

SECTION 313 Cr.P.C – POWER, PROCEDURE AND PURPOSE

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RELEVANT PROVISION

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) shall¹, 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.

STATE AMENDMENT :

Jharkhand.—In its application to the State of Jharkhand, in Section 313—

(1) In every enquiry or trial for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him the Court, after the words “enabling the accused,” the word “in person or through the medium of electronic video linkage” shall be inserted. [*Vide* Jharkhand Act 2 of 2016, S. 4 (w.e.f. the date to be notified)]

¹ In *Basavaraj R. Patil* (2000) 8 SCC 740 while advocating a pragmatic and humanistic approach in less serious offences, Thomas, J. speaking for the majority in a Bench of three learned Judges, explained the scope of clause (b) to Section 313(1) of the Code as follows: “24. ... The word ‘shall’ in clause (b) to Section 313(1) of the Code is to be interpreted as obligatory on the court and it should be complied with when it is for the benefit of the accused. But if it works to his great prejudice and disadvantage the court should, in appropriate cases, e.g., if the accused satisfies the court that he is unable to reach the venue of the court, except by bearing huge expenditure or that he is unable to travel the long journey due to physical incapacity or some such other hardship, relieve him of such hardship and at the same time adopt a measure to comply with the requirements in Section 313 of the Code in a substantial manner. How could this be achieved? 25. If the accused (who is already exempted from personally appearing in the court) makes an application to the court praying that he may be allowed to answer the questions without making his physical presence in court on account of justifying exigency the court can pass appropriate orders thereon, provided such application is accompanied by an affidavit sworn to by the accused himself containing the following matters:(a) A narration of facts to satisfy the court of his real difficulties to be physically present in court for giving such answers.(b) An assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning.(c) An undertaking that he would not raise any grievance on that score at any stage of the case.”

ORIGIN

The provision Section 313 of the CrPC has its root in the principal of natural justice i.e Audi Altera, Partem. It is based on the one of the most fundamentals to be observed in the process of criminal trial that the accused should be called upon to explain the evidence against him and should thus be given an opportunity of stating his own case.

OBJECT

Section 313 CrPC confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right, as a constitutional right to a fair trial under Article 21 of the Constitution².

The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused. The whole object of Section 313 CrPC is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand³. Questioning an accused under Section 313 CrPC is not an empty formality.

The requirement of Section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself⁴.

The proper methodology to be adopted by the Court while recording the statement of the accused under Section 313 CrPC is to invite the attention of the accused to the circumstances and substantial evidence in relation to the offence, for which he has been charged and invite his explanation. In other words, it provides an opportunity to an accused to state before the court as to what is the truth and what is his defence, in accordance with law. It was for the accused to avail that opportunity and if he fails to do so then it is for the court to examine the case of the prosecution on its evidence with reference to the statement made by the accused under Section 313 CrPC⁵.

One of the main objects of recording of a statement under this provision of CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put

² Jai Prakash Tiwari v. State of Madhya Pradesh 2022 SCC OnLine SC 966

³ Tara Singh v. State, 1951 SCC OnLine SC 49.

⁴ Kalicharan v. State of U.P., (2023) 2 SCC 583

⁵ Dharnidhar v. State of U.P., (2010) 7 SCC 759

forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law⁶.

JUDICIAL PRECEDENTS

1. Mukesh Kumar v. State of Jharkhand 2010 (4) JLJR 321 (HC)

Whether the order of conviction can be based only on the statement recorded under Section 313 Cr.P.C. ?

The Hon'ble High Court of Jharkhand held that no doubt, it is true that Section 313 Cr. P. C. is intended to afford a person accused of a crime an opportunity to explain the circumstances appearing in evidence against him.

Sub-section (1) of the section is in two parts: the first part empowers the court to put such questions to the accused as it considers necessary at any stage of the inquiry or trial whereas the second part imposes a duty and makes it imperative on the court to question him generally on the prosecution having completed the examination of its witnesses and before the accused is called on to enter upon his defence. Therefore, it does appear that the purpose of examination of the accused under Section 313 Cr.P.C. is to give the accused an opportunity to explain the incriminating material which has surfaced on record. After the statement under Section 313 Cr.P.C. is recorded, opportunity is given to the defence to lead evidences and then to hear the arguments and to pronounce judgment. Therefore, no matter how weak and scanty the prosecution evidence is in regard to a certain incriminating material, it is the duty of the court to examine the accused and seek his explanation thereon.

