

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.1386 of 2017**

Arising Out of PS. Case No.-49 Year-2016 Thana- KISHANPUR District- Supaul

=====

Md. Nasim S/o Late Md. Alam, R/o Village- Pirganj, P.S.- Kishanpur, District-  
Supaul.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

Acts/Sections/Rules:

- Section 302 of I.P.C.

Cases referred:

- State of Maharashtra Vs. Sukhdev Singh and Another, reported in (1992) 3 SCC 700
- Mohan Singh Vs. Prem Singh and Another, reported in (2002) 10 SCC 236
- Dharnidhar Vs. State of Uttar Pradesh and Others, reported in (2010) 7 SCC 759
- Ashok Kumar Vs. State of Haryana, reported in (2010) 12 SCC 350.

Appeal - filed against the judgement whereby the Trial Court has convicted the appellant for commission of the offence under Section 302 of IPC.

Held - The use of a statement under Section 313 of the Code as an evidence is permissible as per the provisions of the Code, but has its own limitations. The Courts may rely upon 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, the statement made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Further, the statement made by the accused under Section 313 of the Code can be used by the Court to the extent that it is in line with the case of the prosecution and the same cannot be the sole basis for convicting an accused. (Para 21)

Medical evidence supports the version given by the eye-witness. (Para 22)

The present is not a case where the appellant/accused has been convicted solely relying upon his confession before the Court while giving his statement under Section 313 of the Code. (Para 22.1)

Appeal is dismissed. (Para 24)

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District- Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr. Sameer Ranjan, Advocate

For the State : Mr. Sujeet Kumar Singh, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**

**and**

**HONOURABLE MR. JUSTICE DR. ANSHUMAN**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 07-01-2025**

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Code’) challenging the judgment of conviction dated 04.09.2017 and order of sentence dated 07.09.2017 passed by learned F.T.C. No. 2, Supaul in Sessions Trial No. 149 of 2016 (G.R. No. 466/2016) arising out of Kishanpur P.S. Case No. 49 of 2016, whereby the concerned Trial Court has convicted the present appellant for commission of the offence punishable under Section 302 of I.P.C. and sentenced him to undergo imprisonment for life.

**2.** The factual matrix of the present case is as under:-



**2.1.** The informant Aszadi Khatoon gave written complaint on 10.03.2016 before Kishanpur Police Station, wherein she has stated that on 09.03.2016 she along with her husband Md. Tasrif (deceased) was coming from Tharbitta Station market to her house at Pirganj after buying household articles. At about 03:30 p.m. when she reached near the bridge to the west of the Kosi Dam, all of a sudden accused Md. Naseem appeared from the bamboo grove and stabbed her husband in front of her on the abdomen by a knife and fled away towards the same bamboo grove. She alleged that her husband fell down on the road and started crying for help. Then, two boys from her village came there and took her husband on their motorcycle to Kishanpur Hospital from where her husband was referred to Supaul Sadar Hospital. Her husband died in the ambulance while being taken to Darbhanga for better treatment. She has further stated that her husband had come to her village from Rajasthan four days before. She has further alleged that, after stabbing her husband, the accused went to her *maika* (maternal home) and misbehaved with her younger sister Sarbari Begum and also tried to kill her but somehow her sister's life was saved when she started shouting.

**2.2.** After registration of the F.I.R., the Investigating Officer commenced the investigation and, during the course of the



investigation, he had recorded the statement of the witnesses, collected the evidence and thereafter filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same under Section 209 of the Code to the concerned Sessions Court where the same was registered as Sessions Trial No. 149 of 2016 (G.R. No. 466/2016).

**2.3.** During the course of the trial, the prosecution had examined 8 witnesses and also produced the documentary evidence. Thereafter, further statement of the appellant/accused was recorded under Section 313 of the Code. After conclusion of the trial, the Trial Court passed the impugned judgment and order of conviction and sentence against which the appellant/convict has preferred the present appeal.

**3.** Heard learned counsel for the appellant Mr. Sameer Ranjan and Mr. Sujeet Kumar Singh, learned A.P.P. for the Respondent-State.

