MRC-3-2021 &
CRA-D-750-2021

2026:PHHC:006238-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

MRC-3-2021
CRA-D-750-2021

State of Haryana ...Appellant

Versus

Vinod @ Munna …Respondent

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
01.12.2025	19.01.2026	FULL PRONOUNCED	19.01.2026

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Yuvraj Shandilya, A.A.G., Haryana
Mr. Atul Gaur, A.A.G., Haryana.

Mr. Ashwani Bhandwal and Mr. Sumit Sharma, Advocates
for the Convict Vinod alias Munna
[Appellant in CRA-D-750-2021 & respondent in MRC-3-2021]

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
336	21.12.2020	City Jhajjar, Haryana	302, 376AB, 365 IPC 6 of POCSO Act and 3 of SCSTPO Act

Criminal Case number before the Sessions Court	CIS No. SC/154/2020
Date of Decision	25.10.2021
Date of order on the quantum of sentence	29.11.2021

Name of the accused/convict	**Vinod @ Munna**
Conviction under Sections	451, 365, 367, 377, 376-AB, 302 IPC, and 6 of POCSO Act

Sentence imposed upon the convict – Vinod @ Munna			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
451 IPC	RI for 07 years	5000/-	SI for one month

365 IPC	RI for 07 years	5000/-	SI for one month
367 IPC	RI for 10 years	25000/-	SI for three months
377 IPC	RI for 10 years	50000/-	SI for three months
376-AB IPC	Imprisonment for natural life	50000/-	SI for three months
302 IPC	Death penalty. To be hanged by neck till death	-	-
6 of POCSO Act	Imprisonment for life	50000/-	SI for three months

1. On the intervening night of Dec 20/21, 2020, on her 5th birthday, the victim 'M', whom this Court would affectionately refer to as '*Laadli'*, was allegedly abducted by the appellant Vinod alias Munna, a plumber with criminal antecedents, aged 27, from her parents. Vinod took Laadli to his home, which was at a distance of approximately 40-50 meters. He locked and bolted the doors, committed her rape, and then smothered her to death. Vinod was arrested, prosecuted, and upon conviction by the trial Court, was awarded death sentence, in addition to the other sentences as captioned above.

2. Seeking confirmation of the Death Sentence, the trial Court had sent the above-mentioned reference to this Court under §366 of the Code of Criminal Procedure, 1973, [CrPC], and challenging the conviction and the consequent sentence as captioned above, the appellant also came up before this Court by filing the present criminal appeal under §374(2) of the CrPC.

3. Laadli's father worked as a laborer and belonged to Madhya Pradesh and had been in Jhajjar, Haryana, for the past 22 years, where he and his family had been living in rented accommodation. Around one year prior to Dec 2020, they had taken a house on rent from the accused, Vinod, @ Munna, (herein after referred to as 'Vinod'), son of Partap Singh, and for six months preceding Dec 2020, they had been staying on rent at a place near Khatiko Wali Dharamshala, *Chhawani Mohalla*, Jhajjar, Haryana.

4. On the intervening midnight of Dec 20/21, 2020, Vinod under the influence of alcohol, came to Laadli's parents' rented house and took Laadli to his house. Laadli's parents tried to rescue her, sought help from the people in the vicinity, and after that, they rushed to the Police. However, the police reached Vinod's house after a considerable delay. The main door of the house was locked, and Vinod had bolted the door of the room from the inside. Then, with the help of the neighbors, the police broke open the door, and upon entering the room, they noticed that Laadli was lying naked and motionless on a bed, and even Vinod was half naked and was lying over Laadli. By the time Laadli's rescue was attempted, Laadli had already been raped from both of her orifices and was non-reactive.

5. The Police Officials informed their seniors, and the Deputy Superintendent of Police [DSP] Rahul Dev [PW23] arrived at the spot and took over the investigation and recorded

the statement [Ext PW2/A] of Laadli's father. On Ext PW2/A, the DSP made a note [vide Ext PW23/A] that he had received information that one girl 'M', daughter of the complainant, resident of Madhya Pradesh, and currently residing near Chhawani Mohalla, aged five years, had been raped and murdered, and after receiving such information, he had reached the spot in his official vehicle.

6. The Investigator DSP Rahul Dev [PW23] further noted that he had inspected the crime scene and found a prima facie offence of rape and murder. After that, the FSL team was also summoned to inspect the spot. DSP Rahul Dev [PW23] sent this information to the police station through Constable Dharmender [PW4] for the registration of a formal FIR Ext PW3/A, which is a reproduction of the complaint recorded at the spot made by Laadli's father. As per the endorsement made vide Ext PW3/B, the above-mentioned FIR was registered at the Police Station mentioned above.

7. On Dec 21, 2020, the Scientific Officer, Miss Neetu [PW22], inspected the crime scene and gave her crime scene report [Ext PW22/A]. ESI Surender [PW9] took photographs [Ext P1 to P18] and did videography of Laadli's body and of the crime scene.

8. The Investigator DSP Rahul Dev [PW23], in the presence of the witnesses, SI Urmila [PW7] and Inspector Nar Singh [PW17], and Laadli's father [PW2], collected the articles from the crime scene and prepared memos thereof [Ext PW2/B, PW2/C, and PW2/D]. The articles collected from the room vide memo [Ext PW2/B] were a blanket [Ext P4], a pillow [Ext P5], a woolen bed sheet [Ext P6], and a torn cloth [Ext P7] lying in the room.

9. In the memo [Ext PW2/C], it was mentioned that below the bed on the floor, one underwear with the brand name 'Frontline' [Ext P11] was lying, one woolen pair of stockings (pyjama) small size, red and white color [Ext P8]; one coat [Ext P9], green color, and one inner (vest) of tobacco color [Ext P10], were also lying there. There were bloodstains on the coat at various places, and all these clothes were sealed in separate parcels with five seals of RD affixed.

10. Vide another memo [Ext PW2/D], the Investigator also recovered from the room of the accused a green royal half-filled bottle of liquor and one quarter empty with a white and blue label, [Ext P1 & P2], and one glass [Ext P3] lying in the corridor outside the room.

11. On Dec 21, 2020, at 9:30 AM, the Investigator DSP Rahul Dev, HPS, [PW23] arrested the accused Vinod. The Arrest Memo [Ext PW23/F] mentions the place of arrest as Chhawani [Cantonment], Jhajjar. It further states that the information about his arrest was given to the mother of the accused on her mobile number.