It has been well settled that the statements made by the accused will not be evidence *stricto sensu* for the reason that no oath is administered to the accused before his statement is recorded. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. However, at the same time, one in order to decide the issue as has been formulated to take notice of the provision as contained in sub-section (4) which reads as under:-

“Section 313 (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.”

⁶ Vahitha v. State of Tamil Nadu 2023 SCC OnLine SC 174

Thus, the answers given by the accused in response to his examination under Section 313 Cr.P.C. can be taken into consideration in such inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, the statement by the accused though cannot be taken strictly as evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. This proposition of law has already been laid down in the cases of *State of Maharashtra v. R.B. Chowdhari*⁷, *Hate Singh Bhagat Singh v. State of M.B.*⁸ and also in the case of *Narain Singh v. State of Punjab*⁹, wherein it has been held that if the accused confesses to the commission of the offence with which he is charged the Court may, relying upon that confession, proceed to convict him. It would be better to reproduce the observation made in the case of *Narain Singh v. State of Punjab* (supra) by the Hon'ble Supreme Court by three Judges Bench:

“Under Section 342 of the Code of Criminal Procedure by the first subsection, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation—if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may be taken into consideration at the enquiry or the trial. If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety.”

Further, the Jharkhand High Court noted that the present subsection (4) with which this Court is concerned is a verbatim reproduction of subsection (3). Therefore, the aforesaid observations apply with equal force. Subsequently, the Hon'ble Supreme Court in a case of *State of Maharashtra v. Sukhdev Singh*¹⁰ putting its reliance on the case of *Hate Singh Bhagat Singh* (supra) and also on the case of *Narain Singh* (supra) held that the answers given by the accused under Section 313 Cr.P.C. examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In this case at the time of recording statement under Section 313 Cr.P.C. when the court put that question as to whether he has committed such offence, he accepted his guilt and on that basis learned

⁷ AIR 1968 S.C. 110

⁸ AIR 1953 S.C. 468

⁹ (1964) 1 Cri.L.J. 730

¹⁰ (1992) 3 SCC 700

trial court recorded the order of conviction and sentence, which, in the High Court's view has rightly been recorded, as plea of guilt seems to be voluntary one keeping in view that the accused on being asked expressed his intention to plead guilty and before that he had also expressed his wishes to plead guilty before the jail authority and as such that order needs no interference by this Court.

2. Nar Singh v. State of Haryana, (2015) 1 SCC 496

i) Whether circumstances not put to the accused for explanation could be used as evidence against him?

ii) Whether defective questioning under section 313 could ipso facto vitiate the trial?

iii) Whether non-compliance with the mandatory provisions of Section 313 CrPC vitiates the trial and conviction of the appellant?

There are two kinds of examination under Section 313 CrPC. The first under Section 313(1)(a) CrPC relates to any stage of the inquiry or trial; while the second under Section 313(1)(b) CrPC takes place after the prosecution witnesses are examined and before the accused is called upon to enter upon his defence. The former is particular and optional; but the latter is general and mandatory.

The object of Section 313(1)(b) CrPC is to bring the substance of accusation to the accused to enable the accused to explain each and every circumstance appearing in the evidence against him. The provisions of this section are mandatory and cast a duty on the court to afford an opportunity to the accused to explain each and every circumstance and incriminating evidence against him. The examination of the accused under Section 313(1)(b) CrPC is not a mere formality. Section 313 CrPC prescribes a procedural safeguard for an accused, giving him an opportunity to explain the facts and circumstances appearing against him in the evidence and this opportunity is valuable from the standpoint of the accused. The real importance of Section 313 CrPC lies in that, it imposes a duty on the court to question the accused properly and fairly so as to bring home to him the exact case he will have to meet and thereby, an opportunity is given to him to explain any such point.

Elaborating upon the importance of a statement under Section 313 CrPC, in *Paramjeet Singh v. State of Uttarakhand*¹¹, this Court has held as under:

“22. 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

¹¹ (2010) 10 SCC 439

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 Birdhichand Sarda v. State of Maharashtra¹² and State of Maharashtra v. Sukhdev Singh¹³.)”

