RANVIR YADAV
V.
STATE OF BIHAR
Criminal Appeal No. 10 of 2002

MAY 5, 2009

[DR. ARIJIT PASAYAT, DR. MUKUNDAKAM SHARMA, JJ]

Code of Criminal Procedure, 1973: s.313 – Examination under – Object and scope of – Discussed – On facts, no incriminating materials put to accused u/s.313 – Due to this serious lapse, conviction as recorded calls for interference – Penal Code, 1860 – s.302.

The High Court set aside the order of acquittal and convicted appellant under Section 302 IPC. Appellant-accused filed present appeal on the ground that incriminating materials were not put to him in examination under Section 313 Cr. P.C.

Partly allowing the appeal, the Court

HELD: 1.1. The purpose of Section 313 Cr.P.C. is set out in its opening words – 'for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.' [Para 4] [658-B-C]

Hate Singh, Bhagat Singh v. State of Madhya Pradesh AIR (1953) SC 468 – relied on.

1. 2. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus. The word 'generally' in

A sub-section (1) (b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question B must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining C circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to D explain is bad in law. The whole object of enacting Section 313 Cr. P.C. was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give. It is not E sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which F an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a serious charge. Fairness, therefore, requires that each material circumstance should be put simply and separately in a G way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. [Paras 5-7] [658-F-H; 659-A-F]

2. It is true as contented for the appellant that no incriminating materials were put to the accused under H

Section 313 Cr. P.C. There is no accusation specifically put in question during examination. It only refers to kidnapping. So far as the question No. 3 is concerned same relates to PW 10. He did not say that he had seen gun fired by the appellant. [Para 10] [660-F-G]

3. It is a matter of regret and concern that the trial court did not indicate the incriminating material to the accused. Section 313 Cr. P.C. is not an empty formality. There is a purpose behind examination under Section 313 Cr.P.C. Unfortunately, that has not been done. Because of the serious lapse on the part of the trial court the conviction as recorded has to be interfered with. Conviction recorded by the High Court is set aside. [Para 11] [660-H; 661-A-B]

Case Law Reference

AIR (1953) SC 468 relied on Para 4

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.10 of 2002

From the Judgement and Order dated 29.09.2000 of the Patna High Court in Govt. Appeal No. 24 of 1985

U.U. Lalit, Shishir Pinaki, Sanjay Jain, for the Appellant.

Gopal Singh, Manish Kumar, for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Patna High Court directing reversal of the judgment of acquittal recorded by learned Third Additional Sessions Judge, Munger. All the accused persons were acquitted by the aforesaid judgment. However one of accused respondent i.e. Kirat Yadav before the High Court died during the pendency of the appeal. A Criminal Revision was also filed by the informant-

A Lalitdeo Prasad and the said revision was taken along with the State's appeal.

2. Prosecution version as unfolded during trial is as follows:

As per the fard beyan of Lalitdeo Prasad Singh, on 31st
B July, 1982 at about 8 A.M. informant alongwith several other persons, namely, Rameshwar Mistry, Kailash Singh, Brahmdeo Singh, the Govt. Amin(Omar Ali), Biranchi Das, Challitar Singh, Jalim Singh, the wife of Rameshwar Mistry, Bilo Mistry, Shiv Das, Kedar Das Rajendra Mistry, Manikant Mishra and 5 to 6
C others proceeded from Sirjua Ghat to the Diara across the Ganges river into the boat of Rameshwar Mistry. When this contingent of the informant's party anchored into the Diar side of the river for some persons from the boat came out and proceeded to same distance, some criminals also alighted
D from small boat from the eastern and western side and asked these persons to stop. When these persons who had alighted from the boat of the informant, did not stop, there was firing from the side of the criminals which hit Manikant Mishra (P.W.1). The criminals caught hold of Rajendra Mistry, Rameshwar Mistry, Brahmdeo Singh (all three deceased persons) and brought them
E near the boat of the informant. On the boat of the informant, still sitting were Kailash Singh, Biranchi Das, Challitra Singh, Shiv Das and the Government Amin. Near the boat, Rajendra Mistry was shot at by Kirat Yadav by rifle. Rameshwar Mistry was also shot at by Ranvir Yadav. Khantar Sao shot dead Bramhdeo
F Singh. Ranvir Yadav assaulted the Amin with rifle. Rajendra Mistry, Rameshwar , Mistry and Brahmdeo Singh succumbed to their fire-arm injuries at the spot. The dead bodies of these three deceased persons were loaded on the informant's boat. Thereafter the boat of the informant was occupied by some of
G the criminals and other criminals boarded a small fisher man's boat and carried the informant's boat inside the river towards east, beheaded the dead bodies at the order of Ranvir Yadav and also slit open the stomach of the dead bodies and thereafter threw the cut parts of the dead body into the river. On the way
H inside the river, Kailash Singh was also shot dead by Ranvir

Yadav as a lesson on the ground that Kailash had filed certain criminal case against the assailants. The informant and the other persons left inside the boat were also threatened of dire consequences, if they disclosed the matter to the police. The informant and three others were brought to the bank of the river and made to disembark from the boat. The Amin was still carried further into the river. The informant came to Sirjua ghat. The cause of occurrence as given in the far beyan, is that Ranvir Yadav had taken possession of several lands of Sirjua Village and the villagers wanted their lands to be measured and demarcated and so being angered at this step of the villagers, the accused persons committed the aforesaid occurrence.

