

Recording of Statements of Accused u/s 313 CrPC

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1.(A) Object of recording statement of accused u/s 313 CrPC : The legislative intent behind recording statements of accused u/s 313 CrPC is as under :

- (i) To provide opportunity to accused to explain circumstances appearing against him.
- (ii) For the court, to have an opportunity to examine the accused and to elicit an explanation from him which may be free from fear of being trapped for an embarrassing admission or statement. See : **Dharnidhar vs. State of U.P., 2010 (6) SCJ 662.**

1(B). Object behind recording statement u/s 313 CrPC : Object and purpose is to afford an opportunity to the accused personally to explain any circumstances appearing in the evidence against him at the trial. In case statement u/s 313 CrPC consists of inculpatory part accompanied by explanatory part and two cannot be separated if there is an admission of certain facts u/s 313 CrPC that can be acted upon within the parameters of Sec. 58 Evidence Act. While considering the answer of the accused u/s 313 CrPC the court cannot accept the inculpatory part and reject the exculpatory part of the answer. See :

1. **Subhash Chand Vs. State of Rajasthan, (2002) 1 SCC 702 (Three-Judge Bench)**
2. **Parsadi Vs. State of UP, 2003(47) ACC 153 (DB)**

1(C). Statement of accused u/s 313 CrPC can be used as evidence against the accused : Statement of accused u/s 313 CrPC which is supportive of the case of the prosecution can be used as evidence against the accused. See : **Brajendra Singh Vs. State of MP, 2012 (77) ACC 992 (SC).**

1(D). Examination of accused u/s 313 CrPC is not mere a formality : Examination of the accused u/s 313 CrPC is not a mere formality. Answers given by the accused to the questions put to him during such examination have a practical utility for Criminal Courts. Apart from affording an opportunity to the delinquent to explain incriminating circumstances against him, they would help the court in appreciating

the entire evidence adduced in the court during trial. See : **Rattan Singh Vs. State of Himachal Pradesh, AIR 1997 SC 768.**

- 2(A). Proper mode of recording statement u/s 313 CrPC** : The proper methodology to be adopted by the court while recording the statement of the accused u/s 313 of the 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. See : **Dharnidhar vs. State of U.P., 2010 (6) SCJ 662.**
- 2(B). Compound questions to be avoided u/s 313CrPC** : Compound questions should normally be avoided to be put to an accused u/s 313 CrPC. See : **State of Punjab Vs. Swaran Singh, (2005) 6 SCC 101**
- 2(C). Method of framing questions u/s 313 CrPC** : Questions u/s 313 CrPC must be framed in such a way as to enable the accused to know what he is to explain and what are the circumstances which are against him and for which an explanation is needed. The whole object of Sec.313 CrPC is to afford the accused a fair and proper opportunity of explaining circumstances which must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Conviction based on the failure of the accused to explain what he was never asked to explain is bad in law. The whole object of enacting Sec.313 CrPC 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 him so that he may be able to give such explanation as he desires to give. It is not sufficient compliance of Sec. 313 CrPC to string together along 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 circumstances 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. See :

1. **Ajay Singh Vs. State of Maharashtra, 2007(58) ACC 1061 (SC)**
2. **Adil Vs. State of UP, 2008(62) ACC 151 (All. DB)**

Note : Ajay Singh's case has been relied upon the Allahabad High Court in Adil's case in setting aside the reference sent by Sri D.K. Nelwal ASJ, Meerut awarding death sentence to three accused vide Judgement dated 1.1.2007. Appeal was allowed as the name of the PW which was quoted u/s 313 CrPC was not even mentioned as PW in the case or any of the prosecution papers.

2(D). Circumstances not appearing in evidence cannot be put to accused u/s 313 CrPC : Circumstances not appearing in evidence cannot be put to accused u/s 313 CrPC. No trial court can pick out any paper or document from outside the evidence and abruptly slap it on the accused and corner him for giving an answer favourable or unfavourable. See : **Kalpna Rai Vs. State Through CBI, (1997) 8 SCC 732**

3(A). Statement u/s 313 CrPC can be made basis of conviction : It is settled principle of law that the statement of an accused made u/s 313 CrPC can be the basis for conviction. See :

1. **Dharnidhar vs. State of U.P., (2010) 7 SCC 759.**
2. **State of Maharashtra Vs. Sukhdev Singh, (1992) 3 SCC 700.**
3. **Narain Singh Vs. State of Punjab, (1964) 1 CRLJ 730(SC) (Three-Judge Bench).**