**4.** Learned counsel for the appellant would mainly submit that, in the present case, the prosecution has projected PW-7 (informant) as an eye-witness whereas PW-1 to PW-5 are hearsay witnesses. It is further submitted that the Trial Court did not give reasonable opportunity to cross-examine the informant (PW-7) as



well as the Investigating Officer (PW-8), as a result of which *prejudice* has been caused to the appellant. It is further submitted that the Trial Court, simply relying upon the confession made by the appellant while giving his further statement under Section 313 of the Code, has convicted the appellant. Therefore, solely relying upon the statement given by the accused/appellant under Section 313 of the Code, he has been convicted which is not permissible in the eye of law. Learned counsel, therefore, urged that the impugned judgment and order be quashed and set aside and the present appeal be allowed. It is also pointed out from the record that the appellant is in custody since March, 2016.

5. Learned counsel for the appellant has placed reliance upon the following decisions:-

(i) **State of Maharashtra Vs. Sukhdev Singh and Another**, reported in (1992) 3 SCC 700.

(ii) **Mohan Singh Vs. Prem Singh and Another**, reported in (2002) 10 SCC 236.

(iii) **Dharnidhar Vs. State of Uttar Pradesh and Others**, reported in (2010) 7 SCC 759.

(iv) **Ashok Kumar Vs. State of Haryana**, reported in (2010) 12 SCC 350.



6. On the other hand, learned A.P.P. has opposed the present appeal. Learned A.P.P. would mainly submit that the informant herself is an eye-witness to the occurrence in question and she has fully supported the case of the prosecution. Even PW-6, the Doctor who had conducted the *post mortem* examination of the dead body of the deceased has also supported the version of the eye-witness. It is also contended that PW-2, who is sister of the informant, has also supported the second incident referred in the *fardbeyan*. Thus, the prosecution has proved the case against the appellant beyond reasonable doubt. At this stage, learned A.P.P. has also referred the statement of the appellant/accused recorded under Section 313 of the Code in which the appellant has specifically admitted/confessed “हाँ मैंने मार दिया। बहुत दिन से झंझट चलता था इसलिए मार दिया।” (Yes, I killed him. The quarrel had been going on for a long time, that is why I killed him.).

7. Learned A.P.P., therefore, submits that the version given by the appellant himself under Section 313 of the Code corroborates the case of the prosecution and more particularly, PW-7 (eye-witness). Learned A.P.P., therefore, urged that no error has been committed by the Trial Court while passing the impugned judgment and order. He, therefore, urged that the present appeal be dismissed.



8. We have considered the submissions canvassed by the learned counsels and perused the Trial Court record. It would emerge from the record that the prosecution had examined 8 witnesses before the Trial Court. It is relevant to note that PW-1 to PW-5 have specifically deposed before the Court that they are not eye-witnesses to the incident of giving blow by the appellant to the deceased. Therefore, the case of the prosecution mainly rests on the deposition given by PW-7 Aszadi Khatoon (informant). The informant is the wife of the deceased. She has specifically deposed in her examination-in-chief that she had filed the case. The incident occurred on 9<sup>th</sup> March, 2016 at about 03:00-03:30 p.m. She had gone to Varsitta market with her husband and her two children. While returning, at around 03:30 p.m., she reached the west of the bridge of Kosi Dam. She was walking four steps ahead of her husband with her two children. When her husband shouted, she turned around and saw that the accused Md. Naseem was pulling out a knife from her husband's abdomen. When she reached near her husband shouting, the accused fled inside the bamboo grove. On hearing her cry, a village boy named Rehmat, came and took her husband to Kishanpur Hospital. From there, her husband was referred to Supaul Hospital. The Doctor at Supaul told her to take him to Darbhanga Hospital. She took her husband in an ambulance



and when they reached between Supaul and Kishanpur, her husband died. She has further stated that the accused is her brother-in-law. She has stated that her husband used to live in Rajasthan. It had been only ten days since her husband came home when the accused stabbed him. She identified the accused present in the Court. She has further stated that she had filed a case in the Police Station. She signed after listening and understanding. She identifies her signature.

**8.1.** At this stage, it is pertinent to note that nobody appeared on behalf of the defence to cross-examine the informant (PW-7).

