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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./69/2025

DHANANJOY KAR AND 2 ORS
S/O. SRI DHIRENDRA KAR, R/O. H/NO. 4, BISHNUPUR, P/O. BISHNUPUR, P/S. AND DIST. DHEMAJI, ASSAM.

2: TAPESH DAS
S/O. LT. NARESH DAS
R/O. H/NO. 3
BISHNUPUR
P/O. BISHNUPUR
P/S AND DIST. DHEMAJI
ASSAM.

3: RAJIB DAS
S/O. NARESH DAS
R/O. H/NO. 3
P/O. BISHNUPUR
P/S AND DIST. DHEMAJI
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

2:SARATHI SING @ SARATI
R/O. H/NO. 4
P/O. BISHNUPUR
P/S. AND DIST. DHEMAJI

Advocate for the Petitioner : MR M SAHEWALLA, MR. D BORA(P-3),MR. N MAHAJAN(P-3),MR. P K DAS(P-3),MR. A CHAUDHURY (P-3),MR. P BORA,MS K BHATTACHARYYA,MS K SARMA

Advocate for the Respondent : PP, ASSAM,

Linked Case : CRL.A(J)/55/2025

NIREN BARMAN
SON OF LATE GAITARU BARMAN @ PAITARU
RESIDENT OF VILLAGE- NO.3
SANTIPUR BAZAR BASTI UNDER DHEMAJI POLICE STATION IN THE DISTRICT OF DHEMAJI
ASSAM

2: SRI DEBA BARMAN
BOTH SONS OF SRI NIREN BARMAN RESIDENT OF VILLAGE NO.4
BISHNUPUR UNDER DHEMAJI POLICE STATION IN THE DISTRICT OF DHEMAJI
ASSAM

3: SRI AJIT BARMAN
BOTH SONS OF SRI NIREN BARMAN RESIDENT OF VILLAGE NO.4
BISHNUPUR UNDER DHEMAJI POLICE STATION IN THE DISTRICT OF DHEMAJI
ASSAM
VERSUS

STATE OF ASSAM
PP ASSAM

Advocate for : MR. U CHOUDHURY
Advocate for : PP
ASSAM appearing for STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

08.10.2026

(Rajesh Mazumdar, J)

Heard Shri P. Bora, learned Senior Counsel assisted by Mr. D. Bora, learned counsel for the appellants in Crl.A. No. 69/2025. Also heard Mr. M. Bhagabati, learned Counsel for the first appellant and Mr. U. Choudhury, learned counsel for the second and third appellant in Crl.A. (J) 55 of 2025.

2. These appeals have been preferred under Section 415 of the BNSS, 2023 against the impugned judgment dated 13.12.2024 passed by the learned Sessions Judge, Dhemaji, in Sessions Case No.106/2013, convicting the appellants under Sections 147/ 148/ 449/ 302/ 149 IPC, for causing the death of one Nandi Singh on 02/09/2012, and sentencing them to suffer rigorous imprisonment for 2 years for the offence under Section 147 IPC; rigorous imprisonment for 3 years for the offence under Section 148 IPC; rigorous imprisonment for 10 years each and a fine of Rs. 10,000/- each, and in default of payment of fine, rigorous imprisonment for another 1 year each, for the offence under Section 449/149 IPC; and imprisonment for life each and a fine of Rs. 20,000/- each, and in default of payment of fine, rigorous imprisonment for another 2 years each, for the offence under Section 302/149 IPC. The appellant Ajit Barman has further been convicted under Section 325 IPC and sentenced to rigorous imprisonment for 7 years and a fine of Rs. 10,000/-, and

in default of payment of fine, rigorous imprisonment for another 6 months.

3. Crl.A.(J)/55/2025 has been preferred from jail, through the learned Counsel, by the three convicts, namely Niren Barman, Deba Barman and Ajit Barman. Crl.A./69/2025 has been preferred by Dhananjoy Kar, Tapesh Das and Rajib Das. As both the appeals arise out of the same judgment, they have been heard together and are being disposed of by this common order.