3(B). Admission of genuineness Of (prosecution) documents By Defence—Effect : "If the prosecution or the accused does not dispute the genuineness of a document filed by the opposite party under sub-sec. (1) of S. 294 it amounts to an admission that the entire document is true or correct. It means that the document has been signed by the person by whom it purports to be signed and its contents are correct. It does not only amount to the admission of it being signed by the person by whom it purports to be signed but also implied the admission of the correctness of its contents. Such a document may be read in evidence under sub-sec. (3) of S. 294 Cr.P.C. Neither the signature nor the correctness of its contents need be proved by the prosecution or the accused by examining its signatory as it is admitted to be true or correct. The phrase 'read in evidence' means read as substantive evidence, which is the evidence adduced to prove a fact in issue as opposed to the evidence used to discredit a witness or to corroborate his testimony. It may be mentioned that the phrase 'used in evidence' has been used in sub-section (1) of Section 293, Cr.P.C. with respect to the reports of the Government scientific experts mentioned in sub-section (4) of Section 293, Cr.P.C. and the phrase 'read in evidence' has been used in sub-section

(1) of Section 296, Cr.P.C. with respect to the affidavits of persons whose evidence is of a formal character. The phrases ‘used in evidence’ and ‘read in evidence’, have the same meaning, namely, read as substantive evidence.” If the genuineness of Post Mortem Report is admitted by the accused, it can be read as substantive evidence u/s. 294 Cr.P.C. Likewise, if the genuineness of a document (it’s execution and contents both) is admitted by the accused and none of the parties against whom the same has been produced to be read as evidence is disputing it’s genuineness, such admitted document (alongwith it’s contents) has to be read against the accused. See : **Saddiq and others Vs. State of U.P., 1981 Cr.L.J. 379 (Allahabad) (Full Bench).**

3(C). Once genuineness of document of prosecution is accepted by the defence there remains no necessity to examine any witness. See.. Vinay Kumar Vs. State of U.P, 2010 (70) ACC 990 (Allahabad) (DB).

3(D). Exhibited or non-exhibited documents—documents not proved but exhibited & proved but not exhibited—effect : Mere production and marking of a document as exhibit is not enough. Its execution has to be proved by admissible evidence. Mere marking of a document as exhibit by Court cannot be held to be a due proof of its contents. But where the documents produced are admitted by the opposite party, signatures on them are also admitted and they are thereafter marked as exhibits by the Court, then their correctness cannot be questioned by the opposite party and then no further burden rests on party producing the document to lead additional evidence in proof of the writing on the document and it’s execution. See :

1. **Narbada Devi Gupta VS. Birendra Kr. Jaiswal, (2003) 8 SCC 745**
2. **R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami, (2003)8 SCC 752.**

3(E). An exhibited photostat copy whether admissible ? : If secondary evidence (Photostat copies etc.) are filed, objection as to admissibility thereof can be raised even after the document has been marked as an exhibit or even in appeal or revision. But when the objection is not directed against the admissibility of the secondary document but only against the mode of proof thereof on the ground of irregularity or insufficiency, it can be raised when the evidence is tendered but not after the document has been admitted in evidence and marked as an exhibit. Once the document has been admitted in evidence and marked as exhibit, objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular, cannot be allowed to be raised at any stage subsequent to the

marking of the document as an exhibit. See : **Smt. Sudha Agarwal Vs. VII ADJ, Ghaziabad, 2006(63) ALR 659 (Allahabad).**

3(F). Mere exhibiting of a document cannot dispense with its proof : As per the provisions of Sections 63 & 65 of the Evidence Act, 1872, a party is required to lay down factual foundation to establish the right to give secondary evidence where the original document cannot be produced. Admissibility of a document does not amount to its proof. Mere marking of an exhibit on the document does not dispense with its proof. See : **Kaliya Vs. State of M.P., 2013 (83) ACC 160 (SC).**

3(G). Conviction can not be based u/s 313 CrPC : Conviction can not be based on statement made u/s 313 CrPc which can not be regarded as substantive piece of evidence. See :

1. **Ashok Kumar Vs. State of Haryana, 2010 (70) ACC 639(SC)**
2. **Mohan Singh Vs. Prem Singh, 2003 Cr LJ 11 (SC)**

