

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

129

2026.PHHC.005832



CRR-1215-2020 (O&M).
Decided on: January 14, 2026.

DEVENDER THAKUR AND OTHERS

...Petitioner

Versus

SMT. SAPNA THAKUR

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

PRESENT Mr. A.K. Kanwar, Advocate,
for the petitioner.

Ms. Dheerja, Advocate, (Legal-aid-counsel)
for the respondent.

VINOD S. BHARDWAJ. J. (ORAL)

The instant revision petition has been preferred against the judgment dated 09.09.2020 passed in CRA-1063 of 2018, by the Additional Sessions Judge, Faridabad, whereby the judgment dated 12.11.2018 passed in CIS No.CHI/26095/2014, bearing Case No.133 acquitting the petitioners-accused has been set aside and the case was remanded to the trial Court with a direction to re-examine the accused under Section 313 Cr.P.C. and to pass a fresh judgment.

2 Learned counsel appearing on behalf of the petitioner(s) contends that the proceedings in the present case emanate from FIR bearing

No.112 dated 07.05.2014, under Sections 323, 354, 506 and 34 of the Indian Penal Code, 1860, registered at Police Station, SGM Nagar, Faridabad.

3 The above case had been registered on the complaint moved by one Smt. Sapna Thakur wherein it was alleged that on 8.12.2013 at about 5.30/5.45 p.m., Devender Thakur (one of the petitioners herein) had called a plumber for installation of a water pump. The complainant objected to the said installation on the ground that, if water motors were to be installed, there ought to be two separate water pumps and further requested that the work be undertaken only on her husband's return. She thus stopped the plumber from installing the water motor till his return. A few minutes thereafter, the accused persons, after hatching a criminal conspiracy entered into the house of complainant forcibly and illegally. Devender Thakur caught hold of her by her hair and dragged her out of house, whereupon Vipul Thakur, Abhinav Thakur and Anjana Thakur inflicted fists and punch blows upon her. Due to dragging, her hair was uprooted. The neighbors namely Vivek Singh Dhillon and his mother Smt. Omwati were stated to be witnesses of the incident. Her son Saurab Thakur rescued her from the clutches of the accused persons. Her husband Kuldev Singh Thakur also reached the house and all the facts were narrated to him whereupon a complaint was submitted.

4 A formal FIR was registered upon the aforesaid complaint and investigation was undertaken. The site plan was prepared and accused persons were arrested and produced in the Court.

5 On completion of investigation, final report under Section 173 Cr.P.C. was submitted to the Court. A copy of the challan along with all the necessary documents was also handed over to the accused persons free of costs as envisaged under Section 207 Cr.P.C. Charge was later framed

against the accused persons for commission of offence under Sections 323, 354 and 506 of the Indian Penal Code, 1860 to which they pleaded not guilty and claimed trial.

6 In order to prove its case, the prosecution examined 08 witnesses whereafter prosecution evidence was closed by order and statements of the accused were recorded under Section 313 Cr.P.C. Accused persons denied the allegations as well as the evidence and pleaded false implication in the case.

7 Upon consideration of the evidence led by the respective parties, the trial Court held as under vide its judgment dated 12.1.2018: -

“19. After hearing Ld. counsel for parties and going through the case file very carefully and minutely, this court is of view that complainant has suppressed material fact from the court. She has not disclosed about compromise taken place between parties before police. Both parties given complaints in local police station regarding incident of 08.12.2013. But the matter was compromised and that's why complaints were canceled by police. The eye witness Omwati PW-3 has not supported the prosecution case and she was declared hostile. PW-4 Vivek Dhillon eye witness of incident has given clean chit to accused Abhinav and Vipul Thakur. The police has also found no involvement of accused Abhinav Thakur in the case and has not filed challan against him. There is dispute between parties regarding properties as husband of complainant and accused are real brothers. It is possible that complainant has given exaggerated version of incident regarding which compromise already taken place between parties. There is no allegation of assault upon complainant with intention to outrage her modesty. The witness PW-1 husband of complainant was not present at the spot at the time of incident. So, his testimony is just a hearsay evidence. The other witnesses examined in the

