaggo case [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] , therefore, do not support the view that a material witness can be 'tendered' for cross-examination only. The observations from a judgment of this Court cannot be read in isolation and divorced from the context in which the same were made and it is improper for any court to take out a sentence from the judgment of this Court, divorced from the context in which it was given, and treat such an isolated sentence as the complete enunciation of law by this Court. The judgment in Jaggo case [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] has in our opinion been misappreciated and that judgment cannot be interpreted as a sanction from the Supreme Court to the prosecution to adopt the practice of tendering a witness for cross-examination only, without there being any examination-in-chief, in relation to which the witness has to be cross-examined. All that the judgment in Jaggo case [(1971) 2 SCC 42 : 1971



SCC (Cri) 401 : AIR 1971 SC 1586]
emphasises is that the mere ipse dixit of the prosecutor that a particular witness has been won over is not conclusive of that allegation and the Court should not accept the same mechanically and relieve the prosecutor of his obligation to examine such a witness. It was for this reason suggested by the Bench that where the prosecution makes such an allegation, it must keep the witness in attendance and produce him to enable the defence to cross-examine such a witness to test his evidence as well as the allegations of the prosecution and bring out the truth on the record. After the coming into force of the Criminal Procedure Code, 1973, which replaced the Code of 1898, recording of evidence in commitment proceedings has been totally dispensed with and Section 288 of that Code has been omitted. Consequently, the course suggested by some of the High Courts in the earlier quoted judgments regarding tendering of a witness for cross-examination who had been examined in the committal court, is also no more relevant or



available. The Jaggo case [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] , which was decided when the Code of 1898 was operating in the field could not, therefore, be pressed into service by the trial court while dealing with the instant case tried according to the Code of 1973. Thus considered, it is obvious that the trial court, wrongly permitted the prosecution to tender PW 4 and PW 5 for cross-examination only. Both PW 4 and PW 5 were, according to the prosecution case itself, eyewitnesses of the occurrence and had removed the deceased to the hospital. Their evidence was, of a material nature which was necessary for the unfolding of the prosecution story. The effect of their being tendered only for cross-examination amounts to the failure of the prosecution to examine them at the trial. Their non-examination, in our opinion, seriously affects the credibility of the prosecution case and detracts materially from its reliability.

26. As per the said ruling under new Cr.P.C. the recording of evidence, in contempt proceedings having been



dispensed with, tendering of witness for cross-examination only, no more relevant or available under the Criminal Procedure Code.

27. Admittedly, P.W. 2 was tendered by the trial Court which is not at all permissible under law.

28. P.Ws. 4 and 5 turned hostile and did not support the case of the prosecution in any manner.

29. Section 307 of the I.P.C. defines ‘Attempt to murder’- “whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned”.

30. What is the necessity to convict an accused under Section 307 of IPC? is dealt in the case of *the State of Madhya Pradesh Vs. Kanha @ Om Prakash* reported in *2019 3 SCC 605*, wherein their Lordships have held that:-



(I). Showing proof of grievous or life threatening hurt is not a *sine quo non* for the offence of Attempt to murder.

(II). The convict of the accused under Section 307, it is not essential that bodily injury capable of causing death should have been inflicted and it is sufficient if there was present an intent coupled with some overt act in execution thereof and further that merely because the injury inflicted on the victim were simple in nature, it would not be correct, to acquit under Section 307 of IPC,

31. In the **State of Madhya Pradesh Vs. Kanha @ Om Prakash reported in 2019 3 SCC 605** their Lordships have discussed about several judgments of the Hon'ble Apex Court, having incorporated under Section 307 of the IPC and held as below:-

9. Section 307- of the Penal Code reads thus:

“307. Attempt to murder.

—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and



*shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned. **Attempts by life convicts.**— When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.*

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.”



(emphasis supplied)

The first part of Section 307 refers to “an act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder”. The second part of Section 307, which carries a heavier punishment, refers to “hurt” caused in pursuance of such an “act”.

10. Several judgments of this Court have interpreted Section 307 of the Penal Code. In State of Maharashtra Vs. Balram Bama Patil, this Court held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted: (SCC p, 32, Para-9)

“9.To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still



there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

(Emphasis supplied)

This position in law was followed by subsequent benches of this Court.

11. In State of M.P. V. Saleem, this Court held thus: (SCC PP. 559-60, para-13)

“13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an



accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

(Emphasis supplied)

12. In Jage Ram v. State of Haryana, this Court held that to establish the commission of an offence under Section 307, it is not essential that a fatal injury capable of causing death should have been inflicted: (SCC p. 370, para 12)

“12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the



weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

32. On construing the above citations, it is evident that proof of grievous hurt or life threatening hurt is not *sine qua non* for offence under Section 307 of IPC. The intention of the accused can be ascertained from actual injury, if any, as well as other circumstances. The actual injury itself was not established in this case.

