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AN EXAMINATION OF TREATMENT OF SECTION 313 OF CRIMINAL PROCEDURE CODE AT TRIAL COURTS: ISSUES AND CONCERNS

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ABSTRACT

One of the most valuable right given to the accused during the trial is, right to hear him after the completion of prosecution evidence. Section 313 of Criminal Procedure Code prescribes the procedural safeguard for an accused who is facing the trial. No doubt, right to fair trial is implicit in Article 21 of the Constitution of India. Hence, section 313 imposes an obligation on the part of the Court to question the accused with respect to incriminating circumstances against him in the prosecution evidence and record his statement to that effect. Ironically, it is taken up lightly or considered as mere formality at the trial courts. Recently, in *Satbir Singh and another v. State of Haryana* Hon'ble Supreme Court expressed concern over the way section 313 is treated by the trial courts. Considering its significance in ensuring fair trial and dispensing fair justice, the author tries to explore the various dimensions of this provisions.

Keywords: *Right, Accused, Trial, Evidence, Prosecution.*

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Introduction

One of the vital objects of the Criminal Procedure Code, 1973 is to ensure fair trial. The right to fair trial is enshrined as a fundamental right under Article 21¹ of the Constitution of India.² It makes obligatory on the part of the state not to deprive any person of his life or personal liberty except according to the procedure established by law. In *P. Sanjeeva Rao v. State of AP*³, the Hon'ble Supreme Court held that the object of the fair trial is to give the accused fairest opportunity to prove his innocence. The Criminal Procedure Code being the law governing the proceedings before the Criminal Courts in India has taken all the necessary precautions to provide procedural safeguards to the accused to ensure he gets fair trial in accordance with the principles of natural justice. One such provision is Section 313 of the Criminal Procedure Code, 1973⁴. Section 313 is well rooted in the principles of fair justice and is based on the maxim "Audi alteram partem" (hear the other side). This section not only favors the accused but also helps the Court to come to a proper conclusion without causing much prejudice to the accused.

There are two types of legal system one adversarial legal system⁵ and the another is inquisitorial legal systems.⁶ The nature of investigation and adjudication depends upon the legal system a country adopts. India follows the adversarial system in which accused is presumed to be innocent until proven guilty. This places the burden on the prosecution to prove the guilt beyond reasonable doubt. Once the prosecution discharges this burden then the accused must prove his innocence by adducing evidence on his behalf. Therefore, after the completion of

¹ Article 21: Right to life and personal liberty: No person shall be deprived of his right or personal liberty except according to the due procedure established by law.

² M P Jain, Indian Constitutional Law, Eighth edition, LexisNexis, Reprint 2019, p 1178

³ A.I.R. 2012 S.C. 2242

⁴ Section 313: 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 In this system the prosecutor representing the State (or the people) accuses the defendant (the accused person) of the commission of some crime; and the law requires him to prove his case beyond reasonable doubt. It is a system where the judge plays a passive role.

⁶ In this system judge plays an active role in finding the truth. It is the judge who puts the questions to witnesses including the accused in order to ascertain the truth. The standard of proof required is inner satisfaction and conviction of judge and not proof beyond reasonable doubt.



prosecution evidence the statement of the accused is recorded under section 313 of the Cr.P.C by giving him an opportunity to explain the clinching evidence against him. Moreover, it is the fundamental right of the accused to be heard on the accusations before they are used against him. Recording the statement of the accused is not a mere formality but it has got a practical utility to the criminal courts. Recently in *Satbir Singh and another v. State of Haryana*, the Hon'ble Supreme Court comprising Chief Justice of India N.V. Ramana and Justice Aniruddha Bose condemned the casual approach of the trial Courts in recording the statement of the accused under section 313 of Cr.P.C. and further noted that the "examination of an accused under section 313 of Cr.P.C cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness.⁷ No doubt, the legislature has tried to explain the provisions in a lucid way. However, this section has brought to light a few intriguing questions of law like the evidentiary value of the statement recorded under section 313 of Cr.P.C, drawing adverse inference against accused when he chooses to remain silent during his examination, non-examination of the accused, and fatal omission during examination etc.