The defence of the accused persons was that the police was inimical to the main accused Ranvir Yadav whose father, late Hariballabh Yadav, was killed by A.S.P. and in this connection a case was filed by the servant of Ranvir Yadav. Kanta Sao and Kirat Yadav were employees of Ranvir Yadav and therefore they were implicated falsely in the instant case. The police was pressing the accused persons hard to withdraw the case of murder filed against the police officials.

Twelve witnesses were examined to further the provision version. Several documents were exhibited. The trial Court held that the prosecution version lacks credibility and, therefore, directed acquittal. On appeal the High Court held that there was improper analysis of the evidence and accordingly held that the acquittal was not proper. Therefore the accused Ranvir Yadav i.e. present appellant and Khantar Sao was sentenced to undergo imprisonment for life for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). The appeal in respect of accused Mithu Yadav was dismissed. The position is that out of four accused persons one had died during trial and the acquittal of one was maintained by the High Court and one had also not filed an appeal as it was stated that he had also died. The present appeal relates to accused Ranbir Yadav. Though various points were urged in respect of the appeal, the primary stand was that incriminating materials were

not put to him in examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code').

3. Learned counsel for the respondent-State on the other hand submitted that the accused is a history sheeter, has a long criminal record and therefore there is no scope for interference in this appeal. According to him all the relevant questions were put during examination under Section 313 of the Code.

4. The purpose of Section 313 of the Code is set out in its opening words- 'for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.' In *Hate Singh, Bhagat Singh v. State of Madhya Pradesh* (AIR 1953 SC 468) it has been laid down by Bose, J that the statements of accused persons recorded under Section 313 of the Code 'are among the most important matters to be considered at the trial'. It was pointed out that the statements of the accused recorded by the committing magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box and that they have to be received in evidence and treated as evidence and be duly considered at the trial. This position remains unaltered even after the insertion of Section 315 in the Code and any statement under Section 313 has to be considered in the same way as if Section 315 is not there.

5. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.

6. The word 'generally' in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be

framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.

7. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

8. In order to appreciate the stand relating to not putting the relevant questions during the examination under Section 313 of the Code, the factual scenario needs to be noted.

9. The examination under Section 313 of the Code the same reads as follows:

"Q. It is stated on the basis of statement of witnesses that on 31.7.1982 at around 8.30 A.M. Rameshwar Mistry was

A killed in Sirjua Diara by firing shot from rifle? What do you have to say about it?

Ans. No, I was falsely implicated.

Q. It is also stated that accused kept the dead body of
B Rameshwar Mistry, Rajendra Mistry and Bramhadeo Singh on boat and they took Lalit Narayan Singh Kailash Singh, Chalitar Singh, Anil Sahib and Biranchi Das on the boat and killed Kailash Singh by proceeding further and threw the dead body in river by cutting it what do you have to
C say?

A. Ans. Police has implicated me. Safi Alam, S.P. of Khagaria committed murder on 15th April, 1980 in the evening by firing shot. My servant has filed case on him. My uncle filed case on police S.D.O. from that day, he
D started implicating me in the case and started saying me to withdrew the case. The police which comes, states the same thing. I was not allowed to study at that time. I was studying. Due to this reason, I was falsely implicated.

Q. I heard the statement of witnesses. Do you have to
E say anything in defence?

A. I write it later on.

Q. It is also evident that you fired shot from the rifle at the arm of Amin."
F

10. It is true as contented by learned counsel for the appellant that no incriminating materials were put to the accused under Section 313 of the Code. There is no accusation specifically put in question during examination as quoted above.
G It only refers to victim of kidnapping. So far as the question No.3 is concerned same relates to PW 10. He did not say that he had seen gun fired by the appellant.

11. Above being the position the appeal deserves to be allowed. It is a matter of regret and concern that the trial court
H did not indicate the incriminating material to the accused.

Section 313 of the Code is not an empty formality. There is a purpose behind examination under Section 313 of the Code. Unfortunately, that has not been done. Because of the serious lapse on the part of the trial court the conviction as recorded has to be interfered with. Conviction recorded by the High Court is set aside. Bail bonds executed to give effect to the order of bail dated 8.1.2002 shall stand cancelled because of the acquittal. A B

12. The appeal is allowed to the aforesaid extent.

D.G. Appeal partly allowed.