33. Admittedly, the nature of weapon used or the severity of the blows inflicted were also not established by the prosecution to prove the guilt of the appellants.

34. In the present case, there is no evidence on record to prove that the injuries were caused by the appellants with deadly weapons and in absence of the proof of any injury over P.Ws. 1 and 3, the trial Court ought not have convicted the accused.

35. It is also relevant to note that under Section 313 CrPC examination of the accused only these common questions were asked to the accused which reads as follows:-



Question I. Have you heard the statement of the witness?

Question II. There is an allegation on you that you along with the other accomplice carried arms and weapons and injured Harangi Yadav, Banarsi Yadav, Harihar Yadav, Anarsi Yadav, Sundar Yadav, Horil Yadav what do you say ?

Question III. What do you say defence?

Except the said questions, nothing else was put to the accused persons with regard to incriminating evidence against the appellants.

36. In *Indrakunwar Vs. State of Chhattishgarh reported in 2023 SCC OnLine SC 1364*, their Lordships have evolved principles to be followed while framing questions under Section 313 CrPC examination which are as follows:-

35. On perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when construing such statements.

35.1. The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

35.2- The intent is to establish a dialogue between the Court and the accused. The process benefits of the



accused and aids the Court in arriving at a final verdict.

35.3- *The process enshrined is not a matter of procedural formality but is based on the cardinal principles of natural justice i.e. audi alterum partem.*

35.4- *The ultimate test when concern with the complaints of the section is to inquire and ensure whether the accused got the opportunity to say his piece.*

35.5- *In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretations. The accused may not be put to prejudice to any omission or inadequate questioning.*

35.6- *The right to remain silent or any answer to question which may be false shall not be used to his detriment being the sole reason.*

35.7- *This statement cannot found the sole basis of conviction and is neither a substance to or a substitute piece of evidence. It does not discharge but reduces the prosecution burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.*

35.8- *This statement is to be read as a whole. One part cannot be read in isolation.*

35.9- *Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of Indian Evidence Act, 1872, however, the inculpatory aspect*



as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10- *The circumstances not put to the accused while rendering his statement under Section R to be excluded from consideration as no opportunity has been offered to him to explain them.*

35.11- *The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defense. The defense so articulated must be carefully scrutinized and considered.*

35.12- *Non-compliance with the section may cause to the prejudice to the accused and may impede the process of arriving at a fair consideration.*

37. In Prem Chand Vs. State of Maharashtra reported in 2023 5 SCC 522 their Lordships also evolved the guidelines for examination of the accused under Section 313 of Cr.P.C. which held as follows:-

15. *What follows from these authorities may briefly be summarized thus:*

15.1. *Section 313CrPC [clause (b) of sub-section (1)] is a valuable safeguard in the trial process for the accused to establish his innocence.*

15.2. *Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain*



any circumstances appearing in the evidence against him.

15.3. *When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.*

15.4. *The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences.*

15.5. *An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.*

15.6. *The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).*

15.7. *Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.*

15.8. *Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.*

15.9. *If the accused takes a defense and proffers any alternative version of events or interpretation, the court has to carefully analyse and consider his statements.*

15.10. *Any failure takes a defense the accused's explanation of incriminating circumstances, in a*



case, may vitiate the trial and/or endanger the conviction.

38. Bearing the well-settled principles in mind, every criminal court proceedings under Clause (b) of Sub-section (1) of Section 313 of Cr.P.C. has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstances in the evidence that could be used against him.

39. The Criminal Justice System ensures a fair and speedy trial and the facts within the domain of the court are to be explained to the accused and opportunity has to be given to them to explain about the incriminating evidence.

40. In the present case, it does not appear from the records that the incriminating evidence was put to the appellants. Taking into consideration the entire material on record it can be constrained that there is no sufficient corroborating evidence i.e. either oral or documentary to convict the appellants. Therefore, conviction granted by the



trial Court is not sustainable and is liable to be set aside. Further, the prosecution has miserably failed to prove the guilt of the accused/appellants for the charges levelled against him.

41. In result the appeal is allowed, setting aside the conviction and sentence imposed against the appellants in Sessions Trial Case No. 457 of 1986/Trial No. 61/2002 on the file of Addl. Sessions Judge, Fast Track Court, Bhagalpur.

42. The appellants were enlarged on bail vide order dated 10.05.2004. Hence, the bail bonds of the appellants stand cancelled.

(G. Anupama Chakravarthy, J)

Manishkr/-

AFR/NAFR	NAFR
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