IN THE HIGH COURT OF MADHYA PRADESH AT J A B A L P U R

BEFORE

JUSTICE SUJOY PAUL

&

JUSTICE AMAR NATH (KESHARWANI)

CRIMINAL APPEAL No. 859 OF 2010

BETWEEN:-

SUNIL S/O SHRI LAKHAN VERMA AGED ABOUT 30 YEARS OCCUPATION-CULTIVATOR R/O-BABUTOLA P.S.- AMARWADA DIST-CHHINDWARA (MADHYA PRADESH)

.....APPELLANT

(SHRI J.K. DEHARIYA - ADVOCATE FOR APPELLANT)

AND

THE STATE OF MADHYA PRADESH, THROUGH POLICE STATION-AMARWADA DISTRICT CHHINDWARA (M.P.)

.....RESPONDENT

(BY SHRI AJAY SHUKLA – GOVERNMENT ADVOCATE)

……..

Reserved on : 18/01/2023

Pronounced on : 08/02/2023

…….

This Criminal Appeal having been heard and reserved for judgment, coming on for pronouncement on this day, ***Justice Amar Nath (Kesharwani)*** *pronounced the following:*

J U D G M E N T

This is an appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (In short "Cr.P.C.") against the judgment, dated 29.04.2009 passed in Sessions Trial No. 94/2009 by learned

Additional Sessions Judge, Amarwada, District Chhindwara whereby the appellant was held guilty for committing an offence punishable under Sections 302 and 201 of Indian Penal Code (hereinafter referred as "IPC") and directed him to undergo sentence of life imprisonment with fine of Rs.1000/- and R.I. for 7 years with fine of Rs. 1000/- respectively, with default stipulation.

2. The prosecution story, in brief, is that on 08.03.2009, information was given by 'Janpad Sadasya' Haridas Verman (PW-3) s/o Likhi Ram Verma r/o Babutota on the mobile phone of Inspector Vinod Shrivastav, S.H.O. Amarwada, that in Banjara Mohalla of Village Babutola, a man was murdered and burned by appellant Sunil Verma. On the said information, S.H.O. Vinod Shrivastav (PW-13) has entered that information in Roznamchasanha as entry no. 445 at 07:30 A.M. and proceeded towards the spot to look into the matter. When Inspector Vinod Shrivastav (PW-13) reached the spot at around 09:00 AM, informer/complainant Ku. Bhujlo Bai (PW-1) has informed Inspector Vinod Shrivastav (PW-13), at village Babutola that she is a resident of "Banjara Mohalla of Village Babutola and she does household chores. On Saturday night, at around 11:00 PM, when she was sleeping in her house, suddenly someone pushed the door of her house, she woke up and when she looked through the space between the door, she saw that Sunil Verma (appellant) was standing in front of the door and put on the door latches of her house from outside and went away. Then she got out of her house from the backdoor and saw that appellant was chasing a man while coming from the road passing by Jagdevs and Deepchand's house, and while doing so, he was throwing stones at the deceased, some of the stones hit him and he fell

down but the appellant continued to hit him with stones and after that appellant caught hold of the leg of that person (deceased) and dragged him in front of the house of Gaura Bai (PW-5). Subsequently, he collected pieces of 'Tatera' from the nearby area and put them over the body of deceased and set it on fire and again he (appellant Sunil Verma) picked a stone from there and thrown them at the burning man who was lying on the ground. She got scared and went back inside her house. On the next day, at around 06:00 A.M., she came out from the back side of her house and saw that the man, who was beaten by appellant and set on fire was lying dead there and further informed that the man who was lying dead was Annilal Dheemar and informed that Annilal Dheemar was killed by hitting stones and burnt afterward by Sunil (appellant) and the same was seen by Gauri Bai (PW-5) and Dashoda Bai (PW-2). On the said information, Inspector Vinod Shrivastava (PW-13) registered Dehati Nalishi (Ex.P/1) on spot and has also lodged Dehati Merg intimation (Ex.P/2). After Merg-inquiry, First Information Report Crime No. 80/2009 under Section 302 of I.P.C.(Ex. P/18) was registered at Police Station- Amarwada, District-Chhindwara.