12. The Investigator DSP Rahul Dev [PW23] got prepared a site map [Ext PW23/B] of the crime scene and the inquest report [Ext PW23/C], and a site map [Ext PW23/D] of the rented house of Laadli's family.

13. The Investigator PW23 DSP Rahul Dev sent a letter [Ext PW12/A] to the Medical Officer of the Government Hospital, Jhajjar, seeking the postmortem examination of Laadli.

14. The dead body was taken to the hospital, where Laadli's postmortem examination was conducted by a Medical Board comprising three Doctors [PW12, PW13, and PW14]. As per the Postmortem Report [Ext PW12/B], the cause of death was "asphyxia due to homicidal smothering, which was sufficient to cause death in the ordinary course of nature."

15. The postmortem report also stated the bruise injuries and swelling in her genital area and anal region which were full of clotted and liquid blood, and a recent tear in her hymen was also observed. Further, an application was made by the DSP Rahul Dev [PW23] to the Medical Officer vide Ext PW14/A to seek opinions regarding the injury no. 3 and 4 of the deceased. On this, PW12 Dr Nisha Dabar, and PW 13 Dr Bhupesh gave their opinion vide Ext PW14/B, regarding the said injuries, as per which there was evidence of recent forcible sexual penetration of the vagina and anus, which was suggestive of sexual assault and unnatural sexual violence offence.

16. Further, for scientific biological evidence, the vaginal, anal, and buccal swabs were preserved for seminal stains/ spermatozoa. The Doctors obtained the genetic material via swabs and handed it over to the Police vide Ext PW17/A, for forwarding to the FSL. Reports of the RFSL and the DNA report were received by the Police and tendered in evidence as Ext PX/PW21/A, Ext PY, and Ext PZ.

17. On Dec 22, 2020, the statements under §164 CrPC [Ext PW2/I] of Laadli's father, and [Ex PW6/B] of her mother were recorded by JMIC, Jhajjar [PW19].

18. On Dec 22, 2020, the accused Vinod made an alleged disclosure statement [Ext PW11/A] to DSP Rahul Dev [PW23] in the presence of Inspector Nar Singh [PW17] and ASI Jagdish [PW11] and disclosed about the spot of crime, his criminal antecedents, and his fear amongst the people living in the vicinity. Based on the said statement, the prosecution also got identified the spot from the accused Vinod, from where he had kidnapped the victim [Memo Ext PW11/B] and also the spot of crime [Memo Ext PW11/C].

19. After completing the investigation, the police filed the challan under §173 CrPC against the accused Vinod. The trial Court framed the charges for the offences captioned above, to which the appellant pleaded not guilty. After the prosecution's evidence was completed, the accused, in his statement under §313 CrPC, denied all the incriminating circumstances as incorrect and, in answer to the last question, stated that someone hit him on his head, because of which he had become unconscious, and claimed innocence.

20. Vide impugned judgment, the trial Court held the accused Vinod guilty, and he was convicted and sentenced as captioned above. After the conviction, at the time of sentencing, the statement of the convict was recorded on Nov 29, 2021, under §235(2) CrPC, wherein he made a plea for a lesser sentence because his mother was a widow, he was unmarried, and his mother stayed with him. However, the trial Court was not convinced and imposed the death penalty.

21. We have heard the Counsel for the parties and have also analyzed the record, and it leads to the following outcome.

22. We must point out that during the course of arguments, no submissions were made on the convict’s behalf regarding wrong questions or absence of questions under §313 CrPC. However, at the time of dictating the judgment, we have noticed various flaws in the recording of the statement under §313 CrPC, 1973, which is analogous to its predecessor, §342 CrPC, 1898, and the present successor, §351 BNSS, 2023.

23. The statements of the victim’s father and the mother were recorded under §164 CrPC and were tendered in evidence as Ext PW2/I and PW6/B, respectively; however, these were not put to the accused under §313 CrPC.

24. Ext PZ, the DNA report of the FSL allegedly stating that the hair on Laadli’s vagina was connected with the blood sample of the accused Vinod, was not put to the accused Vinod under §313 CrPC.

25. This report, Ext PZ alone, is the most crucial document, and if it is read in evidence without affording an opportunity to the accused under §351 BNSS [§313 CrPC, 1973] to explain the same, it is most likely to cause prejudice to the convict Vinod.

26. As per the evidence, the accused Vinod was under the noticeable influence of Alcohol; however, in the questionnaire of incriminating evidence under §313 CrPC, the Toxicology report Ext PY was not put to the accused Vinod.

27. In addition to not putting the above-mentioned documents and reports to the accused under §313 CrPC, 1973, the manner in which the entire incriminating circumstances were put to the accused is contrary to the spirit of §313 CrPC, 1973.

28. We are extracting the entire statement that was put to the accused under §313 CrPC, 1973, and it reads as follows:

> *Statement of accused Vinod @ Munna S/o Sh.Partap Singh, aged about 27 years, Occupation Plumber resident of Chawani Mohalla, Jhajjar, under Section 313 Cr.P.C*
>
> *Q.1 It has come in evidence of the prosecution against you that on dated 13.01.2021, you were charged under Sections 451/365/367/377/376-AB/302 IPC/6 POCSO Act/3(1)(c)(w)/3(2)(v) as an FIR was registered against you in P.S. City. Jhajjar. What have you to say?*
>
> *Ans. It is wrong*
>
> *Q.2 It has come in evidence of the prosecution against you that PW2 father of victim deposed that he was a labourer by occupation. He was residing at City Jhajjar in a rented house for 22 years. One year ago, he along with his family resided as a tenant in your house at Chhawani Mohalla, Jhajjar. He alongwith his family has been residing at Chhawani Mohalla near Khatiko Wali Dharamshala for the last 6 months. In the intervening night of 20/21.12.2020, you came at your rented house who was under influence of liquor and kidnapped his daughter victim aged 5 years and taken her away with you to your house. He informed the police. Thereafter, he along with the police reached at your house and found that you had locked your house from inside. Thereafter, police with the help of neighbour broken down the door of your house and found that his daughter was lying naked and you were also lying naked on her. You had committed rape upon his daughter and thereafter murdered her. When we checked she was already dead. The police got recorded his statement Ex.PW2/A which bears his signature at point A. On the same day, the Investigating Officer took the blanket, pillow, wollen bed sheet and torn clothes from the spot to his possession vide seizure memo Ex.PW2/B in his presence which bears his signature. Thereafter, police had taken the clothes of deceased and your underwear vide seizure memo Ex.PW2/C which hears his signature. Thereafter, police had also taken one quarter containing some liquor marka- Green Royal, an empty quarter marka white and blue and one glass into police possession vide seizure memo Ex.PW2/D which bears his signature. He handed over birth certificate of victim Ex.PW2/E & Ex.PW2/F to the Investigating officer and same was taken into police possession vide seizure memo Ex.PW2/G which bears his signature. After postmortem, the dead body of his daughter was handed over to him vide receipt Ex. PW2/H. The receipt bears his signature and his wife. PW2 further deposed that he belong to*