4. When the matter was being argued on merits, it came to the notice of this Court that there are serious infirmities in the recording of the statements of the appellants herein by the learned Trial Court during the trial. The statements of the six appellant out of 8 accused persons under Section 313 Cr.P.C. were recorded by the learned Trial Court on 20.08.2024. For the sake of convenience and ready reference, the statement of the appellant Niren Barman, as reflected in the Trial Court Record, is reproduced herein below:

> "*Q.No.1- PW1 deposed against you that about one and a half years back, one day, at about 11:30 am, the occurrence took place in their house and that on the previous day of the occurrence, i.e., on Saturday, they had lodged a case in the Court as they did not get articles from the fair price shop of Rajib Das and on the next day, Sunday, accused Deba Barman, Rajib Das, Tapesh Das, Ajit Barman, you, Babul Barman, Dhananjoy Kar and Seba Barman entered their house with 'da' and cut the wall and Ajit Das, Deba, Sonatan, Mukunda and Ananda Kar were outside the house and you and other accused persons pulled out her husband, Nandi Singh who was hiding under the 'Duli' and injured him on various parts of his body by cutting and when he was being taken to Dhemaji Civil Hospital by 108 vehicle, on the way, her husband expired. PW1 further deposed against you that accused Ajit had broken her tooth of the upper jaw by assaulting her with his hand and she*

lodged a case in Dhemaji PS. What do you say?

Ans- False.

Q.No.2- PW2 deposed against you that the occurrence is of 2012 and that Nandi Singh had informed him by mobile phone that you, Deba Barman, Ajit Barman, Dhananjoy Kar alongwith some other persons attacked him by coming to his house and that PW2 immediately informed Silapathar PS over phone but did not get connection and later, he came to know that Nandi Singh was killed by the persons. What do you say?

Ans- False.

Q.No.3- PW4 deposed against you that the occurrence took place on 02/09/2012 and that you and the other accused persons committed murder of Nandi Singh inside his house and he had seen the occurrence himself. PW4 further deposed against you that as accused Ajit Das did not properly supply rice, sugar, kerosene, etc. to the public at a fair price properly, Nandi Singh by taking the signatures of the public, submitted an application in the Supply Office informing about it and persons from the office came for enquiry and interrogated the persons and public informed that they did not get the fair price articles properly and on that day, you and the other accused persons assaulted Nandi Singh by laying him and on 02/09/2012, at about 11:30 am, when Nandi Singh was working with bamboo, then, you and all other accused persons alongwith Babul Barman (absconder accused) charged towards Nandi Singh and Nandi Singh, getting scared, entered into his house and went under the 'Duli' of grains and PW4 and his mother asked you and other accused persons not to beat Nandi Singh by touching their feet but they did not listen and they entered into the house and brought out Nandi Singh from under the 'Duli' and committed murder of Nandi Singh by cutting him. PW4 deposed against you that he had seen you, accused Deba Barman, Babul Barman, Ajit Das, Tapesh Das, Dhananjoy and Lakhan Debnath at the place of occurrence and that he had taken Nandi Singh to the hospital by a 108 vehicle and before reaching the hospital, Nandi expired and the wife of Nandi lodged a case in the

police station. What do you say?

Ans- False.

Q.No.4- PW6 deposed against you that accused Rajib Das had a fair price shop and as the fair price articles were not distributed properly, Nandi Singh had informed the Supply Office by submitting an application and persons from Supply Office went for enquiry and for this, a fight took place between Rajib Das and Nandi Singh and on the day of occurrence, Nandi Singh was working in his courtyard and then, you and other accused persons present in the Court alongwith Deba Barman and Babul with weapons in their hands charged towards Nandi Singh to attack him and Nandi Singh, getting scared, entered into the house and closed the door and you and other accused persons entered by cutting the door and he and his daughter-in-law resisted but one of them pushed his daughter-in-law to the ground as a result of which a tooth of his daughter-in-law broke. PW6 further deposed against you that his son, Nandi Singh had hidden himself inside the 'Duli' of grains to save himself from the accused persons but you and the other accused persons pulled him out from the 'Duli' and accused Deba Barman injured Nandi Singh by cutting him and you and the other accused persons also injured Nandi Singh on various parts of his body and after injuring Nandi Singh, you and other accused persons went away and later, by calling a 108 vehicle, they took Nandi Singh to the hospital and in the hospital, doctor declared Nandi Singh as dead and his daughter-in-law lodged ejahar in the police station. What do you say?

Ans- False.