4. Use of statement of accused u/s 313 CrPC in support of prosecution case when permissible : It is settled principle of law that the statement of an accused made u/s 313 CrPC can be used by the court to the extent it is in line with the case of the prosecution and the case of prosecution can be substantiated and treated as correct by the court to that extent. See :

1. **Dharnidhar vs. State of U.P., 2010 (6) SCJ 662.**
2. **Mohan Singh Vs. Prem Singh, 2003 Cr LJ 11 (SC)**

5(A-1). Consequences of not putting questions to accused on certain incriminating evidence : If no prejudice is caused to accused, failure of court to examine accused on certain aspects u/s 313 CrPC is of no consequence. See :

1. **2011 CrLJ 663 (SC)**
2. **Paramjeet Singh vs State of Uttrakhand, AIR 2011 SC 200.**
3. **Santosh Kumar Singh Vs. State through CBI, (2010) 9 SCC 747**
4. **Suresh Chandra Bahri Vs. State of Bihar, 1995 SCC (Cri) 60**
5. **Sharad Birdhi Chand Sharda Vs. State of Maharashtra, (1984) 4 SCC 116**
6. **Dharam Pal Singh Vs. State of Punjab, (2010) 9 SCC 608**
7. **Vashisht Vs. State of NCT of Delhi, AIR 2010 SC 2352**
8. **Shobhit Chamar Vs. State of Bihar, (1998) 3 SCC 455.**

5(A-2). Accused not entitled to acquittal merely for not putting question to him u/s 313 CrPC : The importance of a statement under Section 313 CrPC insofar as the accused is concerned, can hardly be minimized. The statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances

being put against him so that he can give a proper explanation to meet that case. 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 statements is raised in the appellate court, then 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, failure on the part of the trial court to comply with the mandate of the law, 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 of mandatory provisions of Section 313 CrPC, it is an error essentially committed by the Trial court. Since justice suffers in the hands of the Court the same has to be corrected or rectified in the appeal. See :

- (i) **Nar Singh Vs. State of Haryana, AIR 2015 SC 310 (para 16).**
- (ii) **Liyakat Vs. State of Rajasthan, 2015 (88) ACC 372 (SC).**

5(B). Non questioning of accused on some incriminating evidence when not fatal? : Where certain questions with regard to some incriminating evidence against the accused facing trial for offences u/s 302/34, 307 IPC were not put and his explanation was not obtained on such evidence, it has been held by the Division Bench of the Allahabad High Court that non stating all evidence in detail by court to the accused u/s 313 CrPC is not unjustified If the accused is not prejudiced. See : **MalimaChandra Vs State of UP, 1998(37) ACC (H) 35 (All : DB)**

5(C). Non examination of accused u/s 313 CrPC fatal to the case of prosecution : Trial court's failure to examine the accused u/s 313 CrPC to enable him personally to explain any circumstances appearing against him can be fatal to the case of prosecution. See : **Lallu Manjhi Vs. State of Jharkhand, (2003) 2 SCC 401.**

5(D). Evidence not asked to be explained by the accused u/s 313 CrPC not to be used against him : Where there was circumstantial evidence and bush shirt with blood recovered at the instance of the accused on test were found to have human blood but no question u/s 313 CrPC on

such evidence was put to the accused, it has been held that such circumstantial evidence/facts would not be used against the accused.

See :

1. **State of WB Vs. V.Mir Mohd.Omar, 2004(41) ACC 598 (SC)**
2. **Bhalinder Singh Vs. State of Punjab, (1994) 1 SCC 726**

5(E). Putting all evidence to accused for explanation u/s 313 CrPC when

not necessary? : It is not necessary that entire prosecution evidence is put to accused for his explanation. Compound questions should normally be not put to accused. Omission to put a particular question to accused u/s 313 CrPC does not ipso facto vitiate the proceedings. The accused must show the failure of justice occasioned by such omission.