Scheduled caste and on dated 23.12.2020, he handed over caste certificate Ex.PW2/J & Ex.PW2/K of his daughter to the Investigating Officer and same was taken into police possession vide seizure memo Ex.PW2/L which was signed by him. His statement under Section 161 CrPC was recorded by the Investigating Officer. You were present in the court. He identify you. PW6 Mother of victim deposed on the same lines as that of PW2. What you have to say?

Ans. It is wrong.

Q.3. It has come in evidence of the prosecution against you that PW23 DSP Rahul Dev deposed that on 21.12.2020, he was posted as Deputy Superintendent of Police, at City, Jhajjar. During the intervening night, he received a telephonic information at about 2.30 am from PW17 SHO Nar Singh, Police Station City, Jhajjar that you had raped and murdered the girl aged 5 years from Chhawani Mohalla Jhajjar in your house. After receiving the said information, he along with his staff reached at the place of occurrence i.e Chhawani Mohalla Jhajjar where PW17 SHO Nar Singh, PW ASI Sant Kumar, PW7 SI Urmila, PW4 Ct. Dharmender and PW2 met him. At about 5.45 am, father of the deceased/PW2 complainant got recorded his statement Ex.PW2/A upon which he recorded the tehrir Ex.PW23/A and same was sent through PW4 Ct. Dharmender to Police Station City, Jhajjar for registration of the case. Thereafter he got inspected the place of occurrence from FSL team and got the photographs and video-graphy done of the place of occurrence by PW9 ASI Surender. Thereafter he lifted on blanket, one pillow, one warm bed sheet and torn clothes were put into the plastic bag and prepared parcel and affixed 6 seal of RD on the said parcel. Thereafter, above mentioned case property was taken into police possession vide seizure memo Ex. PW2/B signed by PW2, PW7 SI Urmila and by PW17 SHO Nar Singh. Thereafter, he also lifted clothes of victim, your underwear make front line, colour grey and same were converted into the sealed parcel and affixed the seal of RD on the said parcel and same were taken into police possession by him vide seizure memo Ex.PW2/C which was signed by PW17 SHO Nar Singh and PW7 SI Urmila and PW2 father of the victim. On the same day, he also lifted the quarter containing some liquor make Green Royal lying on the cot, empty quarter of make white and blue, one glass which were lying on the ground outside of the room, same were also put into the sealed parcel and affixed the seal of RD on the said parcel and were taken into police possession by him vide seizure memo Ex.PW2/D which was signed by PW17 SHO Nar Singh and PW7 SI Urmila and PW2 father of the victim. On the same day, PW2 father of the victim handed over the birth certificate Ex.PW2/E and Ex.PW2/F to him and same were taken into police

possession vide seizure memo Ex.PW2/G which was signed by PW2 father of the victim as an attesting witness. Thereafter, he inspected the place of occurrence and prepared the rough site plan Ex.PW23/B. Thereafter, he conducted the proceedings under Section 174 CrPC and prepared inquest report Ex.PW23/C. He recorded the statement of relatives of the victim under Section 175 Cr.P.C. Thereafter he handed over the application (Ex.PW12/A) to PW17 SHO Nar Singh for got conducting the postmortem of the deceased. You were apprehended at the spot and you were arrested vide arrest memo Ex.PW23/F. Thereafter, he got your medico-legally examined from GH Jhajjar. Meanwhile, postmortem of the deceased was conducted by the board of the doctors on my application Ex.PW12/A. After postmortem dead body of the deceased was handed over to the parents of the victim vide receipt Ex.PW2/H. After postmortem, the board of doctors handed over sealed parcel of viscera, vaginal swab, anal swab, buccal swab and sample seal of the doctors to him and same were taken into police possession by him vide seizure memo Ex.PW17/A which was signed by PW17 SHO Nar Singh as and attesting witness. Thereafter, you were also got medico legally examined from the medical officer by submitting application Ex.P12/C and the concerned doctor handed over your (belongings i.e. pent shirt, underwear, jacket along with sealed parcel of pubic hair, collected hair, genital swab) to him, same were taken into police possession vide seizure memo Ex.PW17/B which was signed by PW17 SHO Nar Singh as an attesting witness and prepared by him. Thereafter, you were produced before the learned Illaqa Magistrate and one day your police remand was sought. Thereafter, case property was deposited in Malkhana Moharer, City, Jhajjar. On dated 22.12.2020, you were interrogated and during interrogation, you suffered your disclosure statement Ex.PW11/A which was reduced into the writing by you and signed by PW11 ASI Jagdish, PW17 SHO Nar Singh and yourself. In pursuance of said disclosure statement, you demarcated the place of occurrence from where you abducted the victim. In this regard, he also prepared the site plan Ex.PW23/D and demarcation memo Ex.PW11/B was prepared by him and signed by PW17 SHO Nar Singh and PW11ASI Jagdish. You also demarcated the place where you committed rape upon the victim and murdered her. In this regard, he also prepared the demarcation memo Ex.PW11/C and signed by the aforesaid witnesses. On the same day, he also recorded the statement of witnesses. He got prepared the scaled site plan Ex.PW8/A, Ex.PW8/B from PW8 ESI Jai Chand and recorded his statement under Section 161 CrPC. On dated 23.12.2020, PW2 father of the victim handed over the caste certificate Ex.PW2/J, Ex. PW2/K to him, same were taken into police possession vide seizure memo Ex.PW2/L which was prepared

