

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.533 of 2003

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Pramod Kumar Singh Son Of Late Binda Singh, Resident Of Village-
Bairgomoa Kurmi Tola, P.S.- Bairginia District- Sitamarhi

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Prashant Saurabh (Amicus Curiae)
For the Respondent/s : Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 06-02-2025

1. The appeal is arising out of the judgment of conviction and order sentence dated 22.09.2003 on the file of IInd Additional Sessions Judge, Sitamarhi in Sessions Trial No. 32 of 1991/148 of 2003 arising out of Bairginia P.S. Case No. 74 of 1990, wherein the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of seven years for the offences punishable under Section 376 read with 511 of Indian Penal Code and for rigorous imprisonment for a period of three years for the offence punishable under section 454 of Indian Penal Code.



2. The case of the prosecution is that on 21.10.1990, the victim (P.W. 6) lodged a fardbeyan with the Assistant Sub-Inspector, Bairginia at about 04:00 A.M., alleging that during the intervening night of 20th-21st October, 1990, while she was in deep sleep, she was awakened by a noise. She saw a man entering her house and later realized that the man was not her husband. She identified the person as her neighbour, Promod Kumar Singh in the light of a lantern/diya. It is further alleged in the fardbeyan that she was shocked, and when she attempted to raise an alarm, the accused/appellant gagged her mouth with one hand, pointed a dagger at her, and threatened her to kill, if she made any noise. Further, he removed her sari up to her waist and attempted to insert his penis into her vagina. She tried to resist by pressing her thighs together, the appellant was unable to complete his act. In the process, the appellant struck her neck with a knife. She stood up and turned her neck away, but still sustained a lacerated injury. At that moment, she called out her mother-in-law for help. Upon hearing



her cries, the appellant fled by jumping out of the house.

3. The contents of the fardbeyan further disclose that afterward, her mother-in-law, uncle, and the entire family rushed to her. She narrated the entire incident to her family members. She also noticed that the hook of the house gate was opened, splitting the door into two halves. She has been married six months prior and was staying at her in-laws' house. While residing there, she observed that the appellant frequently roaming around her house.

4. Basing on the fardebyan, a case was registered against the appellant vide Case No. 74 of 1990, at Bariginia Police Station. The Investigating Officer, after due investigation, filed a charge-sheet against the appellant for the offences punishable under Section 452, 376 r/w Section 511 of the IPC. The Learned Chief Judicial Magistrate, Sitamarhi took cognizance of the case against the appellant on 25.01.1991 for the above said sections and committed the case to the Court of the Sessions. During the trial, on 29.03.1991, charges were framed



against the appellant for offences punishable under Sections 454 and 376 r/w Section 511 of IPC. The charges were read over and explained to the appellant in Hindi, for which the appellant pleaded not guilty and claimed to be tried.

5. On behalf of the prosecution, P.Ws. 1 to 6 were examined, and three exhibits were marked. Exhibit 1 consists of the signatures of Harish Chandra Prasad and P.W. 1 on the fardbeyan. Exhibit 1/1 contains the signatures of P.W. 1 and P.W. 3 on the seizure list. Exhibit 1/2 is the signature of the victim on the fardbeyan. Upon completion of the prosecution's evidence, the appellant was examined under Section 313 of the Cr.P.C. regarding the incriminating material of the prosecution evidence found against him. The appellant denied the allegations. After considering the entire oral and documentary evidence on record, the trial Court convicted the appellant for the aforementioned charges.

6. There was no representation for the appellant on several occasions, prompting this Court



to appoint Shri Prashant Saurabh as Amicus Curiae in this case.

7. The Court heard, Mr. Prashant Saurabh, the Learned Amicus Curiae and Mrs. Anita Kumari Singh, the Learned Additional Public Prosecutor and perused the record.