In *Basavaraj R. Patil v. State of Karnataka*¹⁴, this Court considered the scope of Section 313 CrPC and in paras 18 to 20 held as under:

*“18. What is the object of examination of an accused under Section 313 of the Code? The section itself declares the object in explicit language that it is ‘for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him’. In *Jai Dev v. State of Punjab*¹⁵ Gajendragadkar, J. speaking for a three-Judge Bench has focussed on the ultimate test in determining whether the provision has been fairly complied with. He observed thus:*

‘The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity.’

19. Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion.

*20. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim *audi alteram partem*. The word ‘may’ in clause (a) of sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance for it. But if the court fails to put the needed question under clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him.”*

If an objection as to Section 313 CrPC statement is taken at the earliest stage, the court can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective Section 313 CrPC statement is raised in the appellate court, then

¹² (1984) 4 SCC 116

¹³ (1992) 3 SCC 700

¹⁴ (2000) 8 SCC 740

¹⁵ AIR 1963 SC 612

difficulty arises for the prosecution as well as the accused. When the trial court is required to act in accordance with the mandatory provisions of Section 313 CrPC, failure on the part of the trial court to comply with the mandate of the law, in our view, cannot automatically enure to the benefit of the accused. Any omission on the part of the court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. Insofar as non-compliance with mandatory provisions of Section 313 CrPC is concerned it is an error essentially committed by the learned Sessions Judge. Since justice suffers in the hands of the court, the same has to be corrected or rectified in the appeal.

Observing that omission to put any material circumstance to the accused does not ipso facto vitiate the trial and that the accused must show prejudice and that miscarriage of justice had been sustained by him, this Court in *Santosh Kumar Singh v. State*¹⁶ has held as under:

“92. ... the facts of each case have to be examined but the broad principle is that all incriminating material circumstances must be put to an accused while recording his statement under Section 313 of the Code, but if any material circumstance has been left out that would not ipso facto result in the exclusion of that evidence from consideration unless it could further be shown by the accused that prejudice and miscarriage of justice had been sustained by him.”

In *Paramjeet Singh v. State of Uttarakhand*¹⁷, this Court has held as under:

“30. Thus, it is evident from the above that the provisions of Section 313 CrPC make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the court to question the accused on any incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court.

The question whether a trial is vitiated or not depend upon the degree of the error and the accused must show that non-compliance with Section 313 CrPC has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under Section 313 CrPC, it cannot be inferred that any prejudice had been caused to the accused, even assuming that some incriminating circumstances in the prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that the accused has suffered some disability or detriment in relation to the safeguard given to him under Section 313 CrPC. Such prejudice should also demonstrate that it has occasioned

¹⁶(2010) 9 SCC 747

¹⁷ (2010) 10 SCC 439

failure of justice to the accused. ***The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice.*** The facts of each case have to be examined to determine whether actually any prejudice has been caused to the appellant due to omission of some incriminating circumstances being put to the accused.

Further, the Apex Court noted that ***when such objection as to omission to put the question under Section 313 CrPC is raised by the accused in the appellate court and prejudice is also shown to have been caused to the accused, then what are the courses available to the appellate court?***

The appellate court may examine the convict or 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 under Section 313 CrPC and the said answer can be taken into consideration.

The Apex Court referred to *Shivaji Sahabrao Bobade v. State of Maharashtra*¹⁸ and held that this Court has thus widened the scope of the provisions concerning the examination of the accused after closing prosecution evidence and the explanation offered by the counsel of the accused at the appeal stage was held to be a sufficient substitute for the answers given by the accused himself.

The Apex Court then pondered on the point that if all relevant questions were not put to the accused by the trial court as mandated under Section 313 CrPC and where the accused has also shown that prejudice has been caused to him or where prejudice is implicit, whether the appellate court is having the power to remand the case for redecision from the stage of recording of statement under Section 313 CrPC.

Section 386 CrPC deals with power of the appellate court. As per sub-clause (b)(i) of Section 386 CrPC, the appellate court is having power to order retrial of the case by a court of competent jurisdiction subordinate to such appellate court. Hence, if all the relevant questions were not put to the accused by the trial court and when the accused has shown that prejudice was caused to him, the appellate court is having power to remand the case to examine the accused again under Section 313 CrPC and may direct remanding the case again for retrial of the case from that stage of recording of statement under Section 313 CrPC and the same cannot be said to be amounting to filling up lacuna in the prosecution case.

Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under:

1. Whenever a plea of non-compliance with Section 313 CrPC is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable

¹⁸ (1973) 2 SCC 793

to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer.

2. In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

3. If the appellate court is of the opinion that non-compliance with the provisions of Section 313 CrPC has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 CrPC and the trial Judge may be directed to examine the accused afresh and defence witness, if any, and dispose of the matter afresh.

4. The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.

3. **Balaji Gunthu Dhule v. State of Maharashtra, (2012) 11 SCC 685**

i) Whether a statement made under section 313 by the accused can be the sole basis of conviction.

The Apex Court noted that the statement of the accused recorded under Section 313 of the Code cannot be put against the accused person. 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. The statement made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

This Court in *Manu Sao v. State of Bihar*¹⁹ has examined the vital features of Section 313 of the Code and the principles of law as enunciated by judgments, analysing the guiding factors for proper application and consequences that shall flow from the said provision and has observed:

“14. The statement of the accused can be used to test the veracity of the exculpatory nature 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) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence against the accused in any other enquiry 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

¹⁹(2010) 12 SCC 310

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.

15. 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 Code as it cannot be regarded as a substantive piece of evidence.”

4. Raj Kumar Singh v. State of Rajasthan, (2013) 5 SCC 722

What would be the consequence if the accused chose to remain silent during his statement under section 313 ?

The Apex Court noted that in a criminal trial, the purpose of examining the accused person under Section 313 CrPC is to meet the requirement of the principles of natural justice i.e. audi alteram partem.

This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. *In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete.* No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 CrPC, cannot be used against him and have to be excluded from consideration.

In Mohan Singh v. Prem Singh²⁰ this Court held:

“30. *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.*”

In Dehal Singh v. State of H.P.²¹ this Court observed:

“23. *... 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*

²⁰(2002) 10 SCC 236

²¹(2010) 9 SCC 85

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, inter alia, 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 **Rafiq Ahmad v. State of U.P.**²² this Court observed as under:

“67. It is true that the statement under Section 313 CrPC cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of events.”

In **Dharnidhar v. State of U.P.**²³ this Court held:

“29. The proper methodology to be adopted by the Court while recording the statement of the accused under Section 313 CrPC is to invite the attention of the accused to the circumstances and substantial evidence in relation to the offence, for which he has been charged and invite his explanation. In other words, it provides an opportunity to an accused to state before the court as to what is the truth and what is his defence, in accordance with law. It was for the accused to avail that opportunity and if he fails to do so then it is for the court to examine the case of the prosecution on its evidence with reference to the statement made by the accused under Section 313 CrPC.”

In **Ramnaresh case**²⁴ this Court had taken the view that if an accused is given the freedom to remain silent during the investigation, as well as before the court, then the accused may choose to maintain silence or even remain in complete denial, even at the time when his statement under Section 313 CrPC is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused, as may be permissible in accordance with law. While such an observation has been made, this part of the judgment must be read along with the subsequent observation of the Court stating that if he keeps silent or furnishes an explanation, in both cases, the same can be used against him for rendering a conviction, insofar as it supports the case of the prosecution.

In **Brajendra Singh v. State of M.P.**²⁵ this Court held, that it is equally true that a statement under Section 313 Cr.P.C. simpliciter cannot normally be made the basis for convicting the accused. But where the statement of the accused under Section 313 CrPC is in line with the case of the prosecution,

²² (2011) 8 SCC 300

²³ (2010) 7 SCC 759

²⁴ (2012) 4 SCC 257

²⁵ (2012) 4 SCC 289

then the heavy onus of providing adequate proof on the prosecution that is placed is to some extent reduced.