3. During the investigation, spot map (Ex.P/3) was prepared and blood stained soil samples, stones, blood stained half burnt pieces of wood, pieces of burnt clothes and ashes were seized as per the seizure memo (Ex. P/6) from the place of incidence. Naksha-Panchanama of dead body (Ex. P/13) was prepared in the presence of Panch witnesses. The dead body of Annilal was sent for autopsy, which was conducted by Dr. S.K. Dubey (PW-4) who opined that the "death was due to 'asphyxia' shock and as a result of extensive burns. The whole body is

burnt and two lacerated wounds on occipital region of the skull were found and the autopsy report (Ex. P/7) was prepared. During the investigation, the appellant was taken in custody and his disclosure statement (Ex. P/15) was recorded under Section 27 of the Evidence Act and as per his disclosure statement (Ex. P/15), blood stained clothes of the appellant were seized as per seizure memo (Ex. P/16). The appellant was arrested vide arrest memo (Ex. P/14). During the investigation, statements of witnesses were recorded and seized articles were sent to Forensic Science Laboratory (hereinafter referred to as "FSL") for chemical examination. As per the FSL report(Ex. P/22), blood group i.e. 'O' was found on the clothes of the appellant, which were seized at the instance of the appellant, and half-burnt clothes of the deceased. Upon completion of the investigation, charge-sheet was filed before the jurisdictional Magistrate from where the trial was committed to the Sessions Court, Chhindwara. After that, the case was made over to the Additional Sessions Judge, Amarwada, District-Chhindwara for disposal according to law. Learned Trial Court has framed charges under Sections 302 and 201 of the I.P.C. against the appellant, which he has denied and pleaded for trial.

4. The prosecution has examined 13 witnesses and exhibited 22 documents and the appellant has not examined any witness in his defence. After evaluating the evidence that came on record, the learned Trial Court found the appellant as guilty and sentenced him as mentioned hereinabove. Being aggrieved by the judgment of conviction and sentence, the appellant has filed this Criminal Appeal before this Court.

5. Learned counsel for the appellant submits that Bhujlo Bai (PW-1), who lodged the Dehati Nalishi (Ex.P/1), and Dashoda Bai (PW-2) and Gaura Bai (PW-5), whose name were mentioned as eye-witnesses in Dehati Nalishi (Ex.P/1) did not support the prosecution case before the Trial Court and stated that they have not seen any such incident. Learned Trial Court has convicted the appellant on the sole evidence of Deepchand (PW-9) and FSL report (Ex. P/22) and submitted that Deepchand (PW-9) was not named as an eye-witness in the Dehati Nalishi (Ex.P/1) and FIR (Ex.P/18) and his statement under Section 161 of Cr.P.C. was also not promptly recorded. The learned Trial Court has erred in accepting and appreciating the evidence of Deepchand (PW-9). Because when the police force reached the spot and prepared the inquest report in the presence of the witnesses after calling the villagers, at that time, Deepchand (PW-9) did not come forward to report the incident to police officers. Learned counsel for the appellant also submits that in the statement recorded under Section 161 of Cr.P.C. (Ex. D/1), it is mentioned that the time of the incident is around 10:30 P.M., whereas PW-9 has stated before the Trial Court that he saw the dead body of the deceased in burnt condition at around 08:00-09:00 P.M in front of the house of Shiv Prasad.