Object

The object of section 313 of Cr.P.C. is to provide a platform to the accused to explain the incriminating circumstances against him, which is recorded during prosecution evidence. This is solely based on the maxim "Audi alteram partem" meaning hear the other side. In *Jai Deo v. State of Punjab*⁸ the Hon'ble Supreme Court held that the object of the section is to give opportunity to say what accused wanted to say in respect of the prosecution case against him.

Stages of recording the statement under section 313 of Cr.P.C.

Sub section 1 of section 313 empowers the Court to examine the accused at two stages. Firstly, during any stage of the trial without previously warning the accused. The court may ask questions to him. Secondly, after the closure of the prosecution witnesses and before the defense evidence, shall examine the accused. The most important point to be noted here is that, under the first circumstances it is discretionary power of the Court to put questions to the accused. But in the second circumstance, it is mandatory for the Court to record the statement of the accused. However, what we witness today is that first part is seldom invoked. In *Dal Chand v. State of Delhi*⁹ the Court held that, the trial court is bound under the law to examine

⁷ Referred at <https://indiankanoon.org/doc/59224804/> last visited on June 19, 2021.

⁸ A.I.R. 1963 S.C. 612

⁹ 1989 Cr.L.J. (NOC) 33 (Del).



the accused and record his statement under section 313 of Cr.P.C. In *Usha K. Pillai v. Raj K. Srinivas*¹⁰, the Supreme Court held that it is mandatory in a warrant case¹¹ to examine the accused under section 313. Whereas in summons case¹² it is the discretionary power of the magistrate to dispense with the examination of the accused under section 313. The accused cannot claim as of right that he should not be examined or that the counsel should be examined.¹³

Whether personal attendance of the accused is required?

It is crystal clear from the provision of section 313 that the accused must compulsorily appear before the Court to answer the questions. The very purpose of this section is to give opportunity to the accused to directly explain to the judge any incriminating circumstances against him. However, in the proviso clause to section 313 it's been made clear that personal examination of the accused under clause (b) can be dispensed with when his personal attendance is dispensed in a summons case. If the accused is unable to appear personally before the court, he must file an application along with the affidavit explaining the reasons for the same. If the court is satisfied of the genuineness of the application, the court will proceed further by supplying the questionnaire to the accused through his counsel and fix the time within which it must be returned. Within the time or extended time, the accused must submit the answers with the affidavit that those answers were given by himself. He should also affix his signature on each page of the answered questionnaire. If he fails to do so, he shall forfeit his right to seek personal exemption from the Court. In *Basavaraj R. Patil v. State of Collector*¹⁴ the Hon'ble Supreme Court held that accused should be physically present before the court to answer the questions put to him under section 313 of Cr.P.C. However, if it caused undue delay, hardship and huge expenses, the Court could dispense with personal examination of the accused even in warrant case. In the absence of the accused, his counsel cannot be examined under this section.¹⁵

Mode of recording statement under section 313 of Cr.P.C.

The statement under section 313 must be recorded in accordance with section 281 of Cr.P.C.¹⁶.

¹⁰ 1993 Cr.L.J 2669 (S.C.)

¹¹ Section 2(x) of Cr.P.C.: means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

¹² Section 2(w) of Cr.P.C.: means a case relating to an offence, and not being a warrant-case.

¹³ *Sachchidanand v. Poorna Mal*, 1988 Cr.L.J. 511 (Raj).

¹⁴ A.I.R. 2000 S.C. 3214

¹⁵ *Bibhuti Bhushan Das Gupta v. State of West Bengal*, A.I.R. 1969 S.C. 381

¹⁶ Section 281: Record of examination of accused: (1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the



Section 281 of Cr.P.C. deals with record of examination of accused. The procedure is as follows:

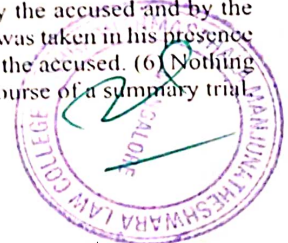
1. No oath shall be administered to the accused when he is examined under section 313 of Cr.P.C.¹⁷
2. It shall be recorded by the judge himself. However, if he is unable to do so due to any other incapacities, be an officer appointed by the court to do so.
3. The record shall, if practicable in which the accused is examined or if not practicable, in the language of the court.
4. The statement recorded should be shown or read over to the accused. If he does not understand the language in which it is written, it shall be interpreted to him in the language known to him.
5. The accused is at liberty to explain or add to his answers.
6. The statement shall be signed by the judge and the accused.
7. Finally, the judge shall certify the statement saying that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

The Court may take the help of Prosecutor and Defense counsel to prepare relevant questions which are to be put to the accused.

