
SCOPE AND SIGNIFICANCE OF EXAMINATION OF ACCUSED U/S.313 CR.P.C

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ABSTRACT

Accused is examined in every enquiry or trial by enabling him or her to explain personally to circumstances appearing in evidence against him or her. The purpose of empowering the court to examine the accused under section 313, Cr.P.C is to meet the requirement of the principle of natural justice ie, audi alteram partem (that no one should be condemned unheard). This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated against him and the court must take note of such explanation. However, his or her statement cannot be made a basis for his conviction. In a case of circumstantial evidence, the same is necessary to decide whether or not the chain of circumstances is complete. This paper elucidates in detail the scope and significance of examination of accused U/S.313 Cr.P.C and also stresses on the evidentiary value of such an examination.

Keywords: accused, examination, 313 Cr.P.C, natural justice

INTRODUCTION

1.The scope and object of Section 313 Cr.P.C

Section 313 Cr.P.C casts a duty on the court to put in an enquiry or trial ,questions to the accused for the purpose of enabling him to explain each material circumstance appearing in evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating the trial ,if it is shown that the accused was prejudiced. The object of Section 313 Cr.P.C is to establish a direct dialogue between the court and the accused and 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 and when no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. The provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion. Even if the prosecution evidence is weak, court has to put incriminating circumstance to the accused and before recording statement of accused under sec 313 cr.p.c. the trial court is not expected to evaluate the evidence for the purpose of deciding whether or not he should question the accused. The law is equally well settled that the statement of the accused by it self is not evidence and the prosecution case is got to be provided by the evidence to be led. The statement of the accused may only add strength to the evidence adduced by the prosecution establishing the prosecution case. Even if it is assumed that the accused had made false statements while examined under section 313 Cr.P.C the law is well settled that the falsity of the defence cannot take the place of proof of facts which the prosecution has to established in order to succeed. In **Tanviben Pankaj Kumar Divetia Vs. State of Gujarat (1997) 7 SCC 156** ,wherein, it was held by the Apex Court that the conviction of the accused is vitiated on account of not drawing the attention of the accused specifically to the incriminating facts alleged by the prosecution witnesses. The examination of the accused is not intended to be an idle formality .It has to be carried out in the interest of justice and fair play to the accused.

2. PROCEDURE OF RECORDING EXAMINATION OF ACCUSED U/S 313 CR.P.C

As per section 313 of Cr.P.C., accused is examined any stage of proceedings and shall after completion of evidence of prosecution. To know procedure of examination of accused it is pertinent to read 313 of Cr.P.C.

Section 313 of the Code of Criminal Procedure provides that

1. in every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him,—

(a) The Court may, at any stage without previously warning the accused, put such question to him as the Court considers necessary;

(b) The Court shall, after the prosecution witnesses have been examined and before the accused is called upon to put up 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”.

A) On plain reading of section 313 of Cr.P.C the first part gives discretion to court to question accused at any stage of enquiry without previous warning where as the second part is mandatory. The use of the word “may” in clause (a) shows that a discretion is vested in the Court. However, clause (b) uses the word “shall”, and makes the questioning mandatory. When an accused is being examined as above, no oath is to be administered to him. Moreover, he does not render himself liable by refusing to answer such questions or by giving false answers to such provisions. The answers which are given by the accused in such examination may be taken into consideration and put in evidence, for or against him in that or any other inquiry or trial for any other offence which such answers may tend to show that he has committed.

B) While examining the accused trial court has to take into consideration that the questions

should be based on the evidence adduced by prosecution witnesses to that incriminating evidence found from prosecution evidence. The questions should be formulated in clear, logical and understandable leaving no ambiguity in questioning accused. While examining accused courts has to take into consideration socio economic and academic qualification of accused and capacity of him to understand questions posed to him. Court has to take acute care while examining rustic and illiterate accused. The accused if he is not a intelligent person with a sharp memory may not even remember all the circumstances put to him while giving his explanation. This may definitely lead to miscarriage of justice. If vague questions are put to the accused he may not have opportunity to explain promptly and effectually. Evidence of each witness and incriminating evidence found there on should be asked individually but not in a formal way questioning all the accused at one time. Questioning of all accused at a time about incriminating evidence found from prosecution is not proper, as role and participation of each accused may differ according to the facts and circumstances of each case. So that, it is always desirable to ask each accused separately about incriminating evidence found against him in a case.