Q.No.5- PW7 deposed against you that the occurrence took place in 2012 and she was at her house and the house of Nandi Singh was near her house and Nandi Singh was working in his courtyard and you and other accused persons with 'da', 'lathi' in their hands chased Nandi Singh and Nandi Singh went inside his house and she also went to the house of Nandi Singh and she saw you and the other accused persons pulling out Nandi Singh from the 'Duli' and injuring him by

cutting and the accused persons went away after cutting and injuring Nandi Singh and someone called 108 vehicle and police came and Nandi Singh was taken to the hospital but doctor could not save him and Nandi Singh expired. What do you say?

Ans- False.

Q.No.6- PW8 deposed against you that the occurrence took place about three years back and that you and other accused persons injured Nandi Singh by cutting and Nandi Singh expired due to the said injuries and he saw the occurrence after coming to the shop. What do you say?

Ans- False.

Q.No.7- PW9 deposed that on 02/09/2012, he had examined Smti. Sarati Singh and on examination, he found loss of right upper one teeth and blood oozing out from gum and another inflammation on the right upper lip and the age of the injury was five and a half hours old caused by hand (blunt object) and nature of injury was grievous. What do you say?

Ans- I do not know.

Q.No.8- PW10 deposed that on 02/09/2012, he conducted postmortem examination on the dead body of Nandi Singh and in his opinion, the cause of death was 'coma' following sharp cut injuries over head extending to brain matter. What do you say?

Ans- I do not know.

Q.No.9- PW11 deposed against you that on 02/09/2012, you and other accused persons entered into the house of his uncle (khura), Nandi Singh and cut him and he was there nearby and then, 108 was called and Nandi Singh was taken to the hospital where he died. What do you say?

Ans- False.

Q.No.10- PW13 deposed that he on completion of investigation, he submitted chargesheet against you and other accused persons u/s 147/148/149/448/325/302 IPC. What do you say?

Ans- The chargesheet had been falsely lodged against me.

Q.No.11- Will you adduce evidence in the case? Ans- No.

Q.No.12- Do you have anything to say?

Ans- I am innocent."

5. We have noticed that the exact same questions had been put to the appellants Dhananjoy Kar, Ajit Barman, Tapesh Das, Debo Barman, and Rajib Das. The answers given by each of the appellants was also recorded identically. We find this procedure adopted by the Learned Trial Court to be not in consonance with the prevalent law of the land.

6. Section 313 (1) (b) Cr.P.C. requires the Court, after the prosecution witnesses have been examined and before the accused is called upon for his defence, to question the accused generally on the case, and Section 313 (1) (a) empowers the Court to put questions at any stage, so as to enable the accused personally to explain any circumstances appearing in the evidence against him. Under Section 313(4), the answers given may be taken into consideration in the trial. Section 313(5) permits the Court to take the help of the Prosecutor and the defence counsel in preparing the relevant questions. Under Section 281(2) and (3), the whole of the examination, including every question and every answer, is

to be recorded in full, read over to the accused (or interpreted to him in a language he understands), and signed by the accused and the Presiding Judge, who shall certify that it is a full and true account of the statement made by the accused.

7. Coming back to the recording of the statements under Section 313 Cr.P.C. in the present case, we have noticed that the learned Trial Court has taken the entire evidence of each Prosecution Witness as a whole and has put the same to each of the appellants as one single composite question, followed by a general query as to what the accused has to say. To each of the questions, the appellants had given brief replies, such as "False", "I do not know", "I am innocent", which are natural consequences, keeping in view the manner in which the questions were framed.

8. The Apex Court has repeatedly emphasized the requirement of proper recording of the examination of the accused under the provisions of Section 313 of the Cr.P.C. In **Satbir Singh v. State of Haryana,** reported in **(2021) 6 SCC 1**, it was held to be a matter of grave concern that Trial Courts often record the statement of an accused under Section 313 Cr.P.C. in a casual and cursory manner, without specifically questioning the accused as to his defence, and that the provision imposes an obligation on the Court to question the accused fairly, with care and caution.

9. In **Nar Singh v. State of Haryana,** reported in **(2015) 1 SCC 496**, it was held that, while Section 313 Cr.P.C. is a procedural safeguard for the accused, it

imposes a duty on the Court to question the accused properly and fairly, so as to bring home to him the exact case he will have to meet.

