IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.79 of 2004

==========

1. Bengali Ram, son of Late Govind Ram

2. Shyam Sunder Ram, son of Bengali Ram

Both resident of Village-Poch Tanda, P.S.-Rahui, District-Nalanda.

.... Appellants

Versus

The State of Bihar ..... Respondents

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Code of Criminal procedure – Section 374(2)

Indian Penal Code – Section 304-B and 201

Appeal against the conviction of the both Appellants u/s – 304-B and 201 IPC and sentence for ten (10) year and fine of Rs. 5000/-.

Informant's daughter died in her matrimonial home in in-laws' place within seven (7) years of marriage.

Cases relied on:-

Arbind Singh vs. State of Bihar [AIR 2001 SC 2124]

Baijnath & Ors. Vs. State of Madhya Pradesh; (2017) 1 SCC 101

Charan Singh @ Charanjit Singh vs. State of Uttarakhand; [2023 SCC 454]

Munna Lal vs. State of Uttar Pradesh [2023 SCC Online 8080]

Jagdish Chandra vs. State of Haryana; (2019) 9 SCC 138

Bansi Lal vs. State of Haryana; (2011) 11 SCC 359

Sukhjit Singh vs. State of Punjab; (2014) 10 SCC 270

Tara Singh vs. State [1951 SCC 903]

Held – It nowhere appears that any demand was ever raised by appellant/accused as to pay any dowry either in cash or kind soon before death. (Para 19)
It can be said safely that demand of dowry as alleged not appears in close proximity with death of the daughter of the informant (Para-21).
It is admitted position that the investigating officer if this case has not been examined and, as such the place of occurrence was not been proved by the prosecution (Para-27).

Examination of the appellants/accused u/s-313 CrPC was done in a very cryptic and casual manner (Para 28).

The prosecution failed to answer number of doubts as surfaced during the trial, the benefits of which must be given to the appellant (Para 30).

Present appeal is allowed [Para 31].

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... ... Appellants

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Appearance :
For the Appellant/s : Mr. Prince Kumar Mishra, *Amicus Curiae*
For the Respondent/s : Mr. Anand Mohan Prasad Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

Date : 09-02-2024

The present appeal has been preferred by the appellants-convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') challenging the impugned judgment of conviction and order of sentence dated 19.11.2003 passed by learned Additional District and Sessions Judge, Fast Track (Additional) Court, Nalanda, Bihar Sharif in S.T. No.51 of 1991/Tr. No.70 of 2002 arising out of Rahui P.S. Case No.2 of 1990, whereby the trial court has convicted both the above-named appellants under Sections 304-B and 201 of the Indian Penal Code (for short 'IPC') and sentenced to undergo simple imprisonment

for ten years under Section 304-B of IPC and simple imprisonment for three years under Section 201 of the IPC respectively with a fine of Rs.5000/- each and in default of payment of fine, to further undergo imprisonment for two and half years. All the sentences have been ordered to run concurrently.

2. The case of prosecution, in brief, as it appears from the written information that the informant, namely, Amrit Ram/PW-7, when visited the matrimonial village of his daughter in connection with some other work, he met with his '*samdhi'*, who responded him in very casual manner, causing a suspicion, whereafter he straightway go to the house of his daughter, where he found that his daughter is lying dead over a cot. He returned to his village and informed about the occurrence to Shiv Kumar Mahto, Nathun Tanti and Vijay Ram and taking them together, against came to matrimonial village of his daughter, namely, Panchitand, where he found the dead body of his daughter was missing and no family members were present over there. It was stated that his *'samdhi'* and son-in-law usually tortured her daughter for non-fulfilment of demand of dowry. He suspected that his daughter might be killed by his son-in-law, namely, Shyam

Sundar Ram and his father. It is stated that the marriage was fixed against total cash amount of Rs.6,000/-, where Rs. 4,000/- was paid by him but, he could not manage balance amount of Rs.2,000/-.

3. On the basis of aforesaid written information, the police lodged a case as Rahui P.S. Case No. 2 of 1990. After completion of investigation, the charge-sheet was submitted under Sections 304-B and 201 of the IPC.

4. The learned Jurisdictional Magistrate on the basis of materials collected during investigation took cognizance of the offence and after compliance of Section 207 of the CrPC, committed the case to the court of sessions in view of Section 209 of the CrPC for trial and disposal.

5. The learned Trial Court on the basis of materials as collected during the course of investigation explained charges to both above-named appellants/accused on 06.07.1991 for the offence punishable under Sections 304-B and 201 of the IPC, to which, they denied and pleaded **'not guilty'** and claimed for trial.