6. Learned counsel for the appellant has also drawn the attention of this court to para nos. 1 and 2 of the statement of Deepchand (PW-9) wherein he has stated that in the night at around 08:00-09:00 P.M., when deceased Annilal was sitting in the house of Jagdish, family members of Jagdish were also sitting there, then appellant Sunil also came there and kicked Annilal (deceased). At that juncture, Jagdish intervened in the matter and after that appellant and deceased Annilal

went therefrom and after that, he saw the dead body of Annilal in burnt condition at around 08:00-09:00 P.M., whereas in the statement recorded under Section 161 of Cr.P.C., (Ex. D/1), it is mentioned that on the date of the incident i.e. 07.03.2009 at around 09:30 P.M., when he was sleeping in the house, he heard Annilal and Jagdev Banjara talking with each other and at around 10:30 P.M., when he went to urinal at back portion of his house, he saw that Annilal and Sunil were talking with each other and at that time, he witnessed the quarrel between Sunil and Annilal and at that time appellant Sunil pelted stones on the deceased.

7. Learned counsel for the appellant further submits that contradictions and omissions in the statement of PW-9 recorded under Section 161 of Cr.P.C. and the statement recorded before Trial Court are very substantial and therefore, Deepchand (PW-9) is not a reliable witness and submits that if Deepchand (PW-9) had seen the whole incident then why he did not disclose this fact to the police immediately after the incident. It is urged that the version of Deepchand (PW-9) has not been corroborated by any other witnesses. The prosecution has not been able to prove any motive for commission of murder of deceased by the appellant. There is no recovery of stone from the possession of the appellant. The Trial Court has wrongly relied upon the FSL report (Ex.P/22) in the impugned judgment and concluded that as the appellant has not given any explanation regarding human blood which was found on his clothes and on that basis concluded that the appellant has caused the murder of the deceased Annilal and burnt the body to dissipate the evidence of the crime, whereas no question were put to the appellant regarding FSL report

(Ex.P-22) under accused statement recorded under Section 313 of Cr.P.C., therefore, contents of FSL report (Ex.P-22) cannot be used against the appellant. The judgment of the Trial Court is contrary to the facts and law. The Trial Court did not appreciate the prosecution evidence in correct perspective and caused great prejudice and injustice to the appellant. Therefore, the conviction and sentence imposed by the learned Trial Court under Sections 302 and 201 of I.P.C. is erroneous and the sentence for life and R.I. for 07 years, deserves to be set aside.

8. Learned counsel for the State opposed the aforesaid prayer by submitting that the appellant has committed the murder of Annilal Dheemar in a cruel manner and the blood group was matched with the clothes of the appellant and half-burnt clothes of the deceased. Hence, the learned Trial Court has rightly convicted the appellant under Sections 302 and 201 of I.P.C. and the appeal is liable to be dismissed and prayed accordingly.

9. We have perused the record of the learned Trial Court and considered the arguments advanced by the learned counsel for the appellant as well as Government Advocate.

10. It reveals from the record that on the information given by Kumari Bhujlo Bai (P.W.-1) a Dehati Nalishi (Ex.P-1), was registered on 08.03.2009 at around 08:30 A.M. by Inspector Vinod Shrivastav (PW-13). As per (Ex.P-1), Ku. Bhujlo Bai (P.W.-1) was an eye-witness and Dashoda Bai (P.W.-2) and Gaura Bai (P.W.-5) were also witnesses of the incident but Ku. Bhujlo Bai (P.W-1), Dashoda Bai (PW-2), and Gaura Bai (PW-5) have not supported the prosecution story before the Trial Court. Though, Ku. Bhujlo Bai (P.W.-1) has admitted her

signature on Dehati Nalishi (Ex.P-1), Dehati Merg Suchna (Ex.P-2), and Site Map (Ex.P-3).