by him and signed by PW2 himself and recorded the supplementary statement of the complainant. On dated 24.12.2020, PW1 Municipal Counselor Kishor Saini handed over the caste certificate Ex.PW1/A and same were taken into police possession by him vide seizure memo Ex.PW1/B which was prepared by him and signed by PW11 ASI Jagdish. Thereafter, PW11 ASI Jagdish handed over the copy of FIRs Ex.P11/1 to Ex.P11/9 to him which were registered against you and same were taken into police possession vide seizure memo Ex.PW11/E, which was prepared by him and signed by PW11 ASI Jagdish. In this regard, PW11 ASI Jagdish also issued certificate under Section 65-B Indian Evidence Act Ex.PW11/F (Objected to). Thereafter, he recorded the statement of PW Ct. Amandeep who sent the special report to learned Illaqa Magistrate as well as the higher authorities. In this regard, he also submitted the hard copy of e-mail Ex.PW23/E. On dated 27.12.2020, he moved an application Ex.PW14/A for seeking the opinion of the doctor regarding the injuries of the victim upon which the doctor gave his opinion Ex.PW14/B thereafter, he added under Sections 376(3), 377, 367, 451 IPC in the present case. Thereafter, the final report under Section 173 CrPC was got prepared by SHO City, Jhajjar, whose signature he identify being worked with him. What you have to say?

Ans. It is wrong.

Q.4. It has come in evidence of the prosecution against you that PW3 SI Bijender Kumar proved first information report Ex.PW3/A and made endorsement Ex.PW3/B, PW5 Raju Chaudhary proved statement Ex.PW5/A under Section 174 CrPC, PW8 EASI Jai Chand proved scaled site plan, Ex.PW8/A & Ex.PW8/B, PW9 ESI Surender Kumar proved certificate Ex.PW9/A, seizure memo, Ex.PW9/B. PW10 ESI Anoop Singh proved duly sworn affidavit Ex.PW10/A, photocopy of register no.19 at serial no.230 dated 21.12.2020 Ex.PW10/B, PW12 Dr. Nisha Dabar proved application Ex.PW12/A, postmortem report Ex.PW12/B, application Ex.PW12/C, MLR Ex.PW12/D, duly sworn affidavit Ex.PW12/E, PW14 Dr. Sunil Narwal tender duly sworn affidavit Ex.PW14/A, proved application Ex.PW14/B, opinion Ex.PW14/C, PW19 Sunil Kumar Ld. JMIC, Jhajjar proved applications Ex.PW19/A, Ex.PW19/B, issued certificate Ex.PW19/C & Ex.PW19/D, zimni orders Ex.P19/1, Ex.P19/2, Ex.P19/3 & Ex.PW19/4, PW21 Monika Dhankar proved report Ex.PW21/A, PW22 Neetu proved crime scene report Ex.PW22/A. What you have to say?

Ans. It is wrong.

Q.5. Why the case is made out against you and why the witnesses have deposed against you?

Ans. It is a false case. The witnesses are deposing against me falsely.

Q.6. Have you anything else to say?

Ans. I am falsely implicated in the present case. Some unknown assailant caused head injury to me. I become unconscious and then that person committed rape and murdered of the victim.

Q.7. Do you want to lead defence evidence?

Ans. Yes, Sir.

29. The prominent concern for this Court is the manner of investigation, omission in putting all the incriminating evidence to the accused under §313 CrPC, and its repercussions on the trial, and in our considered opinion, it causes prejudice to the accused because to put the entire testimony of PW2 and incorrectly stating that the testimony of PW6 was in similar terms, and to answer such long questions would be incomprehendible for ordinary people. As is apparent, question no. 2 was the testimony of victim Laadli's father [PW2], and in the last sentence, it was added that her mother [PW6] also stated in similar terms, which is not absolutely correct. Additionally, this was contrary to the requirement of §313 CrPC, 1973; however, all these deficiencies, which amount to irregularities, are curable, and once cured, shall neither cause any prejudice to the accused on delay or law nor failure of Justice to any.

30. Criminal Justice warrants meticulously following the procedural standards of proof to pin criminal liability, whereby every 'i' ought to be dotted and every 't' ought to be crossed. The yardstick of a fair criminal trial is the quality of investigation and the conduct of proceedings, as per the gold standards, rather than perfunctory completion or hurried disposal.

31. Section 351 BNSS, 2023, which corresponds to §342 CrPC, 1898, and §313 CrPC, 1973, reads as follows:

> 351. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—
>
> (a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;
>
> (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

> Provided that in a summons case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).
>
> (2) No oath shall be administered to the accused when he is examined under sub-section (1).
>
> (3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.
>
> (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.
>
> (5) 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.

32. The interpretation and the extent of Section 313 CrPC have evolved over time, and the following judicial precedents of the Hon'ble Supreme Court would be relevant.

33. In Tara Singh v. The State, [1951] SCR 729, June 1, 1951, a four-Judge Bench of the Hon'ble Supreme Court holds,

> [pg735]. The next point taken regarding the committal stage of the case is that the Committing Magistrate did not examine the appellant properly under sections 209 and 342 of the Criminal Procedure Code. Section 342 (1) states that "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may etc ... " And sub-section (3) states that "the answers given by the accused may be taken into consideration in· such inquiry or trial." Further, section 287 requires that "the examination of the accused duly recorded by or before the Committing Magistrate shall be tendered by the prosecutor and read as evidence." (This refers to the sessions trial). It is important therefore that an accused should be properly examined under ·section 342 and, as their Lordships of the Privy Council indicated in Dwarkanath v. Emperor [A.I.R. 1933 PC 124 at 130], if a point in the evidence is considered important against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and I cannot permit it to be slurred over. I regret to find that in many cases scant attention is paid to it, particularly in Sessions Courts. But whether the matter arises in the Sessions Court or in that of the Committing Magistrate, it is important that the provisions of section 342 should be fairly and faithfully observed.
>
> [pg737-738]. Section 342 requires the accused to be examined for the purpose of enabling him "to explain any circumstances appearing in the evidence against him." Now it is evident that when the Sessions Court is required to make the examination under this section, the evidence referred to is the evidence in the Sessions Court and the circumstances which appear against the accused in that Court. It is not therefore enough to read over the questions and answers put in the Committing Magistrate's Court and ask the accused whether he has anything to say about them. In the present case, there was not even that. The appellant was not asked to explain the

> circumstances appearing in the evidence against him but was asked whether the statements made before the Committing Magistrate and his answers given there were correctly recorded. That does not comply with the requirements of the section.