6. As to substantiate its case, the prosecution has examined altogether nine witnesses, they are:- PW-1 Siya Ram, PW-2 Karu Ram, PW-3 Vijay Ram, PW-4 Md.

Wafauddin, PW-5 Banares Prasad, PW-6 Satendra Prasad, PW-7 Amrit Ram (informant), PW-8 Yadu Mahto and PW-9 Bhagwat Prasad.

7. The prosecution has also relied upon following documents exhibited during the course of trial:-

Sl. No.	No. of Exhibits	Documents
1.	Exhibit-1	Signature of Sheo Pujan Singh, S.I. of Rahui Police Station on FIR
2.	Exhibit-2	Signature of Amrit Ram on *fardbeyan.*

8. On the basis of materials surfaced during the trial, both appellants/accused were examined under Section 313 of the CrPC by putting incriminating circumstances/evidences surfaced against them separately, which they denied and shows their complete innocence.

8. The appellants/accused in their defence examined two witnesses, who are DW-1 Shyam Sundar Ram and DW-2 Mithilesh Prasad @ Meethu Mahto.

9. It is submitted by Mr. Prince Kumar Mishra, learned *Amicus Curiae* appearing on behalf of the appellants/accused that in present case autopsy was not conducted upon the dead body of the deceased daughter of informant and in want of same, death can not be said proved

as unnatural, which is a prime consideration to make out a case under Section 304-B of the IPC. It is further submitted that from the deposition of prosecution witnesses, it cannot be gathered that soon before the death, victim/deceased was subjected to mental or physical cruelty in connection with demand of dowry and in absence thereof, presumption as available under Section 113-B of the Indian Evidence Act cannot be imported. It is further pointed out by learned *amicus curiae* that the Investigating Officer has not examined in this case and in want of same, the place of occurrence cannot be said established. It is submitted that due to non-examination of the Investigating Officer, the appellants/accused persons were deprived from his valuable right to contradict the attentions as invited from the prosecution witnesses and so that they were deprived from their valuable right of defence as available under Section 155 of the Indian Evidence Act as to impeach the credibility of the witnesses. It is further submitted by learned *amicus curiae* that the presence of PW-1 and PW-2 at in-laws home of the deceased appears doubtful in view of deposition of PW-7. They cannot be said the witness of dead body and injury described by them for the reason that they were called by PW-

7 only during his second visit and by that time, no dead body was present in matrimonial home of the deceased. While concluding argument, it is submitted that the manner in which appellants/accused were examined under Section 313 of the CrPC, it can be said safely that the evidence which surfaced during trial were not properly explained to them and they were examined in very cryptic and general manner and on this score alone, the finding of conviction as recorded by the learned trial court is liable to be set aside.

10. It is submitted by learned counsel that the father and other family members of the paternal village of deceased, participated in last rites and the death as appears natural, postmortem could not conducted and, as such, conviction under Section 201 of the IPC is also appearing non-convincing on its face.

11. Learned counsel relied upon the legal reports of Hon'ble Supreme Court rendered in the matters of (i) **Arbind Singh vs. State of Bihar [AIR 2001 SC 2124]**; (ii) **Baijnath and Ors. vs. State of Madhya Pradesh [(2017) 1 SCC 101]**; (iii) **Charan Singh @ Charanjit Singh vs. State of Uttarakhand [2023 SCC Online 454]**; and (iv) **Munna Lal vs. State of Uttar Pradesh [2023 SCC Online 8080]**.

12. Learned APP while opposing the appeal submitted that in view of deposition of PW-7/informant, who is the first person to visit the place of occurrence, unnatural death cannot be denied as he found her daughter in pool of blood. The fact regarding fracture jaw and blood-staining clothes were supported by PW-1 and PW-2. It is submitted that the accused persons failed to produced any documentary evidence in support of his defence version that the deceased died out of stomach related illness. The learned APP further submitted that death occurs in matrimonial home within seven years of marriage, where demand of dowry is specific and, as such, the learned trial court has correctly convicted the appellants/accused by importing the presumption as available under Section 113-B of the Indian Evidence Act.

13. In support of submissions, learned APP has relied upon the report of Hon'ble Supreme Court rendered in the matter of **Jagdish Chandra vs. State of Haryana [(2019) 9 SCC 138]**.

14. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

15. It would be apposite to discuss the

oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal.

16. It would be appropriate to reproduce the provisions of Section 304(B) of the IPC and 113-B of Indian Evidence Act for the sake of convenience and better understanding of the fact, which are as:-

> "***304-B. Dowry death***- *(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was Subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*
>
> ***Explanation***- *For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*
>
> ***113-B. Presumption as to dowry death.*** *- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the*

dowry death.