8. It is contended by the Learned Amicus Curiae that there were many contradictions and major discrepancies in the evidence of the prosecution witnesses and the trial Court ought not to have convicted the appellant. It is further argued that out of the six witnesses, four belonged to the same family and were, therefore, interested witnesses. Additionally, the investigating officer and the doctor were not examined by the prosecution for the reasons best known to them. There was also no documentary evidence on record to corroborate the victim's claim regarding the injuries sustained by her. It is further contended that despite the defence argument that an enmity existed between the appellant and the victim's family due to a drainage dispute between their houses, the trial Court failed to



consider this fact. Hence, the Learned Amicus Curiae prays for the judgment of the trial Court to be set aside, as the prosecution has miserably failed to prove the guilt of the appellant beyond a reasonable doubt.

9. On the other hand, the Learned Additional Public Prosecutor, argued that P.Ws. 2, 4 and 5 had seen the appellant fleeing away from the house, which corroborated the evidence of the P.W. 6 (victim). Therefore, the prosecution urged the Court to confirm the judgment of the trial Court dismiss the appeal.

10. The points for determination in this appeal are:-

(i) Whether the prosecution is able to prove the guilt of the appellant for the offences punishable under Section 454 and 376 read with Section 511 of IPC beyond the reasonable doubt?

(ii) whether the trial court has rightly convicted the appellant for the aforesaid charges?

11. In order to determine the points of appeal, it is necessary to re-appreciate the entire



oral and documentary evidence on record and analyze the relationships between the witnesses, as many of whom belong to the same family. P.W. 6, the victim/informant, is the wife of P.W. 5. P.W. 2 and P.W. 4 are the mother and sister of P.W. 5, respectively. P.W. 1, a resident of the same village, is the uncle of P.W. 5. P.W. 3 is a co-villager.

12. The evidence of P.W. 1 disclose that on the date of incident, he heard the noise of P.W. 5, rushed to the spot and saw the victim, and noticed blood oozing out from her neck. Upon confrontation, the victim informed him that the appellant attempted to rape her and injured her with a dagger on her neck. His evidence further disclose that they took the victim to Bariginia Hospital for treatment, where the Jamadar of the Police Station recorded her statement. He further identified his signature and the signature of one Harish Chandra Prasad on the fardbeyan, which was marked as Exhibit 1. In the cross examination, it is admitted by P.W. 1 that P.W. 5 is his nephew and that on the date of incident, he was at his house. By the time he reached the house



of the victim, one Vinod Singh was present, who also heard the voice of the victim, calling her mother-in-law.

13. The evidence of P.W. 1 does not prove the acts committed by the appellant, as his evidence is hearsay. He did not witness the appellant immediately after the occurrence, i.e., fleeing from the house of the victim. His testimony cannot be relied upon as he claimed that P.W. 5 was at the house of the victim, whereas the evidence of P.Ws. 2 and 6, contradicts this claim. That is a major discrepancy in the evidence of P.W. 1, P.W. 2 and P.W. 6.

14. The other crucial evidence on record is that of P.W. 2, the mother-in-law of the victim. Her evidence disclose that on the date of incident, she was sleeping in the western room of the house. After hearing the voice, she woke up, came out of the room and saw the appellant fleeing by jumping over the wall. Upon confrontation, P.W. 6 informed her about the incident. In cross examination, it is testified by P.W. 2 that there were three rooms in the



house and that the victim was residing in the second room. The incident occurred in dim light. Further, she admitted in cross-examination that on hearing the victim's noise, she woke up and opened the door, stepped outside and called P.W. 1, who resides opposite to the house and after opening the door, she saw the appellant from behind as he was trying to cross the wall to flee.

15. The evidence of P.W. 4, the victim's sister-in-law, disclose that on the date of incident, she woke up on hearing the victim's voice. She, along with her mother went to victim's room using lantern and saw the appellant fleeing. She also noticed an injury on the neck of the victim. On confrontation, the victim informed them that the appellant attempted to commit rape on her, and when she resisted, the appellant gagged her mouth with a cloth and injured her neck with a dagger. Further, her evidence disclose that one Bachan Singh and Brij Bihari Singh arrived at the scene, followed by her grandfather and uncle. In cross examination, it is testified by P.W. 4 that she, her mother and



grandmother were sleeping separately from victim. By the time, she arrived with her mother, P.W. 1 was already present. She saw the appellant fleeing from the courtyard but did not see the appellant inside the victim's room. The appellant ran towards the northern side, while she stood with her mother on the western side. Further, her evidence disclose that P.W. 5, the husband of the victim, was sleeping at door. Her evidence also disclose that lantern was lit in her house.