**9.** From the deposition given by the aforesaid witness, i.e. PW-7, it is clear that she had supported her version given in the written complaint. However, there is minor discrepancy in the written complaint and the examination-in-chief of the informant. In Para-2 of the examination-in-chief, PW-7 (eye-witness) has specifically deposed that the appellant was present with knife and he was pulling out knife from the abdomen of her husband and thereafter the accused fled away from the place of incident. She has also stated that injured was initially taken to Kishanpur Hospital and thereafter to Supaul Hospital from where the injured was referred to Darbhanga Hospital and while the injured was being





taken to Darbhanga in the ambulance, on the way, he succumbed to the injuries. The said witness has also identified the accused in the Court. At this stage, the deposition given by PW-6 (Dr. Mahendra Choudhary) is also required to be examined closely. PW-6 has specifically deposed as under:-

“External findings (On appearance)

Fair complexion, both eye closed, mouth closed & rigor mortis present on all four limbs.

(1) Vertical sharp cutting stab wound upper abdomen right side 1<sup>1/2</sup>” & 1” deep to abdomen caused by flatted pointed sharp cutting weapon, caused of C.R. failure due to external and internal bleeding hemorrhage and shock.

Time elapsed since death 24 hours. This PM report is in my pen & signature marked ext-1

Death caused by excess bleeding also”

**10.** Thus, from the aforesaid deposition given by the Doctor who had conducted the *post mortem* examination of the dead body of the deceased, it is revealed that the medical evidence supports the version given by PW-7 (eye-witness).

**11.** At this stage, it is also relevant to note that in the written complaint given by the informant, she had specifically stated that after giving blow on the abdomen of the husband of the informant, the appellant/accused fled away from the said place and thereafter he went to Pirganj at her maternal house and also misbehaved with the sister of the informant. However, when her



sister raised *hulla*, the accused fled away from the said place also. It transpires from the record that sister of the informant, namely Sarbari Begum, has been examined as PW-2 by the prosecution and the said witness has specifically deposed in Para-1 of her examination-in-chief that on the day of incident at 03:00 p.m., she was at her home. The accused came in her courtyard and called out by her name. She came out of the house. Then, he entered the courtyard with a knife. When he tried to grasp her, she raised an outcry. The accused fled away after the villagers gathered around. After that, she came to know that the accused had stabbed her brother-in-law.

**11.1.** The said witness was cross-examined by the defence.

**12.** Thus, we are of the view that the second incident referred in the written complaint given by PW-7 is also supported by PW-2.

**13.** At this stage, we would also like to examine the deposition given by PW-8 Gonda Ram Soi (Investigating Officer) who had conducted the investigation. As per the deposition given by PW-8, after receiving the information, he reached the place of occurrence and prepared the Inquest Report. Thereafter, written complaint given by the informant was received and he recorded the



statement of the witnesses, examined the place of occurrence and collected the evidence during the course of the investigation. In the meantime, the said witness arrested the appellant herein on 13.05.2016. In fact, the appellant confessed before the said Police Officer his guilt. Here also, it is relevant to note that the defence did not cross-examine the said witness.

14. From the Trial Court record, it would emerge that as the defence counsel was not appearing in the Court, the Trial Court provided the services of defence panel advocate to the appellant/accused on his request to defend his case and thereafter, on 28.08.2017, further statement of the appellant/accused under Section 313 of the Code came to be recorded. It is relevant, at this stage, to refer the said statement which reads as under:-

“ प्रश्न :- क्या आपने गवाहो का गवाही सुना है?

उत्तर :- जी हाँ ।

प्रश्न :- आपके विरुद्ध आरोप है की आपने मुदया के पति मो तसरीफ के पेट में चाकू मार दिया जिस कारण इलाज के दौरान उसकी मौत हो गया । आपको क्या कहना है? (The allegation against you is that you stabbed informant's husband Md. Tasrif in the abdomen due to which he died during treatment. What do you have to say in your defence?)



उत्तर :- हाँ मैंने मार दिया । बहुत दिन से झंझट चलता था इसलिए मार दिया । (Yes, I killed him. The quarrel had been going on for a long time, that is why I killed him.)

प्रश्न :- सफाई में क्या कहना है ?

उत्तर :- कुछ नहीं कहना है। ”

15. Thus, from the aforesaid statement given by the appellant/accused under Section 313 of the Code, it reveals that he has admitted his guilt and confessed before the Court that he had killed the deceased because of some quarrel.