10. From the above, it is apparent that it is the solemn duty of the learned Trial Court to put to the accused each and every incriminating circumstance appearing against him in the evidence separately, that is, to break the evidence of each witness into small, simple and distinct questions, each relating to one fact or circumstance, so as to enable the accused to give a clear and specific answer to each of them. It is not possible for an accused to give a single cogent answer to five or six different incriminating circumstances clubbed together, let alone to the nine or ten circumstances clubbed together in Question Nos. 1, 3 and 4. Such a course inevitably leads to overlapping of explanations and to ambiguity.

11. The infirmity is all the more serious in the present case, in which six accused were charged, among other offences, under Sections 147, 148 and 149 IPC, and were convicted for murder with the aid of Section 149 IPC and sentenced to imprisonment for life. In Question Nos. 1, 3, 4, 5, 6 and 9, the acts alleged are attributed collectively as “you and the other accused persons”. The questions do not separately indicate, to each of the accused/appellants, what specific part he is alleged to have played, namely whether he was a member of the assembly, what weapon he is alleged to have carried, what act he is alleged to have done, which injury is attributed to him, and what common object is alleged. Those are the very circumstances on which the case against each individual accused

rests. By putting to each appellant the acts of eight or more named persons in a single breath, the learned Trial Court made it impossible for him to answer in respect of his own role, as distinct from the roles of the others. A one-word reply of "False" to such a question is no explanation at all.

12. A Division Bench of this Court, in Crl.A. 143/2020 ***Gopal Debnath & Anr. v. State of Assam,*** decided on 30.09.2026, in an appeal arising from Sessions Case No. 38/2017 of the Court of the learned Additional District and Sessions Judge, Hojai, has dealt with identical infirmities. There also, the learned Trial Court had taken the evidence of each witness as a whole and put it as one question, and had put the same questions and recorded the same answers attributable to all the accused by a copy/paste method. This Court held that such an examination makes a mockery of the examination under Section 313 Cr.P.C., causes prejudice to the accused and a failure of justice, and vitiates the trial, and, following **Nar Singh (supra**), this Court set aside the judgment of conviction and remanded the matter for retrial from the stage of examination of the accused under Section 313 Cr.P.C. We respectfully agree with, and follow, the view taken in that decision.

13. It is a settled position of law that when evidence or material is not put to the accused under the provisions of Section 313 Cr.P.C., such evidence or material cannot be used against him. In the present case, the entire evidence of each witness was clubbed into a single question; the individual role of each appellant was never put to him; the evidence of some witnesses was not put at all, and

the questions and answers were copy-pasted for all the six appellants herein. Such examination under Section 313 Cr.P.C. cannot be termed to be merely defective, but is beyond the contours of the prevalent law. The learned Trial Court was required to ask simple questions to each accused on each fact and circumstance separately, so as to enable the accused to answer or explain the said questions clearly. The manner in which the appellants have been examined has caused material prejudice to them and has occasioned a failure of justice.

15. The Supreme Court in **Nar Singh (supra)** has recognised that the Appellate Court may decline to remit the matter for retrial on account of the long time spent in the trial and the period of sentence already undergone, and decide the appeal on merits, keeping in view the prejudice caused to the accused. Having regard to the gravity of the charge, the sentence of imprisonment for life, and the extent of the defect, which runs through the whole of the examination of all the six appellants, we do not consider it safe or fair to decide the appeals on merits on a record which stands vitiated at this stage. A retrial from the stage of the examination under Section 313 Cr.P.C. will also not require the prosecution witnesses to be recalled, as their evidence is already on record.

16. Accordingly, by following the decision of the Supreme Court in Nar Singh (Supra) and the decision of this Court in Crl.A. 143/2020, we remand the matter back to the learned Trial Court and direct retrial of the case from the stage of examination of the accused under Section 313 Cr.P.C. The learned Trial Court shall thereafter ensure that at the time of putting questions to the accused

under Section 313 Cr.P.C., the questions are asked in relation to a particular fact and/or circumstance separately. There should not be several questions clubbed into one question. Consequently, the impugned judgment dated 13.12.2024 passed by the Court of the learned Sessions Judge, Dhemaji in Sessions Case No. 106/2013 is set aside, to the extent that the accused/appellants had been held guilty.

17. The appellants shall be at liberty to prefer appropriate application praying for bail during the remainder of the trial, which application, if preferred, shall be considered on its own merit without reference to the present remand.

18. The learned Trial Court shall make an endeavour to dispose of the case within a period of 6 (six) months from the date of receipt of a copy of this order.

19. Send back the TCR.

JUDGE **JUDGE**

Comparing Assistant