16. On perusal of the entire evidence of P.W. 4, it can be construed that she was residing in a separate house with her mother when the incident took place and on hearing the noise, they arrived at the house of P.W. 6. In chief-examination, she testified that she saw the accused fleeing from the victim's room. However, in cross examination, she admitted that she only saw the accused fleeing from the courtyard and not from the victim's room. From the evidence of P.W. 4, the presence of P.W. 5 has come on record for the first time, who alleged to have been sleeping near the door of the victim's



room. The evidence of P.W. 4 also contradicts the evidence of P.W. 2 and P.W. 6 regarding the location of lantern or the lamp in the house. As per the evidence of P.W. 4, there was lantern in the house but as far as the evidence of P.W. 2 is concerned, the lantern was in western side of the courtyard but as per P.W. 6, it was in her room.

17. The evidence of P.W. 5, who is husband of the victim, clearly disclose that on the date of incident, he was sleeping at the door, while his wife was sleeping in the room. He heard the loud voice of his wife, i.e., victim and rushed to the courtyard, and saw the appellant fleeing. The victim then informed him about the incident, and he noticed blood oozing out from her neck. He subsequently took her to Bairginia Hospital for treatment. In the cross examination, it is testified by the P.W. 5 that on the night of the incident, he was sleeping at the door after returning home from a movie. His house was completely open. He woke up at 2:30 A.M. on hearing the voice of his wife. When he reached the scene, P.Ws. 1 to 4 were already present.



18. The evidence of the victim (P.W. 6) disclose that on the date of the incident, she was sleeping alone in the house. Upon hearing a clicking sound, she woke up and saw a person entering her room. Initially, she mistook him for her husband but soon realized it was the appellant. As soon as she saw the appellant in her room, she raised an alarm but the appellant rushed to her, gagged her mouth, and threatened her with dagger, warning her to remain silent. In an attempt to rape, the appellant lifted her sari up to her waist and attempted to insert his penis into her vagina. However, as P.W. 6 resisted by pressing her thighs together, the appellant inflicted an injury on her neck, tore her blouse, and fled up. On hearing her cries, her family members including her father-in-law's brother (P.W. 1) along with his wife and mother-in-law (P.W.2) rushed to scene. She narrated the incident to them. She further testified that she was treated at Bariginia Hospital where, the Jamadar of Bairginia Police Station recorded her statement. She identified her signature on the fardbeyan, mentioned as Exhibit 1/2.



19. In cross-examination, she admitted that her marriage with P.W. 5 Suresh Singh, was her second marriage. She stated that there were two rooms in the house, one towards the east, where P.W. 2 resided, and the other towards the west, where she stayed. She also acknowledged that a drainage separated her house from the appellant's house. She also stated that her husband was at the betel-nut shop on the night of the incident and reached the scene, within five minutes of the occurrence, though there is no evidence on record indicating as how he was informed. The appellant entered the room by removing the bolt. She further admitted that there were no bruises on her thighs. The injury was caused with a dagger on her neck, and there were no other marks on any part of her body. The Doctor of Bairginia Hospital treated her injuries, but he did not examine her private parts. She also admitted that P.W. 5 consumes alcohol and reaches home about at 10 to 11 P.M.

20. As per the evidence and fardbeyan of the victim, it can be construed that she was alone in



the house on the date of incident, while her husband was sleeping at betel-nut shop. Her husband arrived at the place of occurrence within five minutes of the incident. There is no evidence on record to show that who informed her husband about the incident and how he managed to reach the house from the shop within five minutes.

21. The discrepancies in the evidence of P.W. 2 and 6 are as follows :-

(i) The description of the house; as per the evidence of P.W. 6, there are two rooms in the house, whereas P.W. 2 testified that there are three rooms in the house.

(ii) As per the evidence of P.W. 6, she resides in a room on the western side and her mother-in-law (P.W. 2) resides on the eastern side, whereas P.W. 2 testified that she resides on the western side.