In view of the above, the Apex Court stated that the law on the issue can be summarised to the effect that statement under Section 313 CrPC is recorded to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. ***However, his statement cannot be made a basis for his conviction. His answers to the questions put to him under Section 313 CrPC cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. Thus, the statement of the accused is not a substantive 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 the prosecution 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.*** The statement under Section 313 CrPC is not recorded after administering oath to the accused. Therefore, it cannot be treated as an evidence within the meaning of Section 3 of the Evidence Act, though the accused has a right if he chooses to be a witness, and once he makes that option, he can be administered oath and examined as a witness in defence as required under Section 315 CrPC. *An adverse inference can be taken against the accused only and only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. However, the accused has a right to remain silent as he cannot be forced to become a witness against himself.*

5. Prahlad v. State of Rajasthan, 2018 SCC OnLine SC 2548

In this case, the Court held: “No explanation is forthcoming from the statement of the accused under Section 313 Cr.P.C. as to when he parted the company of the victim. Also, no explanation is there as to what happened after getting the chocolates for the victim. The silence on the part of the accused, in such a matter wherein he is expected to come out with an explanation, leads to an adverse inference against the accused.”

6. Reena Hazarika v. State of Assam, (2019) 13 SCC 289

Whether complete non-consideration of the statement made under section 313 would vitiate the trial.

The Apex Court noted that Section 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2), Cr.P.C.

If the accused takes a defence after the prosecution evidence is closed, under Section 313(1) (b) Cr.P.C. the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The mere use of the word ‘may’ cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. **If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. A solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing.**

In this case, unfortunately neither Trial Court nor the High Court considered it necessary to take notice of, much less discuss or observe with regard to the aforesaid defence by the appellant under Section 313 Cr.P.C. to either accept or reject it. The defence taken cannot be said to be irrelevant, illogical or fanciful in the entirety of the facts and the nature of other evidence available as discussed hereinbefore. The complete non- consideration thereof has clearly caused prejudice to the appellant. Unlike the prosecution, the accused is not required to establish the defence beyond all reasonable doubt. The accused has only to raise doubts on a preponderance of probability as observed in *Hate Singh Bhagat Singh v. State of Madhya Bharat*²⁶.

7. Sajjan Sharma v. State of Bihar, (2011) 2 SCC 206

The Hon’ble Supreme Court, in this case, discouraged the usual process in which the trial Courts used to examine the accused under Section 313, which is evident from the extracts given below from the judgment:-

“13. Here we may also take a look at the examination of the appellant by the court under Section 313 of the Code of Criminal Procedure. This examination too is highly unsatisfactory and sketchy. The first question by the court to the appellant (and for that matter to all the accused) was:

“There is evidence against you that on 24-11-1994 at David Door Bahiar in concert with the other accused (you) killed Narain Kunwar by firing shot at him.”

The appellant replied:

“It is wrong (to say that).”

Whereupon the court put the second and the last question:

“In defence you wish to say anything?”

The appellant replied:

²⁶AIR 1953 SC 468.

“I am innocent.”

14. *We are constrained to say that this is not an isolated case but it is almost a stereotype. It is our experience that in criminal trials in Bihar no proper attention is paid to the framing of charges and the examination of the accused under Section 313 of the Code of Criminal Procedure, the two very important stages in a criminal trial. The framing of the charge and the examination of the accused are mostly done in the most unmindful and mechanical manner. We wish that the Patna High Court should take note of the neglectful way in which some of the courts in the State appear to be conducting trials of serious offences and take appropriate corrective steps.”*

8. Krit Sao v. State of Jharkhand, 2015 2 JLJR 379

The object of Section 313(1)(b) Cr.P.C., is to bring the substance of accusation to the accused to enable him to explain each and every circumstance appearing in the evidence against him. The provision, thus, is mandatory and casts a duty on the Court to afford an opportunity to the accused to explain incriminating evidence against him. It cannot be said to be a mere formality as Section 313 Cr.P.C. prescribes a procedural safeguard to an accused and this opportunity is very valuable from the stand point of the accused. Therefore, it imposes a duty on the Court to question the accused properly and fairly so as to bring home to him the exact case, he will have to meet and thereby an opportunity to him to explain any such point.

In the case **Paramjeet Singh alias Pamma v. State of Uttarakhand**²⁷, the Hon’ble Supreme Court in held as under: -

“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. 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*²⁸, and *State of Maharashtra v. Sukhdev Singh*²⁹)

Whether the omission to put the question under Section 313 Cr.P.C. has caused prejudice to the accused vitiating the conviction or not, would be an important aspect for discussion.

