

17.03.2025
Court No.13
Item No. 24
Sudipta

C.R.A. 363 of 2014

Jyotilal Gorain
Vs.
The State of West Bengal

Mr. Tapan Dutta Gupta,
Mr. Sukhendu Mukherjee,
Mr. Parvej Anam,
Mr. Adil Hossain.

... for the appellant.

Mr. Debasish Roy, Ld. P.P.,
Mrs. Rituparna De Ghosh,

..for the State

1. The instant appeal is directed against judgment and order of conviction dated 19th March, 2014 and 21st March, 2014, passed by the learned Additional District & Sessions Judge, Raghunathpur, Purulia in Sessions Trial No. 46 of 2011 arising out of Sessions Case No. 469 of 2006. The appellant was convicted under Section 302 of the IPC for life.
2. This Court has spent several hours hearing learned counsel for the defence as well as the State. The prosecution has examined as many as eleven witnesses and has exhibited several document. This Court has painstakingly considered the same.
3. Insofar as examination of the accused under Section 313 of the Cr.P.C., this Court finds that one formal question was put under Section 313 indicating its object and purpose. There is only one question, indicating alleged incriminating circumstance against the appellant. Apart from the above the only other question was whether he would want to plead guilty. Such a question is totally irrelevant after the prosecution has closed their evidence and the

‘not guilty plea’ had already been entered after framing of charges. There are only two other questions that have been put, namely, whether the defence wanted to examine any witnesses and whether the appellant wanted to say anything else.

4. The entire examination under Section 313 is set out verbatim hereinbelow.

“Examination of accused person

The examination of accused Jyotilal Gorain

aged about 33 years, taken before me,

on the 19th day of Sept 2013

My name is Jyotilal Gorain

My father’s name is late Balaram Gorain

I am by religion Hindu and my occupation is cultivation

my home is at mouza Beko Police Station-Kashipur District-Purulia I reside at.....

Q: I am asking you some questions, you are not bound to answer those questions. But if you answer you must be careful. Because your answers will be written and may be used against you in any case as an evidence. Do you understand?

A: Yes.

Q: It is primarily evident from the evidence of Prosecution Witnesses No. 1 Jhantu Gorain, No. 2 Gurupada Pramanik, No. 3 Sanjoy Bouri, No.4 Ullas Bouri, NO. 5 Astik Bouri, NO. 7 Uttam Bouri and No. 10 Sudhir Chandra Gorain that due to long pending dispute over land and properties you caused bleeding injury to Sitaram Gorain with an axe and killed him on 3.9.06 in between 6.30 hours and 6.45 hours of evening at three-road junction of Beko Village. What will you say in this regard?

A: Totally False.

Q: Do you want to plead guilty?

A: No.

Q: Will you adduce any defence witness?

A: No.

Q: Will you say anything more?

A: I am a prey of political conspiracy as I am a member of B.J.P. The men of C.P.M involved me. I never killed Sitaram Gorain.

Sd. Jyotilal Gorain
(Signature of the accused)

Sd/-

19.09.2013

Signature of Judge,

The above examination was taken in my presence and hearing and contains full and true account of the statement made by the accused.

Sd/-

Signature of Judge

19.9.2013”

5. This Court is of the unequivocal view that the specific incriminating circumstances that have emerged in the trial against the appellant have not been confronted to him in letter and spirit or even remotely satisfying the requirements of Section 313 of the CrPC. The appellant has thus been denied of a fair opportunity to defend himself in the trial. There has been failure of justice and the appellant has been seriously prejudiced and has been denied a fair trial. The inadequate compliance of the mandate of Section 313 in the instant case could border on the expression “mistrial”. The impugned judgment and sentence are, therefore, liable to be set aside and are hereby set aside on this ground alone.

6. The appellant admittedly was on bail in course of trial and was taken into custody after delivery of the impugned judgement. He has suffered 14 years of incarceration.

7. This court, therefore, directs the trial to commence afresh from the stage of Section 313 of the Cr.P.C. and all incriminating circumstance against the appellant shall be confronted and put forth to him afresh by the Trial Court. The appellant may avail any other opportunities available in law before the same.
8. The appellant shall, therefore, be released on bail on the same terms and conditions as were imposed on him when he was granted bail for the first time by the Trial Court.
9. It is expected that the Additional District and Sessions Judge, Raghunathpur, Purulia shall complete the aforesaid proceeding and pronounce judgment afresh expeditiously from the communication of the copy of this order.
10. Let the Trial Court Records be sent back expeditiously with a copy of this order for necessary compliance.
11. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)