C) While examining the accused the following points to be considered:

a) No oath shall be administered to accused when he is examined under sub section(1) of Cr.P.C. As no oath is taken to examine the accused the statements given by him cannot be taken as an evidence. That is why sub section (3) says accused shall not render himself liable to punishment if he gives false answers.

b) Accused is not compelled to speak, right to keep silence is right of accused governed by our constitution . The accused is at liberty to answer them or refuse to do so. No punishment can flow from his refusal to answer or giving false answers. All that is permissible in such cases for the Court is to draw adverse inference from refusal to answer as it thinks just.

c) It may be seen that the language in which Section 313 of Criminal Procedure Code, 1973 is couched is plain and simple and leaves no room for any misapprehension as to the scope and purpose of the section.

d) The questions to be put, have a limited purpose. The object mainly and solely is to enable the accused to explain any circumstances appearing in the evidence against him. Whereas there is a statutory obligation on the Court to put such questions, no such obligation is cast on the accused to answer them.

e) Each answer should be recorded separately. The examination should be thorough and only with a view to enable the accused to explain the circumstances against him to the best of his ability

f) No vital or salient or incriminating point should be left out which might result in prejudice. If any vital point is left out it cannot be used against the accused. Any such lapse on the part of the Court may prove fatal. A careful reading of the various decisions of the Supreme Court will enable the Presiding Officers to understand fully the significance of drawing attention of the accused to each matter separately by putting him separate questions on each of such points in a form easy to understand and appreciate and giving him a fair and full opportunity to explain the circumstances against him. The points to be covered by presiding officer while examining accused basing on prosecution evidence is that :

- 1) The presence and involvement of the accused at the scene of occurrence.
- 2) The part alleged to be played by him at the scene of occurrence in the commission of the offence.
- 3) The motive for crime.
- 4) Anything revealed by the medical evidence as against him.
- (5) Any objects recovered from him tending to incriminate him.
- (6) Confession.
- (7) Extra-judicial confession
- (8) Motive of the witnesses to depose against him.
- (9) Dying declaration.

g) It was never intended by the legislature that the court should not frame its questions on its own initiative but should depend upon questions to be supplied to it by prosecution by way of adducing evidence against accused basing on charges framed. h) Proper care has to be taken while examining deaf and dumb. It is the duty of court to observe whether the accused, though a deaf, mute had sufficient intelligence to understand the criminal character of the act committed by him and take assistance of interpreter or person who is capable of understanding

the signs of accused or even in writing.

3. EVIDENTIARY VALUE OF SEC 313 Cr.P.C EXAMINATION

As accused is not examined on oath in sec 313 Cr.P.C examination to explain his version or his case against the evidence adduced by prosecution, the statements of him cannot be taken as a evidence against him. The purpose, procedure and consequences of examination of accused in sec 313 Cr.P.C examination was discussed elaborately by the Apex Court in the decision reported in **AIR 2010 SC 3507 Sanatan Naskar & Anr vs State Of West Bengal** wherein it was held “ The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the Cr.PC 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 judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC 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 thereof, 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 simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in 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. The statement of the accused can be used to test the veracity of the exculpatory 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) of Cr.PC explicitly provides 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. 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 of the Cr.PC as it cannot be regarded as a substantive piece of evidence.” It is settled proposition of law that statements given by accused or answers given by accused is not substantive piece of evidence and it is not sole basis for convicting the accused. The statements of accused can be used for proper appreciation of evidence to accept or to reject. In **Mohan Singh v. Prem Singh & Anr., AIR 2002 SC 3582**, Honourable Apex Court held: “The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. If the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 CrPC cannot be made the sole basis of his conviction.” As no oath is administered to accused and he is not subject to cross examination for the statements given by him , those statements cannot be treated as evidence as contemplated in section 3 of Indian Evidence Act. In **Dehal Singh v. State of H.P., AIR 2010 SC 3594**, Honourable Apex Court observed: “Statement under Section 313 of the Code of Criminal Procedure is taken into consideration to appreciate the truthfulness or otherwise of the case of the prosecution and it is not an evidence. Statement of an accused under Section 313 of the Code of Criminal Procedure is recorded without administering oath and, therefore, the said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act. The appellants have not chosen to examine any other witness to support this plea and in case none was available they were free to examine themselves in terms of Section 315 of the Code of Criminal Procedure which, interalia, provides that a person accused of an offence is a competent witness of the defence and may give evidence on oath in disproof