²⁷(2010) 10 SCC 439

²⁸(1984) 4 SCC 116

²⁹(1992) 3 SCC 700

In *State of Punjab v. Hari Singh & Others*³⁰ question regarding conscious possession of narcotics was not put to accused when he was examined under Section 313 Cr.P.C. Finding that question relating to possession of contraband being not put to the accused, the Hon'ble Supreme Court held that the effect of such omission had affected the prosecution case vitally, as such the acquittal was confirmed by the Hon'ble Supreme Court.

*In Kuldip Singh & Others v. State of Delhi*³¹, the Hon'ble Supreme Court held that when an important incriminating circumstance was not put to the accused during examination under Section 313 Cr.P.C., prosecution cannot place reliance on such piece of evidence.

The Jharkhand High Court then referred to the decision in *Nar Singh v. State of Haryana*³² in which while taking into account the objection as to omission to put the question under Section 313 Cr.P.C. before the Appellate Court and the prejudice also shown to have been caused to the accused, the Hon'ble Supreme Court with regard to the courses available to the Appellate Court, summarized them in para 30 of the judgment as referred here in above.

In *Nar Singh case*, on the question of remitting the matter back to the Trial Court on the ground of non-compliance of mandatory provisions of Section 313 Cr.P.C., many aspects were considered including the custody of the appellant and the Hon'ble Supreme Court, ultimately, observed that it was a case to be remitted to the Trial Court for proceeding afresh from the stage of Section 313 Cr.P.C. so that the accused is given a fair trial. It is observed that the victim of the offence or the accused should not suffer for lapses or omission of the Court as omission to put material evidence to the accused in the course of examination under Section 313 Cr.P.C., prosecution is not guilty of not adducing or suppressing such evidence, it is only the failure on the part of learned Trial Court. In the aforesaid case, the appellant was in custody for about 8 years. Considering the right of the accused to speedy trial being a valuable one, the right of victim's family and the society at large, the appellant was not held entitled for acquittal on the ground of non-compliance of mandatory provisions of Section 313 Cr.P.C., instead while setting aside his conviction and sentence, the matter was remitted back to the Trial Court for proceeding with it afresh from the stage of recording statement of accused under Section 313 Cr.P.C. with a direction to the Trial Judge to marshal the evidence on record and put specific and separate question to the accused with regard to incriminating evidence and the circumstance.

9. Udit Ram v. State Of Jharkhand, 2006 2 JLJR 133

³⁰(2009) 4 SCC 200

³¹(2003) 12 SCC 528

³²2015 (1) JLJR 36 (SC)

The Jharkhand High Court was of the opinion that when the circumstances and the evidence appearing against the appellant were not put to him while examining him under Section 313, Cr PC, the same cannot be used against him to convict the appellant under Sections 302/34/201/120B, IPC.

The examination of accused under this Section is not a mere formality. The attention of the accused must specifically be invited to inculpatory pieces of evidence or circumstances led on record with a view to providing him an opportunity to give an explanation if he chooses to do so. Section 313, Cr PC imposes a heavy duty on the Court to take great care to ensure that the incriminating circumstances are put to the accused and his explanation is solicited, The purpose of the examination of the accused under this Section is to give an accused an opportunity to explain the incriminating material which has been surfaced on record. It does not matter how weak or scanty the prosecution evidence is on the record to ascertain the incriminating material. It is the duty of the Court to examine the accused and seek his explanation thereunder.

10. Deepak Tiru v. State of Jharkhand, 2009 3 JLJR 38

From the perusal of the provision as contained in Section 313 of the Code of Criminal Procedure, it appears that the purpose of putting question during examination under Section 313 of the Code of Criminal Procedure is to afford the accused personally, an opportunity of explaining any incriminating circumstances so appearing in evidence against him. However, the accused may or may not avail the opportunity for offering his explanation. It be further noticed that Section 313 does not envisage the examination of the counsel in place of accused where warrant triable cases are concerned but that mandate, in view of the proviso to Section 313(1) is never there so far summons cases are concerned.

11. Chanderdeo Gope and Another v. State of Bihar 2023 SCC OnLine Jhar 185

ii) Whether not putting the question about extra-judicial confession while recording the statement of the accused under Section 313 of the Cr. P.C. can cause serious prejudice ?

In the present case no question has been put before the accused/appellants about making confession before P.W. 3, 5 and 7, as such, serious prejudice has been caused to the appellants since they have not been provided with an opportunity to put their defence so far as the allegation made on the basis of confession so made before P.W. 3, 5 and 7.