16. We have re-appreciated the entire evidence led by the prosecution. We have also gone through the statement given by the accused under Section 313 of the Code. Now, it is the contention of the learned counsel for the appellant that the Trial Court has committed an error while solely relying upon the confession made by the appellant/accused before the Court as conviction cannot be made only on that basis.

17. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **State of Maharashtra (supra)**, wherein the Hon'ble Supreme Court has observed, in **Para-51**, as under:-

*“51. That brings us to the question whether such a statement recorded under Section 313 of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made*



*by the accused will not be evidence stricto sensu. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes sub-section (4) which reads:*

*“313. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.”*

*Thus the answers given by the accused in response to his examination under Section 313 can be taken into consideration in such inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See State of Maharashtra v. R.B. Chowdhari [(1967) 3 SCR 708 : AIR 1968 SC 110 : 1968 Cri LJ 95] . This Court in the case of Hate Singh Bhagat Singh v. State of M.B. [1951 SCC 1060 : 1953 Cri LJ 1933 : AIR 1953 SC 468] held that an answer given by an accused under Section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In Narain Singh v. State of Punjab [(1963) 3 SCR 678 : (1964) 1 Cri LJ 730] this Court held that if the accused confesses to the commission of the offence with which he is charged the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge bench answered the question it would be advantageous to reproduce the relevant observations at pages 684-685:*

*“Under Section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation — if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may ‘be taken into consideration’ at the enquiry or the trial. If the accused person in his examination under Section 342 confesses to the commission of*



*the offence charged against him the court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety.”*

*(emphasis supplied)*

*Sub-section (1) of Section 313 corresponds to sub-section (1) of Section 342 of the old Code except that it now stands bifurcated in two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with his examination under clause (b) may also be dispensed with. Sub-section (2) of Section 313 reproduces the old sub-section (4) and the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforestated observations apply with equal force.”*

**18.** In the case of **Mohan Singh (supra)**, the Hon’ble Supreme Court has observed, in **Para-27 and 30**, as under:-

*“27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that statement under Section 313 CrPC of the accused can either be relied in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See Nishi Kant Jha v. State of Bihar [(1969) 1 SCC 347 : AIR 1969 SC 422] : (SCC pp. 357-58, para 23)*

*“23. In this case the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is*



*contradicted by the other evidence. According to this statement, the injury which the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13-10-1961 negatives both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report this knife could have been the cause of the injuries on the victim. In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Exhibit 6 the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime."*

**30.** *The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. As held in the case of Nishi Kant [(1969) 1 SCC 347 : AIR 1969 SC 422] by this Court, if the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his*



*statement under Section 313 CrPC cannot be made the sole basis of his conviction.*

**19.** In the case of **Dharnidhar (supra)**, the Hon'ble Supreme Court has observed, in **Para-28 to Para-32**, as under:-

*“28. It is a settled principle of law that the statement made by the accused under Section 313 CrPC can be used by the court to the extent that it is in line with the case of the prosecution. The same cannot be the sole basis for convicting an accused. In the present case, the statement of the accused before the court, to some extent, falls in line with the case of the prosecution and to that extent, the case of the prosecution can be substantiated and treated as correct by the court. The legislative intent behind this section appears to have twin objects. Firstly, to provide an opportunity to the accused to explain the circumstances appearing against him. Secondly, for the court to have an opportunity to examine the accused and to elicit an explanation from him, which may be free from the fear of being trapped for an embarrassing admission or statement.*

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

*30. In Hate Singh Bhagat Singh v. State of Madhya Bharat [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] , while dealing with Section 342 of old CrPC equivalent to Section 313 of present CrPC observed that answer of the accused given can be used in other enquiries or trials for other offences.*





31. *In Narain Singh v. State of Punjab [(1964) 1 Cri LJ 730 : (1963) 3 SCR 678] a three-Judge Bench of this Court held as under : (Cri LJ p. 733, para 4)*