34. In Hate Singh Bhagat Singh v. State of Madhya Bharat, (1951) SCC 1060, Nov 02, 1951, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [10]. Now the statements of an accused person recorded under sections 208, 209 and 342, Criminal Procedure Code, 1898, 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. They have to be received in evidence and treated as evidence and be duly considered at the trial (Sections 287 and 342). This means that they must be treated like any other piece of evidence coming from the mouth of a witness and matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him. Nay more. Because of the presumption of innocence in his favour even when he is not in a position to prove the truth of his story, his version should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false. We feel that this fundamental approach has been ignored in this case.
>
> [34]. …We have stressed before the importance of putting to the accused each material fact which is intended to be used against him and of affording him a chance of explaining it if he can.

35. In Ajmer Singh v. State of Punjab [1953] SCR 419, pg427, Dec 10, 1952, the Hon'ble Supreme Court holds,

> We are of the opinion that when the Sessions Judge is required by that section to make the examination of the accused, his duty is not discharged by merely reading over the questions and answers to the accused put in the committing magistrate's court and by asking him whether he has to say anything about them. It is not sufficient compliance with the section to generally ask the accused that having heard the prosecution evidence what he has to say about it. The accused must be questioned separately about each material circumstance which is intended to be used against him.

36. In Ram Shankar Singh v. State of West Bengal, 1962 Supp (1) SCR 49, Oct 10, 1961, a three-Judge Bench of the Hon'ble Supreme Court holds pg62,

> In our view, the learned Sessions Judge in rolling up several distinct matters of evidence in a single question acted irregularly. Section 342 of the Code of

> Criminal Procedure by the first sub-section provides, insofar as it is material: "For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court … shall … question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence". Duty is thereby imposed upon the Court to question the accused generally in a case after the witnesses for the prosecution have been examined to enable the accused to explain any circumstance appearing against him. This is a necessary corollary of the presumption of innocence on which our criminal jurisprudence is founded… In the present case, we are of the view, having regard to the circumstances, that the appellants have not been prejudiced, because of failure to examine them strictly in compliance of the terms of Section 342 of the Code and that view is strengthened by the fact that the plea was not raised in the High Court by their counsel who had otherwise raised numerous questions in support of the case of the appellants.

37. In State of Maharashtra v. Laxman Jairam [1962] Supp. 3 SCR 230, pg234-235, Feb 16, 1962, a three-Judge Bench of the Hon'ble Supreme Court holds,

> …The object of examination under s. 342 therefore is to give the accused an opportunity to explain the case made against him and that statement can be taken into consideration in judging the innocence or guilt of the person so accused.

38. In Jai Dev v. State of Punjab, [1963] 3 SCR 489, pg509, July 30, 1962, a three-Judge Bench of the Hon'ble Supreme Court holds,

> In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr. Anthony has relied on a decision of this Court in Hate Singh Bhagat Singh v. State of Madhya Bharat AIR 1953 Supreme Court 468. In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the point used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under Section 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the Court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the Court should put to the accused person detailed questions which may amount to his cross- examination. 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 question 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. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material.

39. In Bakshish Singh Dhaliwal v. The State of Punjab, 1967(1) SCR 211, pg225, Aug 31, 1966, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [C-E] It was also submitted that these War Diaries were not put to the accused when he was examined under s. 342 of the Code of Criminal Procedure and consequently, their use to the prejudice of the appellant to record findings against him was not justified. This submission is clearly based on a misapprehension of the scope of s. 342, Cr.P.C. Under that provisions, question are put to an accused to enable him to explain any circumstances appearing in the evidence against him, and for that purpose, the accused is also to be questioned generally on the case, after the witnesses for the prosecution have been examined and before he is called on for his defence. These War Diaries were not circumstances appearing in evidence against the appellant. They were, in fact, evidence of circumstances which were put to the accused when he was examined under s. 342, Cr.P.C. It was not at all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section; and consequently, the High Court committed no irregularity at all in treating these War Diaries as part of the evidence against the appellant.

40. In Shivaji Sahebrao Bobade v. State of Maharashtra, [1974] 1 SCR 489, pg501, Aug 27, 1973, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [B-D] 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.

41. In Sharad Birdi Chand Sarda v. State of Maharashtra, [1985] 1 SCR 88, pg160, July 17, 1984, a three-Judge Bench of the Hon'ble Supreme Court holds,

> …In this view of the matter, the circumstances which were not put to the appellant in his examination under s.313 [351 BNSS, 2023] of the Criminal Procedure Code have to be completely excluded from consideration.

42. In Ajay Singh v. State of Maharashtra, [2007] 7 SCR 983; June 06, 2007, the Hon'ble Supreme Court holds,

> [11]. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.
>
> [12]. The word 'generally' in sub-section (l)(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.
>
> [13]. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

43. In Asraf Ali v. State of Assam, [2008] 10 S.C.R. 1115, July 17, 2008, the Hon'ble Supreme Court holds,

> [13]. In certain cases when there is perfunctory examination under Section 313 of the Code, the matter is remanded to the trial Court, with a direction to re-try from the stage at which the prosecution was closed 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. 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 similar view in S. Harnam Singh v. The State (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 facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.
>
> [16]. 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.
>
> [17]. 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.
>
> [18]. In certain cases when there is perfunctory examination under Section 313 of the Code, the matter is remanded to the trial Court, with a direction to retry from the stage at which the prosecution was closed.

44. In State of Punjab v Hari Singh, [2009] 2 SCR 470, Feb 16, 2009, the Hon’ble Supreme Court holds,

> [31]. 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".

45. In Inspector of Customs, Akhnoor J & K v. Yash Pal and Anr. [2009] 4 SCR 118, March 06, 2009, a three-Judge Bench of the Hon’ble Supreme Court holds,

> [22]. 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.

46. In Sanatan Naskar & Anr. v. State of W.B, [2010] 7 SCR 1023, July 08, 2010, the Hon'ble Supreme Court holds,

> [10]. The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the Cr.PC is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory 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) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into 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 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. 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 Cr.PC as it cannot be regarded as a substantive piece of evidence.

47. In Mannu Sao v. State of Bihar, [2010] 8 SCR 811, July 22, 2010, the Hon'ble Supreme Court holds,

> [8]. Let us examine the essential features of this Section 313 Cr.P.C. and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Code. As already noticed, the object of recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance thereof the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or in the alternative to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. 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 as 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 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. 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.

The Hon'ble Supreme Court referred to Jai Dev v. State of Punjab, (AIR 1963 SC 612) and further held,

> xxx
> [32]. 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.