The Division Bench of Hon'ble High Court of Jharkhand have held that the position of law is well settled that the conviction cannot be based without putting specific questions under Section 313 of Cr. P.C. since the recording of statement under Section 313 of Cr. P.C. is the vital stage to provide opportunity to the accused to put his defence. Reference in this regard be made to the judgment

rendered by the Hon'ble Apex Court in *Sharad Birdhichand Sarda v. State of Maharashtra*³³, the said judgment read as under:

“143. Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court viz. Circumstances 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code, 1973 they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of Hate Singh Bhagat Singh v. State of Madhya Pradesh³⁴, this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 of the old Code (corresponding to Section 313 of the Criminal Procedure Code, 1973), the same cannot be used against him. In Shamu Balu Chaugule v. State of Maharashtra³⁵ this Court held thus :

“The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him.”

144. To the same effect is another decision of this Court in Harijan Megha Jesha v. State of Gujarat³⁶ where the following observations were made

“In the first place, he stated that on the personal search of the appellant a chedi was found which was blood stained and according to the report of the serologist, it contained human blood. Unfortunately, however, as this circumstance was not put to the accused in his statement under Section 342, the prosecution cannot be permitted to rely on this statement in order to convict the appellant....”

145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration.”

It is evident from the ratio laid down by the Hon'ble Apex Court hereinabove that not putting the question under Section 313 of Cr. P.C., what incriminating has come against the appellants and if in absence thereof, the conviction is based, the same cannot be said to be justified.

³³ (1984) 4 SCC 116

³⁴ AIR 1953 SC 468

³⁵ (1976) 1 SCC 438

³⁶ AIR 1979 SC 1566

12. Nareshkumar Harmanbhai Brahmbhatt v. State of Gujarat, (1996) 2 GCD 248

Whether the statement recorded u/s 313 CrPC can be used for convicting co-accused ?

In the present case, The appellant, a police constable in the Crime Branch in Ahmedabad City, was convicted under Section 5(2) of the Prevention of Corruption Act, read with Section 151 of the Penal Code, 1860 for accepting an amount of Rs 60 as illegal gratification through Accused 2 who was running a tea shop from the complainant to avoid his cattle being impounded. He was sentenced to undergo rigorous imprisonment for one year and a fine of Rs 100 and in default, to undergo rigorous imprisonment for one month.

Further, the trial court for convicting the appellant had relied on the statement of Accused 2 who had stated that he had accepted the amount on behalf of Accused 1. The High Court was of the opinion that the trial Judge was not in error in finding support from the statement of the accused recorded under Section 313 CrPC.

The Apex Court held that the illegality has been committed by the courts below in treating the evidence recorded under Section 313 as material for convicting the appellant. The Apex Court set aside the orders passed by the High Court and the trial Judge convicting the appellant.

Moreover in *Kojja Sreenu v. State of A.P.*³⁷, The Apex Court has held that “statement being in the nature of a confession involving a co-accused, we do not think it safe to place reliance on the same in the absence of any corroboration whatsoever.”

13. Premchand v. State of Maharashtra 2023 SCC OnLine SC 218

The Hon’ble Apex has held as under :

“13. There is a plethora of judicial pronouncements on consideration of section 313 Cr. P.C., a few of which need to be noted at this stage.

14. A bench of three Hon'ble Judges of this Court in *State of U.P. v. Lakhmi*³⁸ has extensively dealt with the aspect of value or utility of a statement under section 313, Cr. P.C. The object of section 313 Cr.P.C. was explained by this Court in *Sanatan Naskar v. State of West Bengal*³⁹. The rationale behind the requirement to comply with section 313 Cr.P.C. was adverted to by this Court in *Reena Hazarika v. State of Assam*⁴⁰. Close on the heels thereof, in *Parminder Kaur v. State of Punjab*⁴¹, this

³⁷ (2003) 12 SCC 783

³⁸ (1998) 4 SCC 336

³⁹ (2010) 8 SCC 249

⁴⁰ (2019) 13 SCC 289

⁴¹ (2020) 8 SCC 811

Court restated the importance of section 313 Cr.P.C. upon noticing the view taken in *Reena Hazarika* (supra) and *M. Abbas v. State of Kerala*⁴².