11. Deepchand (P.W.-9) has supported the prosecution version before the Trial Court and has stated in examination-in-chief before the Trial Court that on the date of the incident at around 08:00 P.M., deceased was sitting in front of the house of Jagdish Dheemar and family members of Jagdish Dheemar were also sitting there. At that facit of time, appellant Sunil came there and kicked Annilal (deceased). Then, Jagdish intervened in the matter, and thereafter Sunil and Annilal, each went on their own way. PW-9 has also deposed before the Trial Court that between 08:00-09:00 P.M., he saw the dead body of deceased Annilal lying in front of the house of Shiv Prasad and stated that Sunil picked up some 'tatera'/thrash lying nearby his house and used it to set the dead body of Annilal on fire and Sunil also said that if someone deposed or talked about this incident, then he will also set their house on fire. When PW-9 was confronted with his previous statement recorded under Section 161 of Cr.P.C., he stated that the dispute started at 08:00 P.M. and the incident of burning took place at around 10:00 P.M.

12. Kumari Bhujlo bai (P.W.-1) who lodged the Dehati-Nalsi (Ex.P-1) has not proved and supported the prosecution version and Dasoda Bai (P.W.-2) and Gaura Bai (P.W.-5), who were mentioned as eye-witnesses, they also did not support the prosecution case. Except Deepchand (P.W.-9), other independent witnesses of the incident Haridas (P.W.-3), Jhuniya Bai (P.W.-6), Rupa Bai (P.W.-7), Durga Bai (P.W.-8) and Komu (P.W.-12) have also not supported the prosecution story. Om Kumari (PW-10) is a hearsay witness.

13. Now, we shall consider the argument of learned counsel for appellant- whether appellant was properly confronted with incriminating evidence/material while questioning him under Section 313 of Cr.P.C. It reveals from the record of the Trial Court that on the basis of statement of Deepchand (PW-9), Trial Court has framed questions no. 8 to 11 and regarding FSL report (Ex.P-22), Trial Court has framed question No.28 as mentioned below :-

प्रश्न8– दीपचंद अ0सा0 का कहना है कि घटना तीनचार माह पुरानी रात के 8 बजे की है मृतक अम्मी जगदीश ढीमर के मकान पर बैठा हुआ था और जगदीश के परिवार के लोग भी थे तुम्हारा क्या कहना है?

उत्तर– मालूम नहीं।

प्रश्न9– उक्त साक्षी का कहना है कि तुमने मौके पर आकर अम्मीलाल को लात मारी जगदीशन ने बीच बचाव करा लिया था और तुम्हें बाहर कर दिया था तुम्हारा क्या कहना है?

उत्तर– झूठ हैं।

प्रश्न10– उक्त साक्षी का कहना है कि रात के 8–9 बजे उसने अम्मी की जली हुई लाश देखी थी उसके घर के बगल में कचरा पड़ा हुआ था तुमने मृतक के ऊपर डालकर जला दिया तुम्हारा क्या कहना है?

उत्तर– मालूम नहीं।

प्रश्न11– उक्त साक्षी का कहना है कि तुमने धमकी दी कि यदि गवाही दी तो उसके घर पर आग लगा दूंगा तुम्हारा क्या कहना है?

उत्तर– झूठ है।

प्रश्न28– उक्त साक्षी का कहना है कि उसने जप्ती शुदा सामान परीक्षण हेतु विधि विज्ञान प्रयोग शाला सागर भेजा था। उसकी परीक्षण रिपोर्ट प्र0पी022 है तुम्हारा क्या कहना है?

उत्तर– मालूम नहीं।

14. In para Nos.17, 20 and 22 of the impugned judgment, the Trial Court has also considered certain part of evidence against the appellant based on the cross-examination of PW-9, but Trial Court has not framed any question regarding those facts and no opportunity was given to the appellant to explain that incriminating evidence.