See :

1. **State of Punjab Vs. Swaran Singh, (2005) 6 SCC 101**
2. **State, Delhi Administration Vs. Dharampal, (2001) 10 SCC 372**
3. **Jaideo Vs. State of Punjab, AIR 1963 SC 612**
4. **Bakhshish Singh Dhaliwal Vs. State of Punjab, AIR 1967 SC 752**
5. **Shivaji Sahebrao Babade Vs. State of Maharashtra, (1973)2SCC 793**

5(F). Conviction bad in law if accused not required u/s 313 CrPC to

explain evidence used against him : A conviction based on accused's failure to explain what he was never asked to explain is bad in law. The accused must be questioned separately about each material substance which is intended to be used against him. See : **Shaikh Maqsood Vs. State of Maharashtra, 2009(4) SC 429.**

6(A). Statement u/s 313 CrPc. not substantive evidence : Conviction can not be based on statement made u/s 313 CrPc which can not be regarded as substantive piece of evidence. See : **Ashok Kumar Vs. State of Haryana, 2010 (70) ACC 639(SC).**

6(B). Statement of accused u/s 313 CrPC not to be used as substantive evidence : Statement u/s 313 CrPC is not substantive evidence but it can be used for appreciating evidence led by prosecution to accept or reject it. It is however, not a substitute for the evidence of prosecution. See : **Manoj Kumar Vs. State of UP, 2009(67) ACC 116 (All--DB)**

6(C). Conviction cannot be recorded on the basis of statement of accused u/s 313 CrPC : Conviction cannot be based on statement made u/s 313 CrPc which cannot be regarded as substantive piece of evidence. See : **Ashok Kumar Vs. State of Haryana, 2010 (70) ACC 639(SC)**

6(D). Statement of accused u/s 313 CrPC not evidence : Answer given by the accused to questions put u/s 313 of the CrPC is not per se evidence because, firstly, it is not on oath and, secondly, the other party i.e. the prosecution does not get an opportunity to cross examine the accused. It is nevertheless subject to consideration by the Court to the limited extent of drawing an adverse inference against such accused for any false answers voluntarily offered by him & to provide an additional/missing link in the chain of circumstances. See : **Sidhartha Vashisht Vs. State of NCT of Delhi, AIR 2010 SC 2352.**

7. Question whether accused wants to adduce defence evidence cannot be asked u/s 313 CrPC : The question whether the accused wants to adduce evidence in defence should not be put to him while recording statement u/s 313 CrPC in Sessions trial. After the prosecution evidence is recorded and the statement of the accused is also recorded an order should be passed u/s 232 CrPC. If the accused are not acquitted by that order on the ground that there is no evidence that the accused committed the offence, only then the accused should be called upon to enter into his defence and adduce any evidence he may have in support thereof as provided u/s 233 CrPC. In view of above, the fact that the accused has stated in reply to a question that they do not want to adduce any evidence in defence is of no avail. They cannot be debarred from adducing evidence in defence on that score. See : **Pintu Vs. State of UP, 2002 Cr LJ 2241 (All)**

8. Standard of proof of defence plea : It is well settled law that the accused is not required to prove his defence beyond a reasonable doubt. Where an accused sets up a defence or offers an explanation, it is well settled that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities. See : **M.Abbas Vs. State of Kerla, 2001(2) JIC 326 (SC)**

9(A). Presence of accused in court imperative for recording his statement u/s 313 CrPC : Presence of an accused in court for recording his statement u/s 313 CrPC is necessary. General rule is that the accused must answer the question by being personally present in court. Only in exceptional circumstances the said rule can be departed from/dispensed with. Where the accused (Chief Minister of T.N.) though present in

city, sought her personal appearance in court to be dispensed with on the ground of her physical condition and requested the court to send Questionnaire to her to be answered, it has been held by the Supreme Court that it was a ploy adopted to circumvent the due process of law and grant of exemption in the circumstances was held not proper. See :

K. Anbazhagan Vs. Supdt. of Police, (2004) 3 SCC 767

Note- In the abovenoted case of K.Anbazhagan, the Supreme Court explained its earlier decision rendered in the matter of Basavaraj R.Patil Vs State of Karnataka (2000) 8 SCC 740 and distinguished the same in which the accused was in a faraway country America and he had to incur whopping expenditure and undertake a tedious long journey solely for the purpose of answering the court question. That was treated as exceptional exigent circumstance.

