

# **Raj Kumar @ Suman v State (NCT of Delhi) Criminal Appeal no 1471 /2023 Supreme Court dated may 11, 2023**

## **FACTS**

Appellant was convicted by the Sessions Court for the offences punishable under Section 302 read with Section 120-B of the Indian Penal Code. The only circumstance appearing in the evidence against the appellant that “he was standing outside near the gate of the gallery with a kata” was not put to him in his statement under Section 313 of the Code of Criminal Procedure, 1973. Appellant submitted that the only alleged incriminating circumstance appearing against the appellant in the evidence produced by the prosecution has not been put to him in his statement under Section 313 of CrPC and, therefore, he had no opportunity to explain the said circumstance. Moreover, his conviction is based only on this circumstance.

On appeal, the High Court upheld order of Lower Court. Hence present Criminal Appeal before Supreme Court.

## **ISSUE**

Whether as a result of the failure of the Trial Court to put the only circumstance appearing against the appellant during his examination under Section 313 of CrPC, grave prejudice has been caused to the appellant resulting in failure of justice.

## **HOLDING BY SUPREME COURT**

**OBJECT OF 313 EXPLAINED**-Object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific

question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice.

**PROVISION DISCUSSED**

**Sub-section (5) added to Section 313 of CrPC w.e.f. 31st December 2009.**

Sub-section (5) reads thus:

“313. Power to examine the accused.-

(1) ... ..

(2) ... ..

(3) ... ..

(4) ... ..

**(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.”**

It was observed by apex court that **Sub-section (5) added to Section 313 of CrPC w.e.f. 31st December 2009**, now the Court is empowered to take the help of the prosecutor and the defence counsel in preparing relevant questions. Therefore, when the Trial Judge prepares questions to be put to the accused under Section 313, before putting the questions to the accused, the Judge can always provide copies of the said questions to the learned Public Prosecutor as well as the learned defence Counsel and seek their assistance for ensuring that every relevant material circumstance appearing against the accused is put to him. When the Judge seeks the assistance of the prosecutor and the defence lawyer, the lawyers must act as the officers of the Court and not as mouthpieces of their respective clients. While recording the statement under Section 313 of

CrPC in cases involving a large number of prosecution witnesses, the Judicial Officers will be well advised to take benefit of subsection (5) of Section 313 of CrPC, which will ensure that the chances of committing errors and omissions are minimized.

**HOLDING IN PRESENT CASE BY APEX COURT-** In the present case, the only alleged incriminating circumstance appearing against the appellant in the evidence produced by the prosecution has not been put to him in his statement under Section 313 of CrPC and, therefore, he had no opportunity to explain the said circumstance. Moreover, his conviction is based only on this circumstance. Therefore, the effect of the aforesaid omission on the part of the Trial Court is serious. Supreme court had observed that in the present case, the incident is of 1995, that 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 long delay, it is viewed 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. The conviction of the appellant stands vitiated. In the facts of the case, the option of remand will be unjust. Accordingly, the appeal is allowed and the conviction and sentence of the appellant was set aside.

### **PRECEDENT DISCUSSED AND REFERRED**

**Tara Singh v. State 1951 SCC OnLine SC 49**(Bench of 4 Hon'ble Judges of SC)-*The Court considered the provision of Section 342 of the Code of Criminal Procedure, 1898. Section 313 of CrPC and Section 342 of CrPC of 1898 are in parimaterial. Discussed judgement of Privy Council in Dwarkanath Varma v. Emperor [Dwarkanath Varma v. Emperor, AIR 1933 PC 124 at p. 130: 1933 SCC OnLine PC 11], that if a point in the evidence is considered important*

*against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and it cannot be permit it to be slurred over.*

**Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra (1973) 2 SCC 793**  
(Bench of 3 Hon'ble Judges of SC)- Followed as binding-

*Court examined the issue of non-compliance with the requirements of Section 342 of CrPC of 1898, which is parimateria with Section 313. **It lays down that if there is prejudice caused to the accused resulting in failure of justice, the trial will vitiate.** It was held that it is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction.*

**DIRECTIONS BY APEX COURT**

Section 313 deals with Power to examine the accused - While recording the statement under Section 313 of CrPC in cases involving a large number of prosecution witnesses, the Judicial Officers should take benefit of Section 313 (5) of CrPC, which will ensure that the chances of committing errors and omissions are minimized. Section 313(5) CrPC says that 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.

Also apex court summarized the law as under:

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

- 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.
- 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.

**IMPORTANT PARAS (Para 10, 11, 12, 21)**

---