> [33]. 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.

48. In Dharampal Singh v. State of Punjab, [2010] 10 SCR 1160, Sep 09, 2010, the Hon'ble Supreme Court holds,

> [12]. As part of fair trial, Section 313 of the Code of Criminal Procedure requires giving opportunity to the accused to give his explanation regarding the circumstance appearing against him in the evidence adduced by the prosecution. The purpose behind it is to enable the accused to explain those circumstances. It is not necessary to put entire prosecution evidence and elicit answer but only those circumstances which are adverse to the accused and his explanation would help the court in evaluating the evidence properly. The circumstances are to be put and not the conclusion. It is not an idle formality and questioning must be fair and couched in a form intelligible to the accused. But it does not follow that omission will necessarily vitiate the trial. The trial would be vitiated on this score only when on fact it is found that it had occasioned a failure of justice.

49. In Paramjeet Singh @ Pamma v. State of Uttarakhand, [2010] 11 SCR 1064; 2010-INSC-647, Sep 27, 2010, the Hon'ble Supreme Court holds,

> [25]. If any appellate Court or revisional court comes across the fact that the trial Court had not put any question to an accused, even if it is of a vital nature, such an omission alone should not result in the setting aside of the conviction and sentence as an inevitable consequence. An inadequate examination cannot be presumed to have caused prejudice. Every error or omission in compliance of the provisions of Section 313 Cr.P.C., does not necessarily vitiate trial. Such errors fall within category of curable irregularities and the question as to whether the trial is vitiated, in each case depends upon the degree of error and upon whether prejudice has been or is likely to have been caused to accused. Efforts should be made to undo or correct the lapse. (Vide: Wasim Khan v. State of Uttar Pradesh, AIR 1956 SC 400; Bhoor Singh & Anr. v. State of Punjab, AIR 1974 SC 1256; Labhchand Dhanpat Singh Jain v. State of Maharashtra, AIR 1975 SC 182; State of Punjab v. Naib Din, AIR 2001 SC 3955; and Parsuram Pandey & Ors. v. State of Bihar, (2004) 13 SCC 189).
>
> [31]. Thus, it is evident from the above that the provisions of Section 313 Cr. P. C 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.

50. In Sujit Biswas v. State of Assam, [2013] 3 SCR 830; 2013-INSC-359, May 28, 2013, the Hon'ble Supreme Court holds,

> [12]. It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice, i.e. audi alterum 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 Cr.P.C., cannot be used against him and must be excluded from consideration. The said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, as the accused cannot be cross-examined with reference to such statement.

51. In Nar Singh v. State of Haryana [2014] 12 SCR 218; Nov 11, 2014, the Hon'ble Supreme Court holds,

> [27]. The point then arising for our consideration is, if all relevant questions were not put to accused by the trial court as mandated under Section 313 Cr.P.C. 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 re-decision from the stage of recording of statement under Section 313 Cr.P.C. Section 386 Cr.P.C. deals with power of the appellate court. As per sub clause (b) (i) of Section 386 Cr.P.C., 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 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 Cr.P.C. and may direct remanding the case again for retrial of the case from that stage of recording of statement under Section 313 Cr.P.C. and the same cannot be said to be amounting to filling up lacuna in the prosecution case.
>
> [30]. 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:-
>
> (i) Whenever a plea of non-compliance of Section 313 Cr.P.C. 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

> to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer;
>
> (ii) 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.
>
> (iii) If the appellate court is of the opinion that noncompliance with the provisions of Section 313 Cr.P.C. 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 Cr.P.C. and the trial Judge may be directed to examine the accused
>
> afresh and defence witness if any and dispose of the matter afresh;
>
> (iv) 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.
>
> [32]. While we are of the view that the matter has to be remitted to the trial court for proceeding afresh from the stage of Section 313 Cr.P.C. questioning, we are not oblivious of the right of the accused to speedy trial and· that the courts are to ensure speedy justice to the accused. While it is incumbent upon the Court to see that persons accused of crime must be given a fair trial and get speedy justice, in our view, every reasonable latitude must be given to those who are entrusted with administration of justice. In the facts and circumstances of each case, court should examine whether remand of the matter to the trial court would amount to indefinite harassment of the accused. When there is 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 the learned trial court. The victim of the offence or the accused should not suffer for laches or omission of the court. Criminal justice is not one-sided. It has many facets and we have to draw a balance between conflicting rights and duties.

52. In Ajay Kumar Ghoshal v. State of Bihar [2017] 1 SCR 469, Jan 31, 2017, the Hon’ble Supreme Court holds,

> [9]. The High Court copiously extracted the judgment in case of Nar Singh vs. State of Haryana (2015) 1 SCC 496 to remit the matter to the trial court for proceeding afresh. In Nar Singh's case, some of the important questions like Ballistic Report and certain other incriminating evidence were not put to the accused and the same was not raised in the trial court or in the High Court. It was felt that the accused should have been questioned on those incriminating evidence and circumstances; or otherwise prejudice would be

> caused to the accused. In such peculiar facts and circumstances, Nar Singh's case was remitted to the trial court for proceeding afresh from the stage of Section 313 Cr.P.C. Be it noted that in Nar Singh's case, this Court has referred to a catena of other judgments holding that omission to put certain questions to the accused under Section 313 Cr.P.C. would not cause prejudice to the accused. It depends upon facts and circumstances of each case and the nature of prejudice caused to the accused. In our view, the High Court has not properly appreciated Nar Singh's case where this Court laid down that the appellate court can order for fresh trial from the stage of examination under Section 313 Cr.P.C., only in cases where failure to question the accused on certain incriminating evidence has resulted in serious prejudice to the accused. The High Court, in our view, has not properly appreciated the ratio laid down in Nar Singh's case and erred in applying the same to the present case.
>
> [10]. Section 386 Cr.P.C. deals with the powers of the appellate court. As per Section 386 (b) Cr.P.C, in an appeal from a conviction, the appellate court may:- (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (ii) alter the finding, maintaining the sentence, or (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same. Though the word "retrial" is used under Section 386(b)(i) Cr.P.C., the powers conferred by this clause is to be exercised only in exceptional cases, where the appellate court is satisfied that the omission or irregularity has occasioned in failure of justice. The circumstances that should exist for warranting a retrial must be such that where the trial was undertaken by the Court having no jurisdiction, or trial was vitiated by serious illegality or irregularity on account of the misconception of nature of proceedings. An order for retrial may be passed in cases where the original trial has not been satisfactory for some particular reasons such as wrong admission or wrong rejection of evidences or the Court refused to hear certain witnesses who were supposed to be heard.