(iii) The evidence of P.W. 2 disclose that the incident occurred at night and the lantern was in the courtyard towards the west, however, P.W.6, stated that the lantern was in the victim's room. The



evidence of P.W. 2 does not mention the presence of P.W. 5 and P.W. 4 at the time of incident.

22. On perusal of the Section 313 Cr.P.C. examination, it can be understood that no proper opportunity was given to the appellant to explain the incriminating evidence against him, as only three questions were posed to him, which are as follows:-

1. Question:- There is evidence against you that you on the night of 20-21/10.1990, you had committed trespass in the residential dwelling of the informant and abductee Sushila Devi w/o Suresh Singh with a purpose of rape against the informant. You had already made the preparation completely in this regard. What do you have say about this?

Answer:- No, Sir.

2. Question:- There is evidence against you that on the aforementioned time and date, you had attempted to rape the informant and abductee Sushila Devi w/o Suresh Singh. What do you have to say about this?

Answer:- No, Sir.



Question:- Do you have to say anything in your defense?

Answer:- I shall give it in writing.

23. Admittedly, the evidence of P.Ws. 1 to 6 on record. Each of the witnesses has testified against the appellant. At this juncture, it is relevant to mention that the Apex Court has time and again reiterated that each and every incriminating material must be put to the accused to enable him to provide an explanation in the following judgments:-

In **Indrakunwar Vs. State of Chhattisgarh reported in 2023 SCC OnLine SC 1364** wherein their Lordships have held as follows:-

“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 judgments 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.

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."

In **Naval Kishore Singh Vs. State of Bihar reported in (2004) 7 SCC 502** their Lordships have held as follows:-

"5. Counsel for the appellant pointed out that the Sessions Court committed serious error in not properly examining the



accused under Section 313 CrPC. Our attention was drawn to the statement taken from the present appellant. Only three questions were put to the appellant. The first question was whether he heard the statement of the witnesses and the second question was that the evidence given by the witnesses showed that he committed the murder of the deceased and whether he had to say anything in defence. The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC 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. No such opportunity was given to the accused in the instant case. We deprecate the



practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, 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 the 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 a slipshod manner, it may result in imperfect appreciation of evidence. In various decisions of this Court, the importance of questioning the accused under Section 313 CrPC was given due emphasis, e.g. Rama Shankar Singh v. State of W.B. [AIR 1962 SC 1239 :



(1962) 2 Cri LJ 296] , Bhalinder Singh v. State of Punjab [(1994) 1 SCC 726 : 1994 SCC (Cri) 462] , State of Maharashtra v. Sukhdev Singh [(1992) 3 SCC 700 : 1992 SCC (Cri) 705] and Lallu Manjhi v. State of Jharkhand [(2003) 2 SCC 401 : 2003 SCC (Cri) 544] .

6. In the present case, the appellant had not raised any contention in the High Court that he was seriously prejudiced by the way in which the Section 313 questioning was done. If this defect in procedure under Section 313 CrPC had been pointed out, the High Court could have very well remitted the case to the Sessions Court for a proper examination. At this stage, we are not inclined to accept this contention of the appellant especially when the accused was not able to show that he was in any way prejudiced by such irregular procedure."

In *Premchand Vs. State of Maharashtra* reported in (2023) 5



SCC 522 the Lordships of Apex Court

held as under:-

***“13.** There is a plethora of judicial pronouncements on consideration of Section 313CrPC, a few of which need to be noted at this stage.*

***14.** A Bench of three Hon'ble Judges of this Court in State of U.P. v. Lakhmi [State of U.P. v. Lakhmi, (1998) 4 SCC 336 : 1998 SCC (Cri) 929] has extensively dealt with the aspect of value or utility of a statement under Section 313CrPC. The object of Section 313CrPC was explained by this Court in Sanatan Naskar v. State of W.B. [Sanatan Naskar v. State of W.B., (2010) 8 SCC 249 : (2010) 3 SCC (Cri) 814] The rationale behind the requirement to comply with Section 313CrPC was adverted to by this Court in Reena Hazarika v. State of Assam [Reena Hazarika v. State of Assam, (2019) 13 SCC 289 : (2019) 4 SCC (Cri) 546] . Close on the heels thereof, in Parminder Kaur v. State of Punjab [Parminder Kaur v. State of Punjab,*



(2020) 8 SCC 811 : (2020) 3 SCC (Cri) 914] , this Court restated the importance of Section 313CrPC upon noticing the view taken in Reena Hazarika [Reena Hazarika v. State of Assam, (2019) 13 SCC 289 : (2019) 4 SCC (Cri) 546] and M. Abbas v. State of Kerala [M. Abbas v. State of Kerala, (2001) 10 SCC 103 : 2002 SCC (Cri) 1270] .