9(B). Recording of statement u/s 313 CrPC through counsel : Statement of an accused u/s 313 CrPC can be recorded through counsel by giving a questionnaire to the counsel who would obtain answer to questions from accused under his signature and supported by affidavit. The application must be supported by an affidavit stating the exceptional reasons for not personally attending the court. See : **Kaya Mukherjee Vs. Magma Learning Ltd. AIR 2008 SC 1807 (Three-Judge Bench)**

9(C). Magistrate may exempt personal appearance of accused in summon triable case : In a summon triable case (u/s 138 N.I. Act) Magistrate has discretion to dispense with the personal appearance of accused u/s 205 CrPC & record his statement u/s 313 CrPC through counsel. See : **TGN Kumar vs. State of Kerala, AIR 2011 SC 708. (Three-Judge Bench).**

9(D). Statement of accused u/s 313 CrPC through counsel in warrant triable case not permissible : In a warrant triable case (Sec. 363 IPC), statement of accused u/s 313 CrPC through counsel after dispensing with the personal appearance of the accused would not be sufficient compliance of Sec. 313 CrPC. See : **Usha K. Pillai Vs. Raj K. Srinivas, AIR 1993 SC 2090.**

10. Oath not to be administered to accused while recording his statement u/s 313 CrPC : According to Sec. 313(2) CrPC, no oath shall be administered to the accused when he is examined u/s 313(1) CrPC .

11. Public prosecutor & defence counsel to help the court in preparing questions u/s 313 CrPC : Sec. 313(5) of the CrPC as inserted vide

amending Act No. 25 of 2005 w.e.f. 23.6.2006 provides that “The court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the court may permit filing of written statement by the accused as sufficient compliance of this section”.

12. **Consequences when a particular defence plea not taken by accused u/s 313 CrPC** : In the event of absence of specific plea of self defence by accused when examined u/s 313 CrPC, it has been held that it would not be enough to denude the accused of the right if the same can be made out otherwise. See : **Periasami Vs. State of Tamil Nadu, (1996) 6 SCC 457**
13. **Confession/Admission of incriminating circumstances by accused u/s 313 CrPC & its consequences** : If the accused admits u/s 313 CrPC incriminating circumstances appearing in evidence against him, it cannot be ignored merely on the ground that such admission were advanced as a defence strategy. See : **State of UP Vs. Lakhmi, AIR 1998 SC 1007 (Three-- Judge Bench).**
14. **Supreme Court expressing dissatisfaction regarding observance of Sec. 313 CrPC** : Observing that no proper attention is paid to the framing of charges and the examination of accused u/s 313 CrPC, the two very important stages in a criminal trial, and the same is done in the most unmindful and mechanical manner, by some of the courts in the state of Bihar, the Supreme Court directed the Patna High Court to take corrective steps in this regard. See : **Sajjan Sharma vs. State of Bihar, 2011 (72) ACC 675 (SC).**
15. **Statement of accused u/s 313 CrPC not evidence u/s 3 of the the Evidence Act** : Statement of an accused u/s 313 CrPC is not recorded after administering oath to the accused. It cannot therefore, be treated as an evidence u/s 3 of the Evidence Act. See : **Raj Kumar Singh Vs. State of Rajasthan, AIR 2013 SC 3150**
16. **Accused has right to maintain silence during examination u/s 313 CrPC** : The accused has a duty to furnish an explanation in his statement under Section 313 CrPC regarding any incriminating material that has been produced against him. If the accused has been 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 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. See :

- (i) **Phula Singh Vs. State of Himachal Pradesh, AIR 2014 SC 1256.(para 6)**
- (ii) **Surya Baksh Singh Vs. State of UP, 2014 (84) ACC 379 (SC).**

17. Direction to the JTRI, UP, Lucknow to train the judicial officers to frame proper questions u/s 313 CrPC on all incriminating circumstances of the case :

In the case noted below, a Division Bench of the Hon'ble Allahabad High Court has directed that the JTRI, UP, Lucknow must ensure that proper training is given to Judicial Officers on framing proper questions u/s 313 CrPC for examination of the accused so that the entire circumstances of the case are put to the accused and they cannot claim the benefit of being inadequately questioned about the incriminating circumstances of the case. Kindly see : Judgment & order dated 28.08.2014 of the Hon'ble Allahabad High Court passed in Capital Case No. 574/2013, Akhtar Vs. State of UP.

- Note :** (1) In the above judgment, it has been directed by the Division Bench that in the cases involving rape & murder of minor girls, DNA report of the person of victim of the rape and the accused must be procured.
- (2) Registry of the High Court was directed to forthwith forward the copies of the above judgment/directions to all the respondents to submit compliance report of the directions of the Hon'ble High Court within 4 weeks.
 - (3) Registry was also directed to circulate copies of the above judgment/directions to all the District Judges for ensuring compliance of the above directions.
