

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 171 of 2003

**Bishnu Kumar Gupta & Ors.
-Vs-
The State of West Bengal**

For the Appellants : Ms. Ariba Shahab
(Amicus Curiae)

For the State : Mr. Avishek Sinha

Heard on : 13.02.2024, 22.02.2024, 02.05.2024

Judgment on : 18.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the order and judgment passed on 02.05.2003 by the 1st Additional District and Sessions Judge, Chinsura, Hooghly, being Sessions Trial Case No. 131 of 1997 whereas the Learned Court convicted the accused persons and sentenced the same under Section 498A of the Indian Penal Code to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.1,000/- each, in default, to suffer rigorous imprisonment for 6 months and also convicted the appellants under Section 304B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- each, in default, to

suffer rigorous imprisonment for a further period of one (1) year. Both the sentences to run concurrently.

2. The prosecution case precisely stated on 14.11.1993 the de facto complainant Smt. Lakshmi Debi lodged a complaint at Uttarpara Police Station, inter alia, stating that her daughter Rina Rani Saha married Bishnu Prasad Gupta, the appellant on 22nd day of May, 1993. At the time of marriage the mother-in-law of the victim Rina demanded a sum of Rs.25,000/-, 20 bhoris of gold and one scooter for his son Bishnu Prasad Gupta.
3. The complainant paid a sum of Rs.5,000/- and 15 bhoris of gold and thereafter on Rakhi Purnima Day without intimating her husband, she paid a sum of Rs.10,000/- and one gold ring to her son-in-law.
4. In spite of conceding to the demand, the accused Bishnu Prasad and his parents, brothers and sisters inflicted torture upon her daughter Rina and demanded an additional sum of Rs.10,000/- and a scooter.
5. On 14.11.1993 Deo Nandan Saha, the father of the victim, went to the house of Rina in the morning and learnt from the assembled people that her daughter sustained burn injuries and was admitted at Uttarpara Hospital. Being informed over telephone the complainant arrived at the hospital and witnessed the dead body of her daughter.
6. The accused persons demanded excessive dowry from her daughter and being incapacitated to fulfil the same, her husband and other in-laws inflicted physical and mental torture upon the daughter causing her death.

7. Based on the complaint, Uttarpura P.S. Case No. 216/93 dated 14.11.1993 under Section 304B of the Indian Penal Code was initiated.
8. After completion of investigation, the Investigating Officer submitted charge-sheet against the accused persons under Sections 498A/304B of Indian Penal Code.
9. Charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
10. The prosecution examined as many as 19 witnesses and exhibited certain documents. The defence adduced one D.W. in support of their defence.
11. Considered the arguments of the Learned Amicus Curiae as narrated in the written notes.
12. The Learned Advocate for the State submitted that the element of torture inflicted upon the victim and subsequent demand of dowry as reflected in the complaint was corroborated by the evidence of PW-1, PW-2 and other related witnesses. The inquest report in Column No.8 mentioned the demand of dowry in respect of excess money and scooter by the husband of the deceased and the other members of the matrimonial household. The torture led to the death of the victim. The Learned Advocate for the State further stated that the provision under Section 313 of the Criminal Procedure Code was not properly complied with and the same was sketchy.
13. The prosecution witnesses exceedingly comprised the relatives of the victim.
14. PW-1 and PW-2 were the mother and father of the victim respectively. PW-3, PW-4, PW-5 and PW-7 were her paternal relatives.

15. The aforesaid prosecution witnesses deposed in unison the narrative of the complaint emphasizing the demand of balance of dowry including a sum of Rs.10,000/- and a scooter. The provision of the same being refused resulted in the torture being inflicted upon the victim with denial of food resorting her to starvation.
16. The aforesaid prosecution witnesses had learnt the death of the victim sustaining burn injuries.
17. PW-9 and PW-10 were the independent witnesses. PW-9 deposed of a conflict between de facto complainant and the accused persons concerning a demand of scooter which occasioned in his presence within two months of the marriage of the victim. PW-9 was the adjacent resident to the house of PW-1 and claimed himself to be the scribe of the complaint. PW-10 was the father of the first wife of the appellant Bishnu Prasad Gupta who, during his cross-examination, deposed to have severed all ties with the accused persons. PW-10 further stated that the accused persons misbehaved with his daughter though he did not institute any legal proceedings against such ill-treatment and eventually his daughter got divorced. Subsequently, the appellant Bishnu Prasad Gupta married the victim.
18. PW-5 was unaware of the relationship between the parties.
19. PW-8, PW-11 and PW-12 were the doctors who had conducted the post mortem examination through a board comprised of the same as aforesaid. They identified the post mortem report marked as Exhibit-9 along with their signatures thereon. Three of the doctors as aforesaid unanimously opined

the cause of death of the victim to be the resultant of burn injuries sustained by her.