Explanation*- For the purposes of this section, "dowry death" shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)."*

17. It is clear from the above legal provisions as mentioned under Section 304(B) of the Indian Penal Code that before the application of this sections following essential ingredients must be fulfilled which are as:-

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;

(iv) such cruelty or harassment must be for or in connection with demand for dowry;

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death".

18. Coming down to the facts of present case, no doubt, the death of daughter of informant/PW-7 took place in her matrimonial home within seven years of marriage. It appears from the deposition of PW-7, who is informant and father of the deceased that when he visited the matrimonial village of his daughter, he was ill-responded by his '*samdhi',*

which appears suspicious to him and so he directly went to the house of his daughter, where he found that she was lying over a cot. She did not respond to his call and when he came near to her, he found her dead, thereafter, he returned to his village and informed to co-villagers as Sheo Kumar Ram and Karu Ram (PW-2) and when he re-visited there, he did not find dead body there, as same was missing. From his deposition, it appears that the marriage of his daughter was solemnized eight years earlier to the date of his deposition, which is 24.01.1998. He stated that out of Rs.6,000/-, Rs. 4000/- was paid and balance of Rs. 2000/-, he could not pay to the appellants. It appears from his examination-in-chief that a promise was made to give bicycle and wrist watch, where he could not give cycle to appellants/accused. These version regarding bicycle and wrist watch appears to be improved over his *fardbeyan*, which is **Exhibit No.-2**, where he did not made any statement regarding demand of wrist watch. It simply stated that due to non-payment of dowry, his daughter was killed by appellants/accused person.

19. From bare perusal of his testimony as available through his examination-in-chief, it is nowhere appears that any demand was ever raised by appellant/accused

as to pay any dowry either in cash or in kind soon before death. It further not appears that out of any such demand, her daughter was subjected to cruelty or mental torture prior to his death/occurrence. Though, he stated that he was informed by his daughter regarding threat advanced by appellants/accused that they will kill her, if demand of dowry will not be fulfilled but, even from that statement, it cannot be gathered that any cruelty or torture was committed upon her deceased daughter and version is limited only to threat by that time.

20. PW-2 Karu Ram also stated that the marriage of daughter of informant/PW-7 was negotiated against total cash of Rs.6,000/-, one wrist watch and bicycle but, informant (PW-7) could not pay balance amount of Rs. 2,000/- and for said reason, his daughter was killed by appellants/accused. He appears to be maternal brother of PW-7. In cross-examination, he stated that Bangali Ram (appellant/accused) never asked for Rs.2,000/- and not even asked the Amrit Ram to pay the same.

21. Having this much deposition in hand, it can be said safely that demand of dowry was not raised soon before the death of daughter of informant and subsequent to

that any cruelty was committed therefore, it can be said safely that the demand of dowry as alleged not appears in close proximity with death of the daughter of the informant.

22. It would be relevant to reproduce Para-17 of the judgment of Hon'ble Supreme Court rendered in the matter of **Bansi Lal vs. State of Haryana [(2011) 11 SCC 359],** which is as under:-

> **"17.** While considering the case under Section 498-A (*sic* Section 304-B), cruelty has to be proved during the close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide. In the instant case, the conduct of the accused forced the deceased Sarla to leave her matrimonial home just after one year of marriage and stay with her parents for 14 months continuously. It was only at the assurance given by the panchayat that the accused or his family members would not humiliate or subject the deceased Sarla with cruelty, that she rejoined her matrimonial home. It is specific evidence of Gulshan (PW 5) that just few days before her death, when he went to see her sister, there was a demand of scooter by the appellant. In such a fact situation, we do not find any force in the submission made on behalf of the appellant

that there was no demand of scooter in the close proximity of the death".

23. PW-1 is Siya Ram, who visited the matrimonial house of the deceased and saw the dead body, where he found right jaw of deceased ruptured. He stated that he received this information from Amrit Ram (PW-7). PW-2 is also appearing hearsay witness, who received the information regarding occurrence while sitting at his courtyard.

24. From the deposition of PW-7, it appears that when he visited first time to the matrimonial house of his daughter, he saw that she was lying over the cot. He did not notice any blood-stains clothes or any mark of violence on her person. Thereafter, he returned immediately to his village and informed the occurrence to his co-villagers and again returned to the matrimonial house of his daughter, where dead body was missing. As per his deposition, PW-1 and PW-2 arrived at place of occurrence with him on second occasion only and by that time, the dead body was missing. Therefore, any description given by PW-1 and PW-2 regarding mark of injuries over dead body appearing non-convincing. Even PW-7 did not notice any injury upon his deceased daughter when he visited first time and, therefore, his testimony regarding

mark of injuries and blood-stained clothes appears improved. Admittedly, there is no autopsy report available in this case and with this much evidence, it appears safe to said that the death of daughter of informant was not unnatural.