15. Trial Court has also placed reliance upon the FSL report (Ex.P-22) to convict the appellant and in Para-14 of the impugned judgment, Trial Court has stated that –

> ''14. एफ0एस0एल0 सागर से प्राप्त रिपोर्ट के अनुसार घटना स्थल से जप्त मिट्टी, पत्थर, कपड़ों के जले हुए टुकड़े, आरोपी से जप्त शर्ट, स्वेटर, गमछा, धोती, मृतक के अधजले कपड़े और आरोपी का फुलपेंट पर मानव रक्त पाया गया है जिसे एफ0एस0एल0 रिपोर्ट दिनांक 31.12.2009 में बी,डी,जी,एच,आई,जे,के,एल,एम,एन,पी से संबोधित किया है। एफ0एस0एल0 रिपोर्ट प्रा0पी022 प्रस्तुत की गई है, जिससे यह प्रमाणित किया है। कि आरोपी से जो कपड़े विवेचक ने जप्त किये थे उन पर खून लगा था जिसका कोई स्पष्टीकरण आरोपी की ओर से नहीं दिया गया है कि उसके द्वारा जप्त कराये गये कपड़ो पर मानव रक्त क्यों लगा था, आरोपी के कपड़ों पर मानव रक्त का पाया जाना यह प्रमाणित करता है कि आरोपी ने मृतक की मारपीट की, जिससे आई चोंटों के कारण ही आरोपी के कपड़ों पर मानव रक्त पाया गया, तथा आरोपी ने सासक्ष्य का विलोपन करने के आशय से शव को जला दिया।''

16. The Trial Court has relied on the FSL report (Ex.P-22), but no opportunity was given to the appellant for explanation regarding existence of human blood and blood group. Therefore, as per Section 313(4) of Cr.P.C. and the settled principle of law, that evidence cannot be used against the appellant.

17. Section 313(4) of Cr.P.C. provides that-

> "(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."

18. In the case of **Naval Kishore Singh vs. State of Bihar** reported in **(2004) 7 SCC 502** Hon'ble Apex Court has held in para 5 that:-

> **"5.** …… Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence."

It was also held that, if this defect in procedure under Section 313 Cr.P.C. had been pointed out, the High Court could have very well remitted the case to the Sessions Court for proper examination.

19. In the case of **State of Punjab vs. Swaran Singh** reported in **(2005) 6 SCC 101** Hon'ble Apex Court has held in para 10 that:-

> **"10.** The questioning of the accused is done to enable him to give an opportunity to explain any circumstances which have come out in the evidence against him. It may be noticed that the entire evidence is recorded in his presence and he is given full opportunity to cross-examine each and every witness examined on the prosecution side. He is given copies of all documents which are sought to be relied on by the prosecution. Apart from all these, as part of fair trial the accused is given opportunity to give his explanation regarding the evidence adduced by the prosecution. However, it is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. **If there were circumstances in the evidence which are adverse to the accused and his explanation would help the court in evaluating the evidence properly, the court should bring the same to the notice of the accused to enable him to give any explanation or answers for such adverse circumstance in the evidence.** Generally, composite questions shall not be asked to the accused bundling so many facts together. Questions must be such that any reasonable person in the position of the accused may be in a position to give rational explanation to the questions as had been asked. There shall not be failure of justice on account of an unfair trial."

20. In the case of **Asraf Ali vs. State of Assam** reported in **(2008) 16 SCC 328** Hon'ble Apex Court has held in para 22 and 23 that:-

> **"22. The object of Section 313 of the Code is to establish a direct dialogue between the court and**

the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in *S. Harnam Singh* v. *State (Delhi Admn.)* [(1976) 2 SCC 819 : 1976 SCC (Cri) 324 : AIR 1976 SC 2140] while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.

23. "*16*. Contextually we cannot bypass the decision of a three-Judge Bench of this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033] as the Bench has widened the sweep of the provision concerning examination of the accused after closing prosecution evidence. Learned Judges in that case were considering the fallout of omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence. The three-Judge Bench made the following observations therein : (SCC p. 806, para 16)

'*16*. … It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain

it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to 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 and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction.'