53. In Samsul Haque v. The State of Assam, [2019] 11 S.C.R. 229, Aug 26, 2019, the Hon’ble Supreme Court holds,

> [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.

54. In Raj Kumar v. State (NCT of Delhi), 2023 SCC OnLine SC 609, May 11, 2023, the Hon’ble Supreme Court holds,

> [17]. The law consistently laid down by this Court can be summarized as under:
>
> (i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and

> separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;
>
> (ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;
>
> (iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case
>
> (iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;
>
> (v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;
>
> (vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and
>
> (vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.
>
> (viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.

55. In Indrakunwar v. State of Chhattisgarh, Crl.A. No.1730 of 2012; 2023-INSC-934, Oct 19, 2023, the Hon'ble Supreme Court holds,

> [34]. A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements.
>
> [34.1] The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.
>
> [34.2] The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.
>
> [34.3] The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.
>
> [34.4] The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.
>
> [34.5] In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

> [34.6] The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.
>
> [34.7] This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.
>
> [34.8] This statement is to be read as a whole. One part cannot be read in isolation.
>
> [34.9] Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.
>
> [34.10] The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.
>
> [34.11] The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.
>
> [34.12] Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.

56. In Nababuddin v. State of Haryana, Crl.A. No.2333 of 2010; 2023-INSC-1020, Nov 24, 2023, the Hon'ble Supreme Court holds,

> [13]. The appellant has undergone incarceration of five and a half years. If, after the lapse of more than twenty two years, he is again subjected to examination under Section 313 of CrPC, it will cause prejudice to him. Therefore, the failure to put two relevant circumstances to the appellant in his examination under Section 313 CrPC will be fatal to the prosecution case. Hence, on this ground, we hold that the appellant's conviction cannot be sustained.

57. In Naresh Kumar v. State of Delhi, [2024] 7 SCR 178; 2024-INSC-464, July 08, 2024, the Hon'ble Supreme Court holds,

> [21]. We have already held that whether non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial qua the accused concerned and to hold the trial qua him is vitiated it is to be established further that it resulted in material prejudice to the accused. True that the onus to establish the prejudice or miscarriage on account of non-questioning or inadequate questioning on any incriminating circumstance(s), during the examination under Section 313, Cr.PC, is on the convict concerned. We say so, because if an accused is ultimately acquitted, he could not have a case that he was prejudiced or miscarriage of justice had occurred owing to such non-questioning or inadequate questioning.

58. In Ashok v. State of U.P. [2024] 12 SCR 335; 2024-INSC-919, Dec 02, 2024, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [14]. Now, we come to the appellant's statement, recorded per Section 313 of the CrPC. Only three questions were put to the appellant. In the first question, the names of ten prosecution witnesses were incorporated, and the only question asked to the appellant was what he had to say about the testimony of ten prosecution witnesses. In the second question, all the documents produced by the prosecution were referred, and a question was asked, what the appellant has to say about the documents. In the third question, it was put to the appellant that knowing the fact that the victim belongs to a scheduled caste, he caused her death after raping her and concealed her dead body, and he was asked for his reaction to the same. What PW-1 and PW-2 deposed against the appellant was not put to the appellant. The contents of the incriminating documents were not put to the appellant.

59. In Irfan Alias Bhayu Mevativ. State of Madhya Pradesh, CrA-1667-1668 of 2021, 2025-INSC-150, Jan 16, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [29]. The instant case involves capital punishment and thus, providing a fair opportunity to the accused to defend himself is absolutely imperative and non-negotiable. The trial in the case at hand was concluded without providing appropriate opportunity of defending to the accused and within and within a period of less than two months from the date of registration of the case, which is reflective of undue haste…

60. In Aejaz Ahmad Sheikh v. State of Uttar Pradesh & Anr. [2025] 4 SCR 1507; 2025-INSC-529, Apr 22, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [28]. Before we part with this judgment, we have a suggestion to make. There are several criminal appeals which come to this Court where we find that vital prosecution evidence is not put to the accused in statement under Section 313 of the CrPC. The Court becomes helpless, as due to the long lapse of time, the defect cannot be cured by passing an order of remand.

After that, the Hon'ble Supreme Court extracted the ratio from the verdicts of Raj Kumar v. State (NCT of Delhi) [(2023) 17 SCC 95], and to Tara Singh v. State, 1951 SCC 903, and observed,

> We want to supplement what is reproduced above. When an appeal against conviction is preferred before the High Court, at the earliest stage, the High Court must examine whether there is a proper statement of the accused recorded under Section 313 of CrPC (Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023). If any defect is found, at that stage, the same can be cured either by High Court recording further statement or by directing the Trial Court to record. If this approach is adopted, the argument of delay and prejudice will not be available to the accused.

61. In Ramji Prasad Jaiswal v. State of Bihar, [2025] 6 SCR 582, 2025-INSC-738, May 20, 2025, the Hon'ble Supreme Court holds,

> [36]. Four questions generally were put to the appellants, that too, in a most mechanical manner. These questions did not reflect the specific prosecution evidence which came on record qua the appellants. As all the incriminating evidence were not put to the notice of the appellants, therefore, there was a clear breach of Section 313 CrPC as well as the

> principle of audi alteram partem. Certainly, this caused serious prejudice to the appellants to put forth their case. Ultimately, such evidence were relied upon by the court to convict the appellants.
>
> [37]. Therefore, there is no doubt that such omission, which is a serious irregularity, has completely vitiated the trial. Even if we take a more sanguine approach by taking the view that such omission did not result in the failure of justice, it is still a material defect albeit curable…

62. In Suresh Sahu & Anr. v. The State of Bihar (now Jharkhand), CrA-305-2024; 2025-INSC-1382, Nov 27, 2025, the Hon'ble Supreme Court holds,