of the charges. There is reason not to treat the statement under Section 313 of the Code of Criminal Procedure as evidence as the accused cannot be cross-examined with reference to those statements. However, when an accused appears as a witness in defence to disprove the charge, his version can be tested by his cross-examination.” In **State of M.P. v. Ramesh, (2011) 4 SCC 786**, the Apex Court held as under: “The statement of the accused made under Section 313 CrPC can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case. However, as such a statement is not recorded after administration of oath and the accused cannot be cross-examined, his statement so recorded under Section 313 CrPC cannot be treated to be evidence within the meaning of Section 3 of the Evidence Act, 1872. Section 315 CrPC enables an accused to give evidence on his own behalf to disprove the charges made against him. However, for such a course, the accused has to offer in writing to give his evidence in defence. Thus, the accused becomes ready to enter into the witness box, to take oath and to be cross-examined on behalf of the prosecution and/or of the accomplice, if it is so required.” The statements given by accused in 313 Cr.P.C examination cannot be used to fill up the laches on the part of prosecution. In case prosecution evidence is not sufficient to give conviction to accused, then inculpatory statements given by accused cannot be taken into consideration.

4. EFFECT OF NON COMPLIANCE OF SECTION 313 Cr.P.C

Non examination of accused under section 313 of Cr.P.C does not vitiate the entire proceedings or case of the prosecution. Accused can make good of the same even at appellate stage. It is not the sole basis for conviction unless accused has shown miscarriage of justice. In **State of NCT (Delhi Administration) v. Dharampal; AIR 2001 SC 2924** wherein the Apex Court has held as under: “Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred, that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate Court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him. In **Gyan Chand and Others v. State of Haryana; AIR 2013 SC 3395**, plea to non-compliance of the provisions of section 313, Cr.P.C. was taken for the first time before the Supreme Court. But there was no material showing as to what prejudice has been caused to the accused persons, if facts of conscious possession was not put to them. Thus the court held that

the trial was not vitiated for non compliance of the provisions of section 313, Cr.P.C. Mere defective/improper examination under section 313, Cr.P.C. is no ground for setting aside the conviction of the accused, unless it has resulted in prejudice to the accused. Unless the examination under section 313, Cr.P.C. is done in a perverse way, there cannot be any prejudice to the accused. (**SC Bahri v. State of Bihar; AIR 1994 SC 2420**)(**Shobhit Chamar v. State of Bihar; AIR 1998 SC 1693**).

The Hon'ble Apex Court in *Maheshwar Tigga v. State of Jharkhand (2020) 10 SCC 108* reiterated, "*circumstances not put to an accused under Section 313 CrPC cannot be used against him, and must be excluded from consideration.... Importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.*" However, notwithstanding the mandatory nature of said provision, it is trite law that mere defective or improper examination under Section 313 CrPC would be no ground for setting aside the conviction of the accused, unless it has resulted in prejudice to the accused. As per the Hon'ble Court, "*it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance but he must also show that such non-examination has actually and materially prejudiced him and has resulted in failure of justice. In other words in the event of any inadvertent omission on the part of the court to question the accused on any incriminating circumstance appearing against him the same cannot ipso facto vitiate the trial unless it is shown that some prejudice was caused to him.*" Explicably, under such circumstances, "*onus is upon the accused persons to prove that by reasons of his not having been examined as required by S. 313 of the Cr.P.C. he has been prejudiced.*"

5. WHEN IT IS NOT NECESSARY TO EXAMINE THE ACCUSED UNDER SECTION 313 OF CR.P.C

It is settled law that it is not obligatory in each case to examine the accused under above section. If there are no circumstances appearing against the accused in evidence, then the court should not put any questions to accused. If answers are elicited on improper and wrong questions, they cannot be taken into consideration. When the accused had pleaded guilty to the charge, then the question of examination does not arise. In the same way when there is an admission made by the accused himself, then it is not necessary to put that allegation to the accused in

examination. It is not the intent of the legislature to elicit explanation from accused when there is no evidence.

6. CONCLUSION

The law mandates every incriminating evidence should be put to the accused separately. Section 313 CrPC 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. However, the statement cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. Thus, the statements of the accused is not a substantial piece of evidence and therefore, it can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution. In case of the prosecution's evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of his statement cannot be made the sole basis of his conviction.

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