25. It appears that merely as deceased daughter of informant died within seven years in her matrimonial home, where a demand of dowry was there, the learned trial court imported presumption as available under Section 113-B of the Indian Evidence Act. In this context, it would be appropriate to reproduce legal report of Hon'ble Supreme Court rendered in the matter of **Baijnath and Ors.** (supra), which are as under:-

> "**25.** Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:
>
> (*i*) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and
>
> (*ii*) is within seven years of her marriage, and
>
> (*iii*) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.
>
> The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section exposits "cruelty" as:
>
> (*i*) any wilful conduct which is of such a nature

as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or

(*ii*) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the abovereferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof."

26. It would further apposite to reproduce Para-

11 of the judgment of Hon'ble Supreme Court rendered in the matter of **Charan Singh @ Charanjit Singh** (supra), which is as under:-

> "11. The interpretation of Sections 304-B and 498-A IPC came up for consideration in *Baijnath's case* (supra). The opinion was summed up in paras 25 and 27 thereof, which are extracted below:-
>
> *(i)* death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and
>
> (*ii*) is within seven years of her marriage, and
>
> (*iii*) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.
>
> The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section exposits "cruelty" as:
>
> (*i*) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or
>
> (*ii*) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand".
>
> 27. It is admitted position that the Investigating Officer of this case has not examined and, as such, the place of occurrence was not proved by the prosecution during the

trial. Moreover, the non-examination of Investigating Officer, the deposition of prosecution witnesses cannot be said wholly reliable and in this context, the learned *amicus* placed Para-38 and 39 of the legal report of Hon'ble Supreme Court rendered in the matter of **Munna Lal** (supra), which are as under:-

> "38. First, statement of PW-3 under section 161, Cr.PC was recorded nearly 24 days after the incident. Since the Investigating Officer did not enter the witness box, the appellants did not have the occasion to cross-examine him and thereby elicit the reason for such delay. Consequently, the delay in recording the statement of PW-3 in course of investigation, is not referred to and, therefore, remains unjustified. The possibility of PW-3, being fixed up as an eye-witness later during the process of investigation, cannot be totally ruled out.
>
> 39. Secondly, though PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5th September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral

testimony of the so-called eyewitnesses, i.e. PW-2 and PW-3, not being found by this Court to be wholly realiable. The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case".

28. Interestingly, it is pointed out by learned *Amicus Curiae* that appellant/accused, namely, Shyam Sundar

Ram, who is none but the husband of the deceased examined in this case as DW-1 by taking shelter of Section 315 of the CrPC, where a request in writing was made on 07.08.2003 before the learned trial court. It appears from the deposition of DW-1 that suggestions regarding cause of death and dowry demand were made by the prosecution while cross-examination but, prosecution did not put any question regarding the jaw injuries and blood-stained clothes as it was noticed by PW-1, PW-2 and PW-7 as to suggest the death was unnatural. It further appears that examination of appellants/accused u/s-313 of Cr.P.C. also appears recorded in very cryptic and casual manner and they have been convicted without explaining the incriminating circumstances and certainly, a conviction cannot be founded on the basis of such a cryptic examination of appellants/accused persons. In support of this submission, learned counsel relied upon the legal report of Hon'ble Supreme Court rendered in the matter of **Sukhjit Singh v. State of Punjab** reported in **(2014) 10 SCC 270** as under:-

> "**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."

30. In view of aforesaid factual and legal discussions, it appears that the prosecution failed to answer number of doubts as surfaced during the trial, the benefit of which must be given to the appellants/accused.

31. Accordingly, the present appeal is allowed.

32. The impugned judgment of conviction and order of sentence dated 19.11.2003 passed by learned Additional District and Sessions Judge, Fast Track (Additional) Court, Nalanda, Bihar Sharif in S.T. No.51 of 1991/Tr. No.70 of 2002 arising out of Rahui P.S. Case No.2 of 1990 is, hereby, set aside. The above-named appellants/accused are acquitted from the aforesaid charges levelled against them.

33. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.5,000/- (Rupees Five Thousand) to Mr. Prince Kumar Mishra, learned *Amicus Curiae* as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

34. Office is directed to send back the lower court records along with a copy of the judgment to the court below.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.02.2024
Transmission Date	21.02.2024