Evidentiary value of the statement recorded under section 313 of Cr.P.C.

Ours being the adversary legal system the entire burden is upon the prosecution to prove the guilt of the accused beyond reasonable doubt. Perhaps, the question is to what extent the statement recorded under section 313 can be used before the court during trial. No doubt, the statement recorded under section 313 is not a substantive piece of evidence. It cannot be sole basis for conviction. It can only be used as an additional link to corroborate the case of

language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record. (2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf. (3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable, in the language of the Court. (4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers. (5) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused. (6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.¹⁷ Sub section 2 of section 313 Cr.P.C.



prosecution.¹⁸

Sub section 4 of section 313 explains the use of the statement in two parts. First part says that, the answers given by the accused may be taken into consideration in such inquiry or trial, in which the statement of the accused is recorded. Second part says that, the answers given by the accused may be put in the evidence for or against the accused in any other inquiry or trial for any other offence, which such answers may tend to show he has committed. In *State of U.P v. Lakshmi*¹⁹, the Supreme court held that when the accused admitted incriminating circumstances appearing in evidence against him, it cannot be merely ignored that such admissions are advanced as defense strategy. Further, the statement made by the accused under section 313 cannot be used against him unless the incriminating circumstances are put to him in his examination under section 313 of the Cr.P.C.²⁰ If the court chooses to take the statement into consideration it has to take it as a whole.

Non examination and fatal omission in examination – It's effect.

Each incriminating circumstance appearing in the prosecution evidence should be put to the accused²¹. However, mere non examination is not sufficient to set aside the conviction, the accused must prove that non examination has caused prejudice to him. The Supreme Court observed that each material circumstances appearing in evidence against the accused is required to be put to him, specifically, distinctly, and separately. Failure to do so, if shown to have prejudiced the accused, vitiates the trial, but if it does not occasion a failure of justice, it is curable under section 465²² of the code.²³ In *Gyan Chand and Others v. State of Haryana*²⁴, 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 were not put to them. Thus, the

¹⁸ Bishnu prasad Sinha v. State of Assam, 2007 Cr.L.J 1145 (S.C.)

¹⁹ A.I.R. 1998 S.C. 1007

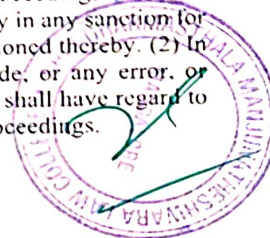
²⁰ A.I.R. 1953 S.C. 468

²¹ Hyder Khan v. State of Karnataka, 2006 Cri.L.J. 3143 (3145)

²² Section 465. Finding or sentence when reversible by reason of error, omission irregularity. (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

²³ S. Harnam Singh v. State. A.I.R. 1976 S.C. 2140

²⁴ A.I.R 2013 S.C 3395



court held that the trial was not vitiated for noncompliance of the provisions of section 313, Cr.P.C. In *Janak Yadav v. State of Bihar*²⁵, an appeal was filed before the High Court against the judgement passed by the trial court acquitting 4 accused and convicting 21 accused to undergo rigorous imprisonment for life for the offence punishable under section 302²⁶, section 149²⁷ and section 396²⁸ of the Indian Penal Code. During the hearing the High Court found that only one accused out of 21 was examined under section 313 of Cr.P.C. The High Court held that non examination of 20 appellants is illegality in the trial and therefore set aside the judgment of the trial court and ordered for retrial. Further on appeal to the Supreme Court, it set aside the order of the High Court to the extent it directs retrial of the case from the stage of framing of the charges and confine the retrial of the case to the stage of the recording of the statement of the appellants, whose statement have not been recorded under section 313 of Cr.P.C. In *Nar Singh v. State of Haryana*²⁹, the Court observed that, the trial court and high court relied upon the material evidence of forensic science laboratory report and ballistic expert opinion to convict the accused for the offence of punishable under section 302 IPC and section 25(1-B) Arms Act³⁰. But both the courts failed to record the statement of the accused under

