



THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Appellate Jurisdiction)

Dated : 21st September, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl. A. No.15 of 2022

Appellant : Rabin Rai

versus

Respondent : State of Sikkim

Appeal under Section 374(2) of the
Code of Criminal Procedure, 1973

Appearance

Mr. N. Rai, Senior Advocate (Legal Aid Counsel) for the Appellant.

Mr. Yadav Sharma, Additional Public Prosecutor with Mr. Sujan Sunwar, Assistant Public Prosecutor for the State-Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. By its Judgment dated 29-03-2022, in Sessions Trial Case No.02 of 2021 (*State of Sikkim vs. Rabin Rai*), the Court of the Learned Sessions Judge, West Sikkim, at Gyalshing, convicted the Appellant under Section 304 Part II of the Indian Penal Code, 1860 (hereinafter, the "IPC"). He was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹ 20,000/- (Rupees twenty thousand) only. The sentence of fine bore a default clause of imprisonment. Aggrieved, the Appellant/Accused now assails the Judgment of Conviction and the Order on Sentence.

2. The First Information Report (for short, "FIR"), Exhibit 1, was lodged by P.W.1, the younger brother of the deceased, informing that on the night of 07-09-2020, the deceased was brutally assaulted by the Appellant/Accused *sans* reason. In the morning her children found her in a state of unconsciousness with



injuries on her body. She was taken to the Soreng Hospital, where her condition deteriorated, hence the prayer for justice. Based on Exhibit 1, the Police Station registered a case against the Appellant under Section 325 IPC, on 08-09-2020, which was investigated into by P.W.16, the Investigating Officer (I.O.). On completion of the investigation, Charge-Sheet was submitted under Sections 325 and 304 IPC against the Appellant.

3. The Prosecution case is that the Appellant and the victim were married in the year 2001-2002. The Appellant was a taxi driver, while the victim owned a grocery store. The victim had two daughters from her previous marriage and one son from the Appellant. On 07-09-2020 at around 1230 hours, the Appellant along with his friends P.Ws 2, 4, 5 and 6 went on a picnic by the river side where they partook of alcohol. From there, at around 1730 hours they proceeded to a hotel at Sombaria where they again had alcohol. Later, in the evening they parted ways to return to their respective homes. When the Appellant reached home an argument broke out between him and his wife, during which the Appellant assaulted the victim with slaps and blows, bruising her face and body and causing her to fall on the floor. Thereafter, he went to sleep. The next morning, on 08-09-2020, he took his taxi and went to work scant realising that the victim was unconscious. At around 08.30 a.m., when P.W.8, their son returned home after opening the shop, he saw his mother had bruises on her face and body and informed his sister P.W.7, who after a while sought help from P.W.2, the Appellant's friend. At around 09.30 a.m., both P.W.7 and P.W.8 tried to wake their mother, in vain. Thereafter, they called their father over the phone, who came home later in the afternoon with medicines but returned to his work. Meanwhile,



P.W.7 went to her maternal uncle and informed him of the incident. At around 03.00 p.m., the Appellant came home and evacuated the victim to the Health Centre at Soreng with the help of P.W.2. The victim was referred to the Central Referral Hospital (CRH), Manipal, Gangtok. On 08-11-2020, the victim succumbed to her injuries at the Health Centre, Soreng after having been in a persistent vegetative state from 08-09-2020.

4. Before this Court, Learned Senior Counsel for the Appellant advanced the argument that the Appellant was only guilty of the offence of hurt and not of culpable homicide as the victim had passed away two months after the incident. That, Exhibit 8, the Medical Report of the victim is revelatory of the fact that the victim had sustained only grievous injuries, duly confirmed by P.W.11, the Doctor who had examined her immediately after the alleged incident. The Appellant's Medical Report, Exhibit 11 does not reveal any injuries on his body that point to a free fight between the Appellant and his wife. Exhibit 16, communication addressed by the I.O. to the Learned Judicial Magistrate on 09-11-2020 reveals that Section 304 IPC was added to the Charge against the Appellant only on the death of the victim on 08-11-2020. That the Appellant, cannot be foisted with a Charge under Section 304 IPC when he was not responsible for the victim's death. The evidence of P.W.2 stating that the Appellant's children had told him that their mother had been beaten by their father, is an improved statement which is not found in his statement under Section 161 Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C"). The evidence of P.W.7, the victim's daughter also reveals that when she took the keys for the shop from their parent's room she saw her mother asleep on the bed and did not disturb her. She did not