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

32. *Following the law laid down in Narain Singh case [(1964) 1 Cri LJ 730 : (1963) 3 SCR 678] the Apex Court in State of Maharashtra v. Sukhdev Singh [(1992) 3 SCC 700 : 1992 SCC (Cri) 705 : 1992 Cri LJ 3454] further dealt with the question whether a statement recorded under Section 313 CrPC can constitute the sole basis for conviction and recorded a finding that the answers given by the accused in response to his examination under Section 313 CrPC of 1973 can be taken into consideration in such an inquiry or trial though such a statement strictly is not evidence and*



*observed in para 52 thus : (Sukhdev Singh case [(1992) 3 SCC 700 : 1992 SCC (Cri) 705 : 1992 Cri LJ 3454] , SCC p. 744)*

*“52. Even on first principle we see no reason why the court could not act on the admission or confession made by the accused in the course of the trial or in his statement recorded under Section 313 of the Code.”*

*It is thus well established in law that admission or confession of the accused in the statement under Section 313 CrPC recorded in the course of trial can be acted upon and the court can rely on these confessions to proceed to convict him.”*

**20.** In the case of **Ashok Kumar (supra)**, the Hon’ble Supreme Court has observed, in **Para-29** and **Para-32**, as under:-

*“29. Now we may proceed to discuss the evidence led by the prosecution in the present case. In order to bring the issues raised, within a narrow compass we may refer to the statement of the accused made under Section 313 CrPC. It is a settled principle of law that dual purpose is sought to be achieved when the courts comply with the mandatory requirement of recording the statement of an accused under this provision. Firstly, every material piece of evidence which the prosecution proposes to use against the accused should be put to him in clear terms and secondly, the accused should have a fair chance to give his explanation in relation to that evidence as well as his own versions with regard to alleged involvement in the crime. This dual purpose has to be achieved in the interest of the proper administration of criminal justice and in accordance with the provisions of CrPC. Furthermore, the statement under Section 313 CrPC can be used by the Court insofar as it corroborates the case of the prosecution. Of course, conviction per se cannot be based upon the statement under Section 313 CrPC.*

*32. The statement of the accused can be used to test the veracity of the exculpatory part 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 an*



*evidence in the case. The provisions of Section 313(4) CrPC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in as evidence for or 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 of a statement under Section 313 CrPC as an evidence 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.”*

**21.** From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that the use of a statement under Section 313 of the Code as an evidence is permissible as per the provisions of the Code, but has its own limitations. The Courts may rely upon 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, the statement made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Further, the statement made by the accused under Section 313 of the Code can be used by the Court to the extent that it is in line with the case of the prosecution and the same cannot be the sole basis for convicting an accused.

**22.** Keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court, if the evidence led by the



prosecution, in the present case, as well as statement of the appellant recorded under Section 313 of the Code are carefully examined, it would reveal that PW-7, who is an eye-witness to the incident in question, has specifically stated about the role played by the appellant herein. In written complaint given by the informant, specific allegations have been levelled against the appellant. PW-7 (informant) has not been cross-examined by the defence. Further, the version given by the informant, i.e. PW-7, is corroborated by the deposition given by PW-6 (Doctor) who had conducted the *post mortem* examination of the dead body of the deceased. Thus, we are of the view that the medical evidence supports the version given by the eye-witness. It is also relevant to note that there are two separate incidents narrated by the informant in the written complaint. First incident is with regard to giving the blow with knife on the abdomen of the husband of the informant and second incident is with regard to misbehaving with the sister of the informant at a different place. Thus, so far as the second incident narrated in the written complaint is concerned, PW-2 has also supported the version of the prosecution.

**22.1.** Now, keeping in view the aforesaid evidence, if the statement given by the appellant/accused under Section 313 of the Code is carefully examined, it transpires that he has confessed



before the Court while giving the statement that he has killed the deceased because of some quarrel. That part of the confession of the appellant/accused while giving his statement under Section 313 of the Code is in line with the case of the prosecution. Thus, the present is not a case where the appellant/accused has been convicted solely relying upon his confession before the Court while giving his statement under Section 313 of the Code.

**23.** In view of the aforesaid discussion, we are of the view that the Trial Court has not committed any error while passing the impugned judgment of conviction and order of sentence. Hence, no interference is required in the present appeal.

**24.** Accordingly, the present appeal is dismissed.

**(Vipul M. Pancholi, J)**

**(Dr. Anshuman, J)**

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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