²⁵ (1999) 9 SCC 125

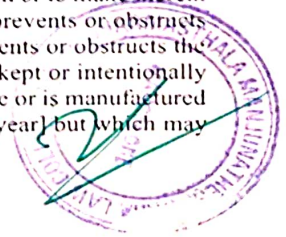
²⁶ Section 302: Punishment for murder: Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

²⁷ Section 149: Every member of unlawful assembly guilty of offence committed in prosecution of common object. —If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

²⁸ Section 396: Dacoity with murder: - If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or [imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

²⁹ (2015)1SCC 496

³⁰ Section(1-B) Arms Act: Whoever- (a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3; or (b) acquires, has in his possession or carries in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or (c) sells or transfers any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section; or (d) being a person to whom sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section; or (e) sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of clause (b) of sub-section (1) of section 9; or (f) brings into, or takes out of, India, any arms or ammunition in contravention of section 10; or (g) transports any arms or ammunition in contravention of section 12; or (h) fails to deposit arms or ammunition as required by sub-section (2) of section 3, or sub-section (1) of section 21; or (i) being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries therefrom or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept, shall be punishable with imprisonment for a term which shall not be less than [one year] but which may



section 313 on this point. The plea of omission to put question under section 313 was raised before the Supreme Court for the first time and prayed to set aside the conviction. The Supreme Court did not set aside the conviction. However, the matter was remitted to trial court for proceeding afresh from the stage of recording statement of accused under section 313 of Cr.P.C. In *Naval Kishore Singh v. State of Bihar*³¹, in trial court accused was put only single question covering the entire evidence against him. On appeal to Supreme Court the appellant for the first time raised the question of causing prejudice to him. Therefore, Supreme Court held that accused having not raised any contention before High Court regarding prejudice caused to him because of defective manner of his examination under section 313 of Cr.P.C. Supreme Court would not accept such contention especially when accused failed to show any prejudice.

Right to remain silent

Another fascinating aspect of section 313 is the right of the accused to remain silent during his examination in trial. This in essence is assimilated in sub section 3 of section 313 of Cr.P.C. empowering the accused to remain silent during his examination. He is neither bound to give true answers nor he is liable for punishment for giving false answer. However, in *Phula Singh v. State of Himachal Pradesh*³², the Supreme Court held that the court is empowered to draw adverse inference, if the accused choose to remain silent. Since, accused makes statement under this section without fear or right of the other party to cross examine him, in *Sanatan Naskar and another v. State of West Bengal*³³ the Supreme Court held that if the statement made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for in accordance with law. In *Munna Kumar Upadhyay @ Munna Upadhyay v. State of Andhra Pradesh*³⁴, apex court held that false denial made by the accused of established facts can be used as incriminating evidence against him. But in *Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan*³⁵, the court cautioned that an adverse inference can be taken against the accused only and only if the incriminating materials stood fully established and the accused is not able to furnish any explanation for the same.



extend to three years and shall also be liable to fine: Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than 6[one year].

³¹ (2004)7 SCC 502
³² A.I.R 2014 S.C. 1256
³³ A.I.R 2010 S.C. 3507
³⁴ A.I.R 2012 S.C. 2470
³⁵ A.I.R. 2013 S.C. 3150

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Filling of written statement by the accused

In the year 2009 an amendment was brought to the section 313 of Cr.P.C. in which they inserted sub section 5 to the said section. As per this sub section the court may allow the accused to submit written statement as sufficient compliance of this section.

Conclusion

Our criminal justice is always looked down by the public because of the low conviction rate. However, to increase the conviction rate, the rights vested with the accused cannot be taken away. Ironically, today recording of the statement of the accused has become a mere formality during which accused goes on answering as "no", "don't know" and "it is false". This attitude of the accused should be discouraged. The Courts should make the accused understand the rationale behind recording his statement. Finally, it is stated that number of judicial pronouncements have asserted that examination is not a mere formality. Moreover, it is the solemn duty of the court to fairly record the statement of the accused, to personally explain any circumstance appearing in the evidence against him. Any lapse in not recording statement or not recording the statement properly would be attributable to the court only and not to the prosecution or the accused. Therefore, the Courts should comply with the provisions of section 313 of Cr.P.C in an effective manner as it is one of the important stages of the trial and to ensure fair justice.