20. PW-13 and PW-14 were the police witnesses who had carried the dead body of the victim through a challan and received the written complaint from PW-1 respectively.
21. PW-15 had been the Investigating Officer who, on completion of the investigation, filed the charge-sheet against the accused persons under Sections 498A/304B of the Indian Penal Code. PW-15, in his cross-examination, deposed to have seized the articles from the bathroom of the accused Baija Nath Prasad Gupta.
22. PW-16, PW-17, PW-18 and PW-19 precluded themselves from identifying the accused persons on dock and denied the factual aspects of the instant case and had been declared hostile by the prosecution.
23. In ***Kahkashan Kausar v. State of Bihar***¹, the Hon'ble Supreme Court held the following:-

“17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the

¹(2022) 6 SCC 599

relatives and in-laws of the husband when no prima facie case is made out against them.

18. *Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that “all accused harassed her mentally and threatened her of terminating her pregnancy”. Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”*

24. Furthermore in **Mahalakshmi v. State of Karnataka**², The Hon’ble Supreme Court held the following:-

“12. *Having considered the charge sheet filed, we are of the view that the assertions made therein are very vague and general.⁴ One instance unless portentous, in the absence of any material evidence of interference and involvement in the marital life of the complainant, may not be sufficient to implicate the person as having committed cruelty under section 498A of the IPC.”*

²2023 SCC OnLine SC 1622

25. The Hon'ble Supreme Court held the following in **Charan Singh v. State of Uttarakhand**³:-

“11. The interpretation of Sections 304B and 498A IPC came up for consideration in Baijnath's case (supra). The opinion was summed up in paras 25 to 27 thereof, which are extracted below:—

“25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

- (i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and*
- (ii) is within seven years of her marriage, and*
- (iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.*

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis “cruelty” as:

- (i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or*
- (ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.*

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression “dowry” is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression

³ 2023 SCC OnLine SC 454

“cruelty”, as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

12. *As the aforesaid case was also pertaining to dowry death, presumption under Section 113B of the Indian Evidence Act was also discussed in detail in paras 29 to 31 of the aforesaid judgment. The same are extracted below:—*

“29. *Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.*

30. *A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.*

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overreached to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty”.

13. A conjoint reading of Section 304B IPC and Section 113B of the Indian Evidence Act with reference to the presumption raised was discussed in para 32 of the aforesaid judgment, which is extracted below:—

“32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in *Shindo v. State of Punjab* [*Shindo v. State of Punjab*, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in *Rajeev Kumar v. State of Haryana* [*Rajeev Kumar v. State of Haryana*, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346]. In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao v. Yadla Srinivasa Rao* [*K. Prema S. Rao v. Yadla Srinivasa Rao*, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is

that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry”.

26. In **Hira Lal v. State (Govt. of NCT), Delhi**⁴, the Hon’ble Supreme Court held the following:-

“8. ...Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, ‘dowry death’ shall have the same meaning as in Section 304-B of the Penal Code, 1860.”

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on “Dowry Deaths and Law Reform”. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of “dowry death” in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been “soon before her death” subjected to cruelty or

⁴(2003) 8 SCC 80

harassment “for or in connection with the demand of dowry”. Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the court must be whether the accused has committed the dowry death of the woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for or in connection with any demand for dowry.
- (4) Such cruelty or harassment was soon before her death.

9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption

under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test...”

27. In **Harjit Singh v. State of Punjab**⁵, the Hon’ble Supreme Court held the following:-

“16. A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relatives; for or in connection with any demand of dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Parliament has also inserted Section 113-B of the Evidence Act by Act 43 of 1986 with effect from 1-5-1986 which reads as under:

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purpose of this section, ‘dowry death’ shall have the same meaning as in Section 304-B of the Penal Code, 1860.”

17. From a conjoint reading of Section 304-B of the Penal Code and Section 113-B of the Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Penal Code.”

⁵(2006) 1 SCC 463

28. The Hon'ble Supreme Court held the following in ***State of Rajasthan v. Teg Bahadur***⁶:-

“18. Our attention was drawn to Section 113-B of the Evidence Act and Section 304-B of the Penal Code, 1860 by the learned counsel appearing for the accused. A conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B of the Penal Code, 1860 shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”.....