case are formal witnesses. So, this court is of view that testimony of complainant is not trustworthy and accordingly, prosecution has failed to prove its case beyond all reasonable doubts. Thus, by giving benefit of doubt, accused Vipul, Devender and Anjana stand acquitted of the charges levelled against them. Bonds furnished by the accused will continue to be valid for the purpose of under Section 437-A Cr.P.C. File be consigned to record room after due compliance.”

8 Accordingly, the trial Court extended the benefit of doubt to the accused Devender Thakur, Vipul Thakur and Anjana Thakur, after disbelieving the testimony of the prosecution witnesses. It was also specifically noticed that the matter had initially been compromised between the parties pursuant to which a cancellation report had been filed. The eye-witness Om Vati did not support the case of the prosecution and was therefore, declared hostile. Her son, Vivek Dhillon also did not support the prosecution version which eventually led to exoneration of the accused persons. It also emerged in evidence that the husband of the complainant and accused persons are brothers and that the version of the incident had been exaggerated. The allegation of assault upon the complainant with the intent to outrage her modesty was not made out at all. PW.1, the husband of the complainant, was not present at the spot at the time of the incident. His testimony was thus only *hear say* and other witnesses were found to be mere formal in nature.

9 Aggrieved of the said judgment dated 12.11.2018, Criminal Appeal bearing No.CRA-1063 of 2018, was filed by the complainant Sapna Thakur before the Sessions Judge, Faridabad. Vide judgment dated

09.09.2020, the appeal was allowed and the matter was remanded after observing as under: -

“12. Now what transpires from the ld. Lower court record is that this prosecution evidence was not put up to the accused in a correct perspective. None of the statement of complainant/eye-witness with regard to alleged occurrence were put up to the accused. Ld. Trial court had fallen in grave error in the manner in which statements of accused under section 313 Cr.P.C. were recorded. Very apparently, one question was put up which for convenience is reproduced as below :-

“Q.1 :It has come into evidence against you and your co-accused that you on 8.12.2013 criminally intimidated the complainant and outraged her modesty in regard to which complaint Ex.PW2/A was given before Illaqa Magistrate and case was sent for investigation to police station under section 156(3) Cr.P.C. Formal FIR was registered and endorsement regarding registration of FIR is Ex.PW6/B. The site map Ex.PW6/A was prepared. The MLR of complainant/injured is Ex.PW7/A. The statement of witness Omwati recorded before police is Ex.PW3/A. What do you want to say?”

13. This court is of the considered view that where prosecution had examined witnesses who had deposed on oath about alleged occurrence as injured and eye witnesses, then their statements of inculpatory nature should have been put up to the accused. Though accused have been acquitted by ld. Trial court but as complainant has approached this court in appeal questioning the acquittal by ld. Trial court, accused are likely to be prejudiced if the oral evidence of the prosecution witnesses is relied by this court without accused

being confronted with the same under section 313 Cr.P.C. Elaborating upon the importance of a statement under Section 313 Cr.P.C., in “Paramjeet Singh alias Pamma v. State of Uttarakhand” (2010) 10 SCC 439 (para 22), Hon'ble Supreme Court of India has held as under: -

5 “Section 313 Cr.P.C is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Circumstances which were not put to the accused in his examination under Section 313 CrPC cannot be used against him and have to be excluded from consideration.” (vide Sharad Birdichand Sarda v. State of Maharashtra(1984) 4 SCC 116 and State of Maharashtra v. Sukhdev Singh (1992) 3 SCC 700.