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.*

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.*

16. *Bearing the above well-settled principles in mind, every criminal court proceeding under clause (b) of sub-section (1) of Section 313 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 circumstance in the evidence that could be used against him. Prior to the amendment of Section 313 in 2009, the courts alone had to perform this task. Instances of interference with convictions by courts of appeal on the ground of failure of the trial court to frame relevant questions and to put the same to the accused were not rare.

17. *For toning up the criminal justice system and ensuring a fair and speedy trial, with emphasis on cutting down delays, Parliament amended Section 313 in 2009 and inserted sub-section (5), thereby enabling the court to take the assistance of the Public Prosecutor and defence counsel in preparing such questions [the first part of sub-section (5)]. Ideally, with such assistance (which*



has to be real and not sham to make the effort effective and meaningful), one would tend to believe that the courts probably are now better equipped to diligently prepare the relevant questions, lest there be any infirmity. However, judicial experience has shown that more often than not, the time and effort behind such an exercise put in by the trial court does not achieve the desired result. This is because either the accused elects to come forward with evasive denials or answers questions with stereotypes like “false”, “I don't know”, “incorrect”, etc. Many a time, this does more harm than good to the cause of the accused.”

In case of **Sanatan Naskar and Another Vs. State of West Bengal** reported in **(2010) 8 SCC 249**, the Lordships of Apex Court have held:-

“21. *The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The*



scope of Section 313 CrPC 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 the judgments which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 CrPC.

22. *As already noticed, the object of recording the statement of the accused under Section 313 CrPC 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 therewith, 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 simpliciter 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. Once such a statement is recorded, the next question that has to be considered by the court



is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

23. *The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) CrPC explicitly provide that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the*



statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

24. *Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 CrPC as it cannot be regarded as a substantive piece of evidence.*

25. *In the light of the abovestated principles it was expected of the accused to provide some reasonable explanation in regard to various circumstances leading to the commission of the crime. He was known to the family along with other accused and by giving just a bare denial or lack of knowledge he cannot tilt the case in his favour. Rather their answers either support the case of the*



prosecution or reflect the element of falsehood in the statement recorded under Section 313 CrPC. In both these circumstances the Court would be entitled to draw adverse inference against the accused.

29. *So, the first and the foremost question that this Court has to examine in the present case is, whether the prosecution has been able to establish the chain of event and circumstances which certainly points out towards the involvement and guilt of the accused. Even, before we enter upon adjudicating this aspect of the case, it will be appropriate to narrow down the controversy keeping in view the admissions, if any, made by the appellants. The accused, after having known the entire case of the prosecution, is required to be examined under Section 313 CrPC. All the material evidence has to be put to the accused and he has to be awarded the fair opportunity of answering the case of the prosecution, as well*



as to explain his version to the court without being subjected to any cross-examination. As already noticed, the answers given by the accused can be used against him in the trial insofar as they support the case of the prosecution.”

In Kalicharan & Ors. Vs. State of Uttar Pradesh reported in (2023) 2 SCC 583 the Hon’ble Apex Court held as follows:-

“24. At this stage, we must refer to the requirement of the examination of the accused under Section 313 of CrPC. Section 313 of CrPC reads thus:-

“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.]

25. *The questions in separate statements of Accused 1 to 4 recorded by the trial court are almost identical. Question 5 is the only question put to them about the evidence adduced against them on the charge of murder of Harpal Singh. Question 5 put to Accused 3 reads thus:*

“Question 5 — That it has come up in prosecution evidence that on being exhorted by accused



Kalicharan, accused Yaad Prakash fired 4-5 shots at complainant Atar Singh and his family members with his countrymade pistol with intention to kill, that hit complainant's cousin Harpal Singh and he died on the spot. What do you have to say in this regard?"