29. PW-1 and other related witnesses did not witness the victim to have been subjected to torture or being ablazed. PW-1 further stated to have provided a sum of Rs.10,000/- to the accused persons without informing PW-2 her husband. PW-2 deposed that the appellant Bishnu Gupta had sought for mercy from him. He stated that *“Thereafter the accused Bishnu Gupta came to me and told me to give pardon him by catching my legs. Then I may contact with my wife over telephone who came in the hospital with my other relatives.”*
30. The extra judicial confession on the part of the appellant-husband is an inadmissible evidence. PW-1 and PW-2 recounted that on the occasion of ‘Bhai Phota’, PW-2 had been to the matrimonial house of their daughter to invite her. However, PW-2 on arrival learnt that his daughter, the victim was set on fire by the accused persons. PW-1, PW-2 or the other related witnesses did not refer to any proximate incident of torture or instigation on

⁶(2004) 13 SCC 300

the part of the appellants whereby the victim unable to bear the severity committed suicide on demand of dowry. The medical report did not reveal any external injury.

31. The prosecution witnesses including the related witnesses and the independent witnesses were located in distant places. None of the neighbours or the local people were examined. Apart from general and omnibus allegations, the overt act of the individual appellants was not specifically described. The presumption under Section 113(b) of the Indian Evidence Act could not be asserted to an incident of absence of predominantly continuous event of torture being inflicted upon the victim beyond her tolerance and resilience, the trauma and agony to be unendurable leading the victim to an extremity to put an end to her life.
32. The prosecution failed to substantiate the immediate or proximate effect of cruelty or harassment upon the victim for demand of dowry and the general and omnibus nature of allegations were insufficient to indict the appellants.
33. In the case of ***Naresh Kumar v. State (NCT of Delhi)***⁷ the following was held by the Hon'ble Supreme Court:-

“11. In the context of the issues thus involved, it is only proper to look into the very object of Section 313, Cr. P.C. This aspect has been considered many a times by this Court to hold that it embodies one salutary principle of natural justice viz., audi alteram partem and empowering the Court to examine the accused thereunder is to give the accused concerned an opportunity to explain the incriminating circumstances appearing against him in the prosecution evidence. In the decision in V.K. Sasikala v. State¹, this Court held that

⁷2024 SCC OnLine SC 1641

examination of an accused under Section 313, Cr. P.C., would not only provide an opportunity to him to explain the incriminating circumstances appearing in evidence against him, but also would permit him to forward his own version with regard to his alleged involvement in the crime. Furthermore, it was held that such an examination would have a fair nexus with a defence he might choose to bring and, therefore, any failure in such examination might take the effect of curtailing his right in the event he took up a specific defence. The general position is that if any incriminating circumstance, appearing against an accused in the prosecution evidence, is not put to him it should not be used against him and must be excluded from consideration. At the same time, we may hasten to add that it is a well-neigh settled position that non-examination or inadequate examination under Section 313, Cr. P.C., on any incriminating circumstance, by itself, would not vitiate a trial qua the convict concerned unless it has resulted in material prejudice to him or in miscarriage of justice. In the decision in Suresh Chandra Bihari v. State of Bihar² and in Wariyam Singh v. State of U.P.³, this Court held that mere defective/improper examination under Section 313, Cr. P.C., would be no ground to set aside a conviction of the accused unless it has resulted in prejudice to the accused. In view of the said position which is being followed with alacrity we do not think it necessary to multiply the authorities on it.

xxx

16. *In this context, the maxim “actus curiae neminemgravabit” - “the act of court shall prejudice no one”, has also to be looked into. In the decision in Oil and Natural Gas Company Limited v. Modern Construction and Company⁶, this Court held that the court has to correct the mistake it has done, rather than to ask the affected party to seek his remedy elsewhere. In the context of the decisions referred above, there can be no doubt that in a charge for commission of a serious offence where extreme penalty alone is*