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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* [AIR 1963 SC 612] Gajendragadkar, J. (as he then was) 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 :

'*21*. … 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."

21. In the case of **Sukhjit Singh vs. State of Punjab** reported in **(2014) 10 SCC 270** Hon'ble Apex Court has held in para 10, 11, 12, and 13 that:-

> **"10.** On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty

formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav* v. *State of Bihar* [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92] . Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

11. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh* v. *State* [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491] wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30)

"*30*. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. **He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section 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**

understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."

12. In *Hate Singh Bhagat Singh* v. *State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] , Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

"*8*. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of

> the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box."
>
> **13.** The aforesaid principle has been reiterated in *Ajay Singh* v. *State of Maharashtra* [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)
>
> "*14*. The word 'generally' in sub-section (1)(*b*) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

22. In the case of **Samsul Haque vs. State of Assam** reported in **(2019) 18 SCC 161** Hon'ble Apex Court has held in para 22 and 23 that:-

"22. It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put to the accused so that the accused gets a fair chance to defend himself. This is in recognition of the principles of audi alteram partem. Apart from the judgments referred to aforesaid by the learned Senior Counsel, we may usefully refer to the judgment of this Court in *Asraf Ali* v. *State of Assam* [*Asraf Ali* v. *State of Assam*, (2008) 16 SCC 328 : (2010) 4 SCC (Cri) 278] . The relevant observations are in the following paragraphs : (SCC p. 334, paras 21-22)

"*21*. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in *S. Harnam Singh* v. *State (Delhi Admn.)* [*S. Harnam Singh* v. *State*

> *(Delhi Admn.)*, (1976) 2 SCC 819 : 1976 SCC (Cri) 324] while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facets by the trial court to the accused adds to the vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise."
>
> **23.** While making the aforesaid observations, this Court also referred to its earlier judgment of the three-Judge Bench in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [*Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , which considered the fallout of the omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence, and the requirement that the accused's attention should be drawn to every inculpatory material so as to enable him to explain it. Ordinarily, in such a situation, such material as not put to the accused must be eschewed. No doubt, it is recognised, that where there is a perfunctory examination under Section 313 CrPC, the matter is capable of being remitted to the trial court, with the direction to retry from the stage at which the prosecution was closed [*Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] ."

23. In the case of **Maheshwar Tigga vs. State of Jharkhand** reported in **(2020) 10 SCC 108** Hon'ble Apex Court (Three Judges Bench) has held in para 8 that:-

> **"8. It stands well settled that circumstances not put to an accused under Section 313 CrPC cannot be used against him, and must be excluded from consideration.** In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it

> provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt."

24. Since the Trial Court has not complied with the requirements of Section 313 of Cr.P.C. in its spirit and has not afforded sufficient opportunity for explanation to the appellant against the incriminating evidence which was used to base his conviction, therefore, such conviction and sentence passed by Trial Court cannot be affirmed by this Court. Resultantly, conviction and sentence passed by the Trial Court is hereby set aside.

25. Looking at the statement of Deepchand (P.W.-9), FSL report (Ex.P-22), and other evidence on record, this Court is of the view that the case should be remitted to the Sessions Court for proper examination under Section 313 of Cr.P.C. after giving proper opportunity to produce defence evidence to the appellant and pass fresh judgment after hearing both the parties expeditiously, preferably within 45 days from the receipt of the record.

26. Before parting with the matter, we are inclined to observe that we have seen certain number of appeals wherein we found that the trial Court has not taken sufficient pains while framing questions under Section 313 of Cr.P.C. and did not confront the accused with incriminating material with necessary accuracy and precision. Since, exercise under Section 313 of Cr.P.C. is not an empty formality and is part and parcel of principles of natural justice, we deem it proper to

direct the M.P. State Judicial Academy to take this aspect into account and do the needful for all category of judges.

27. Accordingly, the appeal is **disposed of**.

(SUJOY PAUL)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

DPS