14. In the light of aforesaid facts and circumstances, it is an appropriate case where power of remand needs to be exercised. Accordingly, by accepting the appeal, ld. Trial court judgment dated 12.11.2018 is set aside and the case is remanded to ld. Trial court with the direction to re-examine the accused under section 313 Cr.P.C. putting across all the incriminating oral evidence also of prosecution to the accused. The trial Court record with a copy of judgment be returned with the direction to the parties to appear before ld.

Trial court on 5.10.2020. Ld. Trial court shall proceed from the stage of recording statement of accused under section 313 Cr.P.C. and pass a fresh judgment. Appeal file be consigned to records after due compliance.”

10 Learned counsel for the petitioner contends that the order passed by the Additional Sessions Judge, Faridabad, suffers from a clear misappreciation of the findings recorded by the trial Court and has been passed by placing reliance on the statements of accused recorded under Section 313 Cr.P.C., notwithstanding the settled position of law that the said provision is a benevolent safeguard for the accused and intended to make him understand the evidence that has come against him. The complainant cannot claim any prejudice to him on account of such an error, if any. Even otherwise, the discharge of the petitioners was not on account of any technical defect in the recording of the statements under Section 313 Cr.P.C. Hence, the legal foundation for setting aside of the judgment suffers from improper appreciation of the statutory provisions.

11 Since there was no representation on behalf of the respondent-complainant and the matter pertained to the year 2020, hence, Ms. Dheerja was appointed as legal aid counsel to assist this Court on behalf of the respondent-complainant.

12 Legal-aid-counsel contends that the Appellate Court has specifically recorded the patent defect in the judgment of acquittal passed by the trial Court. Hence, the order of remand is proper.

13 I have heard the learned counsel for the respective parties and have gone through the documents appended along with the present petition.

14 At the outset, it is pertinent to refer to Section 313 Cr.P.C. which reads as under: -

“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.”

15 It is evident from a perusal of the above that Section 313 Cr.P.C. is enacted for the benefit of the accused with an object of apprising and explaining him of the circumstances appearing in the evidence against him.

16 In the present case, the petitioners-accused have neither assailed the judgment nor made an argument about them being prejudiced by not being confronted with the evidence on record and they never contended that any such omission had resulted in any miscarriage of justice. The object of Section 313 Cr.P.C. is twofold, firstly, to apprise the accused of the evidence that has come against him and secondly to afford him a meaningful and effective opportunity to defend himself after understanding the gravamen of the allegation and the evidence that has been adduced against him. The same is thus technically not a tool wherein a complainant or the prosecution may contend that they have suffered a prejudice on account of failure to ensure compliance of the provisions of Section 313 Cr.P.C.

17 It is also noticed by this Court that the judgment passed by the trial Court is prima facie not based upon any such error in apprising the accused about the evidence available on record. Hence, the said omission did not weigh upon the trial Court while passing its final judgment. In the said circumstances, it was incumbent upon the Appellate Court to have considered the merits of the case and dealt with the evidence

on record as a primary factor to examine the legality, propriety or validity of the judgment under challenge.

18 The foundation of the judgment of the appellate Court however rests solely on a technical lapse qua which no grievance was raised by the party, for whose benefit such a provision has been incorporated in the Statute. The same thus renders the impugned judgment non-speaking and reflective of an improper and inappropriate appreciation of the statutory provision.

19 Consequently, the present petition is allowed. The judgment dated 09.09.2020 passed in CRA-1063 of 2018, titled as 'Smt. Sapna Thakur Vs. Devender Thakur and others' passed by the Additional Sessions Judge, Faridabad, remanding the case to the Sub Divisional Judicial Magistrate, Faridabad, on the ground of improper compliance of Section 313 Cr.P.C. is set aside. The case is remanded to the Additional Sessions Judge, Faridabad to decide the appeal afresh, on merits, in accordance with law and after affording an opportunity of hearing to the parties and without being influenced by the observations recorded hereinabove.

20 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

21 A copy of this order be sent to the High Court Legal Service Committee for information and necessary action.

January 14, 2026.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No