*imposable in case the accused is found guilty, procedural safeguards ensuring protection of right(s) of accused must be followed and at any rate, in such cases when non-compliance of the mandatory procedure capable of vitiating trial qua the convict concerned is raised and revealed from records, irrespective of the fact it was not raised appropriately, it must be considered lest the byproduct of consideration of the case would result in miscarriage of justice. Being the Court existing for dispensation of justice, this Court is bound to consider and correct the mistake committed by the Court by looking into the question whether non-examination or inadequate examination of accused concerned caused material prejudice or miscarriage of justice. We may hasten to add here, that we shall not be understood to have held that always such a mistake has to be corrected by this Court by examining the question whether material prejudice or miscarriage of justice had been caused. In this context, the summarization of law on the subject of consequence of omission to make questioning on incriminating circumstances appearing in the prosecution evidence and the ways of curing the same, if it is called for, by this Court in the decision in *Raj Kumar @ Suman v. State (NCT of Delhi)*⁷, assumes relevance. Paragraph 16 of the said decision reads thus:—*

“17. The law consistently laid down by this Court can be summarized as under:

- (i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;”*
- (ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;*

(iii) *The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;*

(iv) *The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;*

(v) *If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;*

(vi) *In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and*

(vii) *In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.*

(viii) *While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.”*

17. *In view of the circumstances obtained in this case, factually and legally, it is also relevant to refer to paragraph 20 of the decision in Raj Kumar's case (supra) and it reads thus:—*

“21. Even assuming that the defect or irregularity was curable, the question is whether today, the appellant-accused can be called upon to explain the said circumstance. More than 27 years have passed since the date of the incident. Considering the passage of time, we are of the view that it will be unjust now at this stage to remit the case to the Trial Court for recording further statement of the appellant under Section 313 of CrPC. In the facts of the case, the appellant cannot be called upon to answer something which has transpired 27 years back. There is one more aspect of the matter

which persuaded us not to pass an order of remand. The said factor is that the appellant has already undergone incarceration for a period of 10 years and 4 months.”

34. The Hon’ble Supreme Court in **Indrakunwar v. State of Chhattisgarh**⁸ held the following:-

“34. *Keeping in view the understanding of the principles of privacy and the propositions of law in regard thereto, we now travel to what, by law, may be required of the convict-appellant in her statement under Section 313 Cr. P.C.*

35. *A perusal of various judgments¹⁵ rendered by this Court reveals the following principles, as evolved over time when considering 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. This process benefits the accused and aids the Court in arriving at the final verdict.*

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

35.4 *The ultimate test when concerned with the compliance of the Section is to enquire 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 interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.*

⁸2023 SCC OnLine SC 1364

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

35.7 *This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's 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 the 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 the Section are to be excluded from consideration as no opportunity has been afforded 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 defence. The defence so articulated must be carefully scrutinized and considered.*

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

ANSWERS TO THE QUESTIONS

36. *In light of the principles listed above, what we must consider is whether, in explaining the purported incriminating circumstance against her, the convict-appellant ought to have disclosed, over and above denial of any relationship with the deceased child, the specifics of her miscarriage and its aftermath; particularly when the prosecution has failed to discharge its burden of establishing such relationship between the deceased and the convict-appellant.*

37. *It is established that negative inferences cannot be drawn for a question or incriminating circumstance not put to an accused while making a statement under Section 313 Cr. P.C. Her statement, nowhere reflects an answer to a question concerning the particulars of the child that she was admittedly carrying but denied that the deceased was not the one recovered from the dabri. Although there is a requirement by law to disclose the aspects required to adjudicate in a criminal matter, such duty cannot unreasonably and unwarrantedly step over the fundamental right of privacy.”*

35. In **Premchand v. State of Maharashtra**⁹ the following was held by the Hon’ble Supreme Court:-

“15. *What follows from these authorities may briefly be summarised 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 recognised 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.*

⁹(2023) 5 SCC 522

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 defence and proffers any alternate version of events or interpretation, the court has to carefully analyse and consider his statements.*

15.10. *Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction."*

36. The *Amicus Curiae* for the appellants agitated the defective nature of examination of the accused persons under Section 313 of the Code of Criminal Procedure conceded to by the Learned Advocate for the State to have been vague and indistinct. Though the process of examination under Section 313 of the Code of Criminal Procedure Code was evidently cryptic, however the essence and role of the accused persons to have been involved in the alleged offence committed by them was explanatory and was not to their prejudice.

37. Under such circumstances, where the purport of the questions addressed to the accused persons under Section 313 of the Code of Criminal Procedure was not in choate or amorphous, the appeal exclusively at the expense of a defective procedure under Section 313 of the Code of Criminal Procedure cannot be vitiated.
38. In view of the above discussions, the instant criminal appeal being CRA 171 of 2003 is dismissed.
39. I record my appreciation for the able assistance rendered by Ms. Ariba Shahab, Learned Advocate as *Amicus Curiae* in disposing of the appeal.
40. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
41. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)