> [18]. It is evident from the record that only three questions were put to each of the accused in their examination under Section 313 CrPC (Section 351 BNSS). These questions were framed in an extremely generic and mechanical manner, without articulating any of the specific incriminating circumstances appearing in the prosecution evidence.
>
> [19]. The purpose of recording the statement of an accused under Section 313 CrPC (Section 351 BNSS) is to make the accused aware of the circumstances as appearing against him in the prosecution case and to seek his explanation for the same. For this purpose, the accused must be informed of each and every incriminating circumstance which the prosecution intends to rely upon for bringing home the guilt of the accused. Omission to put material circumstances to the accused in the statement under Section 313 CrPC (Section 351 BNSS) would cause grave prejudice and may, in a given case, even prove fatal to the case of the prosecution. Of course, the appellate Court can rectify this error by requiring that a fresh statement under Section 313 CrPC (Section 351 BNSS) be recorded for removing the lacunae, if any, in this procedure. In the present case, on going through the statements of both the accused persons recorded by the trial Court under Section 313 CrPC (Section 351 BNSS) (supra), we find that these statements are almost a reproduction of the language of the charge and, in no manner, convey to the accused persons the incriminating circumstances/evidence produced by the prosecution so as to indict them for the crime. This defect goes to the root of the matter.
>
> [23]. Looking to the highly laconic and defective manner in which the statements of the accused appellants were recorded under Section 313 CrPC (Section 351 BNSS) (supra), we could have remanded the matter to the trial Court for re-recording the said statements and for delivering a fresh judgment. However, considering the fact that more than 35 years have passed since the incident took place, we feel that it would be nothing short of an exercise in futility to direct such remand. We have, therefore, minutely sifted through the evidence on record and shall analyze the same to adjudicate as to whether the conviction of the accused-appellants is justified in the facts, circumstances and evidence as available on record.

63. In Chandan Pasi v. The State of The Bihar, CrA-5137-5138 of 2025; 2025-INSC-1371, Dec 01, 2025, the Hon'ble Supreme Court holds,

> [6]. One of the non-negotiable requirements of a fair trial is that the accused persons should have ample opportunity to dispel the case and claims of the prosecution against them. This ample opportunity can take many forms, whether it is adequate representation through counsel or the

> opportunity to call witnesses to present their side of the case or to have the occasion to answer each and every allegation against them, on their own, in their own words. The last one happens under Section 313 CrPC.
>
> [7]. This Court, in many judgments, delineated the scope and object of Section 313 CrPC. The position is no longer up for debate. Even so, we may refer to certain pronouncements for the sake of completeness.

64. The Murder Reference has been pending before this Court since the year 2021, and this defect went unnoticed at the initial stage. Considering the average time a criminal trial takes to complete in the Trial Courts of Punjab and Haryana, five years should be closer to the average. Further, we need extensive data and studies to demarcate the boundary of time beyond which the delay can be considered to have prejudiced an accused, and, in the process, we cannot forget the Justice to the victim of the crime. An overall analysis of the facts and circumstances of this case, no prejudice shall be caused to the accused if these questions are put to him after a lapse of five years.

65. It is not a case where the Trial Court had put all the incriminating circumstances to the accused. Further, in question no. 2, what the Court had put to the accused was a statement of Laadli's father [PW2] and observed that her mother [PW6] testified in similar terms. Although it is not for this Court to put to analysis, that does not mean the testimony has to be put as a whole.

66. A plain and simple reading of the statute refers to "*circumstances appearing in evidence*" and not the entire statement. Thus, the question which contained the most material facts, could not have been read against him. But if that alone were the position, then it would cause more serious prejudice to the victim without her being at any fault at all. Although, it is legally permissible for any Appellate Court to put the leftover incriminating evidence to an accused, or to direct the trial Court to do so, but that decision has not to be taken in a mechanical manner but has to be taken after analyzing the remaining incriminating evidence which was put to the accused, the prejudice caused to the accused, the defence setup, and the objections taken during the arguments. Since the accused has a right to examine defence evidence, and the evidence that comes in defence, if any, would also need to be analyzed and appreciated in appeal. Thus, the only option available with this Court to do justice to the accused and the victim and her family is to remand the case back to the Trial Court to begin the trial from the stage of recording the statement of the accused under §313 CrPC.

67. As such, without commenting on the cases' merits, the impugned judgment and the order on sentence are quashed and set aside, and the matter is remanded back to the Trial

Court to resume the proceedings from the stage of the recording of the statement of the accused under §351 BNSS, 2023 [§313 CrPC].

68. Given the above and in the light of the judicial precedents mentioned above, especially in Asraf Ali v. State of Assam, [2008] 10 S.C.R. 1115 *supra*, Inspector of Customs, Akhnoor J & K v. Yash Pal [2009] 4 SCR 118 *supra*, Nar Singh v. State of Haryana [2014] 12 SCR 218 *supra*, and Ajay Kumar Ghoshal v. State of Bihar [2017] 1 SCR 469 *supra*, Raj Kumar v. State (NCT of Delhi), 2023 SCC OnLine SC 609 *supra*, the present matters are disposed of in the following terms.

69. CRA-D-750-2021, filed by Vinod, is disposed of to the extent that the judgment of conviction and the order of sentence is quashed and set aside, and the matter is remanded back to the Sessions Court to either take it on their own or assign it to some other trial Court/Successor Court which has the jurisdiction.

70. The trial Court shall put all the incriminating evidence to the accused by making small questions as per the facts and evidence under §351 BNSS [§313 CrPC, 1973], and after that afford him an opportunity to lead defence evidence, if he wants to do so, provided the same is done within a reasonable time. Thereafter, on hearing the parties pass a fresh judgment in accordance with the law.

71. Murder Reference No. 3 of 2021 is disposed of because, as on date, it has rendered infructuous.

72. To comply with Section 412 BNSS, 2023 [371 CrPC, 1973], the proper officer of the High Court shall, without delay, send either physically or through electronic means, a copy of the order, under the seal of the High Court and attested with their official signature, to the Court of Session.

73. Both matters stand closed on the terms set out in this verdict. All pending miscellaneous applications, if any, stand disposed of.

74. Registry is directed to send back the entire record of the Trial Court, along with a certified copy of this Judgment, to the concerned Sessions Judge.

75. Considering the time for which the matter was pending before this Court since the year 2021, and the FIR is of the year 2020, we request the trial Court to expedite the hearing by striking a balance between Speedy Justice and Buried Justice.

Murder Reference No. 3 of 2021 and CRA-D-750-2021 stand closed, and the trial is to commence afresh from the stage of 351 BNSS [313 CrPC].

(SUKHVINDER KAUR)	**(ANOOP CHITKARA)**
JUDGE	**JUDGE**

Jan 19, 2026
Jyoti Sharma

Whether speaking/reasoned	YES
Whether reportable	**YES**