15. What follows from these authorities may briefly be summarized thus:

- a. section 313, Cr. P.C. [clause (b) of sub-section 1] is a valuable safeguard in the trial process for the accused to establish his innocence;
- b. section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him;
- c. when questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court;
- d. the accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences;
- e. an accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him;
- f. the explanations that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s);
- g. statements of the accused in course of examination under section 313, since not on oath, do not constitute evidence under section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case;
- h. statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, *inter alia*, to test the authenticity of the exculpatory nature of admission; and
- i. if the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements;
- j. any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.

⁴²(2001) 10 SCC 103

16. Bearing the above well-settled principles in mind, every criminal court proceeding under clause (b) of sub-section (1) of section 313 has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstance in the evidence that could be used against him. *Prior to the amendment of section 313 in 2009, the courts alone had to perform this task. Instances of interference with convictions by courts of appeal on the ground of failure of the trial court to frame relevant questions and to put the same to the accused were not rare. For toning up the criminal justice system and ensuring a fair and speedy trial, with emphasis on cutting down delays, the Parliament amended section 313 in 2009 and inserted sub-section (5), thereby enabling the court to take the assistance of the Public Prosecutor and Defence Counsel in preparing such questions [the first part of sub-section (5)].* Ideally, with such assistance (which has to be real and not sham to make the effort effective and meaningful), one would tend to believe that the courts probably are now better equipped to diligently prepare the relevant questions, lest there be any infirmity. However, judicial experience has shown that more often than not, the time and effort behind such an exercise put in by the trial court does not achieve the desired result. This is because either the accused elects to come forward with evasive denials or answers questions with stereotypes like ‘false’, ‘I don't know’, ‘incorrect’, etc. Many a time, this does more harm than good to the cause of the accused. For instance, if facts within the special knowledge of the accused are not satisfactorily explained, that could be a factor against the accused. Though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances. A proper explanation of one's conduct or a version different from the prosecution version, without being obliged to face cross-examination, could provide the necessary hint or clue for the court to have a different perspective and solve the problem before it. The exercise under section 313 instead of being ritualistic ought to be realistic in the sense that it should be the means for securing the ends of justice; instead of an aimless effort, the means towards the end should be purposeful. Indeed, it is optional for the accused to explain the circumstances put to him under section 313, but the safeguard provided by it and the valuable right that it envisions, if availed of or exercised, could prove decisive and have an effect on the final outcome, which would in effect promote utility of the exercise rather than its futility.

Whether written statement filed under section 313(5) CrPC can be treated as a part of accused's statement under section 313(1) read with section 313(4) of the CrPC?

17. Once a written statement is filed by the accused under subsection (5) of section 313 Cr. P.C. and the court marks it as an exhibit, such statement must be treated as part of the accused's statement under sub-section (1) read with sub-section (4) thereof. In view of the latter sub-section, the written statement has to be considered in the light of the evidence led by the prosecution to appreciate the truthfulness or otherwise of such case and the contents of such statement weighed with the probabilities of the case either in favour of the accused or against him.

18. This is a case where it does not appear from the records that the written statement (Ext. 96) engaged the attention of both the trial court as well as the High Court. Applying the principles noted above and for the reasons discussed below, there can be no quarrel that non-consideration of Ext. 96, to a limited extent, in relation to recording of conviction and consequently imposition of sentence, has rendered it vulnerable to interference.

19. Ext. 96 refers to inculpatory admissions as well as seeks to bring out exculpatory circumstances. The statement has to be read in its entirety. The inculpatory admissions emerging from this statement against the appellant are (i) his presence at the spot and (ii) sustaining of injuries by the victim and the other prosecution witnesses while the appellant, as claimed, was attempting to save himself from getting injured. The exculpatory circumstances sought to be established are (i) the appellant's description of the act complained of as involuntary, which was compelled by inevitable circumstances and not guided by choice and, (ii) sustaining of injury by him in the same transaction.

22. Be that as it may, we have no difficulty in proceeding to record our conclusions resting on the evidence on record as well as Ext.96, which the appellant voluntarily filed before the trial court as his response to the incriminating materials appearing in the evidence against him while being questioned under section 313, Cr. P.C., for whatever it is worth. It appears to us to be a fair and proper disclosure of the appellant's version as to what transpired on that fateful evening. ”