26. *Such a case was not at all made out by the prosecution in the evidence before the court. The material brought on record by the prosecution witnesses (PW 1 and PW 2) is to the effect that Harpal Singh died due to injuries sustained as a result of an attack made by Accused 1, 3 and 4 on him by sharp weapons. These material circumstances brought on record against the accused on which their conviction is based were never put to the accused. What was put to the accused was not the case made out by the prosecution in the evidence. No questions are asked in the Section 313 statement about the post-mortem of the body of Harpal Singh. It is not put to the witness that the cause of death of*



Harpal Singh was due to haemorrhage and shock as a result of injuries caused by sharp weapons.

27. Questioning an accused under Section 313CrPC is not an empty formality. The requirement of Section 313CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself.

28. In para 21 of the decision of this Court in *Jai Dev v.*



State of Punjab [Jai Dev v. State of Punjab, (1963) 3 SCR 489 : AIR 1963 SC 612] , it was held thus : (SCC pp. 620-21, para 21)

“21. In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr Anthony has relied on a decision of this Court in Hate Singh v. State of Madhya Bharat [Hate Singh v. State of Madhya Bharat, 1951 SCC 1060 : AIR 1953 SC 468] . In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the points



used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under Section 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire 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. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material."



29. *In para 145 of the well-known decision of this Court in Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] , it was held thus : (SCC p. 182, para 145)*

“145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration.”

24. All the above cases squarely apply to the facts and circumstances of the present case. In a criminal trial, the purpose of examining accused persons under Section 313 of the Code of Criminal Procedure is to fulfill the requirements of Principles of Natural Justice, allowing the accused to furnish an explanation regarding the incriminating



circumstances associated with him, and Court must take note of such explanation.

25. On perusal of entire evidence, it is evident that the evidence of P.Ws. 4 and 5 do not inspire the confidence of this Court, as their presence were disclosed either by P.W. 6 or by P.W. 2. If P.W. 5 was sleeping at the door, the appellant would have had to cross him to reach the room of the victim. As per the evidence of P.W. 6, the door was bolted from inside, therefore, if at all, P.W. 5 was indeed sleeping outside the door, it raises question about how the appellant could have entered the victim's room without first removing the bolt. Except for the evidence of P.W. 6, there is no other evidence on record to establish that the appellant entered the victim's room with intention to commit rape or attempted to do so. The evidence of P.W. 6 is not corroborated by any medical evidence. If at all, P.W. 6 sustained any injury, the prosecution ought to have brought the injury report on record to support her evidence. Furthermore, as already stated (*supra*), the prosecution has not examined the Investigating



Officer or the Doctor for reasons best known to them. In view of the major contradictions and discrepancies that go to the root of the prosecution case, it is not proper to convict the appellant. Admittedly, the incident took place at midnight. It is the victim's version that she was alone in the house when the appellant entered her room to commit rape, however, she also testified that her family members reached at the spot when she raised her voice. Both statements contradict each other. There is no evidence on record to prove that the appellant criminally trespassed into the victim's house or attempted to commit rape punishable under Sections 454 and 376 r/w Section 511 of Indian Penal Code. Therefore, this Court construes that the prosecution has miserably failed to bring home the guilt of the appellant under Section 454 and 376 r/w Section 511 of Indian Penal Code. The trial Court has not properly appreciated the evidence on record and ought not to have convicted the appellant. Then, the judgment of the trial Court requires interference, and the judgment of conviction and order of sentence



imposed by the trial Court against the appellant are liable to be set aside.

26. With the aforesaid reasons, the judgment of conviction and order of sentence dated 22.09.2003, in Sessions Trial No. 32 of 1991/148 of 2003 on the file of II- Additional Sessions Judge, Sitamarhi is hereby set aside and the appellant is acquitted for the offences punishable under Sections 454, 376 r/w 511 of IPC.

27. The record reveals that the appellant was released on bail by this Court vide order dated 6.12.2004. Hence, the bail bonds of the appellant shall stand cancelled.

28. In result, the appeal is allowed.

(G. Anupama Chakravarthy, J)

Amandeep/-

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