notice anything untoward nor did she mention that she had seen injuries on her mother's face or body. P.W.3, the Chief Medico Legal Consultant, who conducted the autopsy on the body of the deceased on 08-11-2020 vide Exhibit 5, failed to mention the cause of death of the victim, hence there is no conclusive proof that her death was caused by the injuries. P.W.8, the son of the victim also noticed that his mother was sleeping when he entered his parents room, it was only when he entered the room for the second time that he saw blood on her hands and her mouth. In such a circumstance the Appellant cannot be held responsible for the injuries. Besides, as he is a child witness his evidence needs corroboration. This submission was fortified by relying on ***State of U.P. vs. Ashok Dixit and Another***¹. That, P.W.11, Dr. Bijaya Subba has clearly admitted under cross-examination that the injuries sustained by the deceased could have been sustained during a fall on a rough surface.

(i) It was further contended that the Learned Trial Court failed to take into consideration the responses of the Appellant made on his examination under Section 313 Cr.P.C. That, in response to questions no.12, 13, 21, 24 and 52, he has categorically claimed his innocence. Contending that the Section 313 Cr.P.C. statement of the Appellant is not in compliance of the procedure prescribed which has thereby caused prejudice to the Appellant, Learned Senior Counsel garnered succour from the decision of this Court in ***State of Sikkim vs. Suren Rai***². That, the Division Bench of this Court held therein that Section 313 of the Cr.P.C. is an important section of the Cr.P.C. which requires the

¹ (2000) 3 SCC 70

² SLR (2018) SIKKIM 629



Court to put questions to the Accused to enable him to “*personally*” explain any of the circumstances appearing in evidence against him. The statement is not to be taken on oath and the answers given by the Appellant may be taken into consideration in such enquiry or trial and put in evidence for or against him in any other enquiry into, or trial. It was also specified that every material circumstance must be questioned separately providing fair, proper and sufficient opportunity to the Accused to explain the circumstances appearing against him. Moreover, the questions are required to be short and each new incriminating fact must be separately put to the Accused. These guidelines having been flouted by the Learned Trial Court as several questions have been rolled into one question making it difficult for the Appellant to comprehend the meaning of the question. Reliance was also placed on ***Sanatan Naskar and Another vs. State of West Bengal***³, on this point and it was urged that the judgment specifically lays down that, all incriminating evidence must be put to the Accused so as to provide him with an opportunity to explain incriminating circumstances appearing against him. He must also be permitted to put forward his own version or reasons. It was observed that Section 313(4) Cr.P.C. explicitly provided that the answers given by the Accused may be taken into consideration in such enquiry or trial. That, as the case is one of circumstantial evidence, it is a settled position of law that the Appellant can be penalized only if the Prosecution is able to prove beyond a reasonable doubt that the chain of events and circumstances point definitely towards the involvement and guilt of the Accused. On this aspect reliance was

³ (2010) 8 SCC 249



placed on ***Vijay Shankar vs. State of Haryana***⁴. That, in the instant case the Prosecution has not even been able to establish that the Appellant had inflicted the injuries on the deceased. That, even if the Court is inclined to observe that the Appellant is the perpetrator, the offence would be only of grievous hurt under Section 325 of the IPC and not under Section 304 of the IPC. To buttress this submission, reliance was placed on ***Rupinder Singh Sandhu vs. State of Punjab and Others***⁵. That, where there are two views in a matter, the view in favour of the Accused is to be taken by the Court as held by the Supreme Court in ***State of Uttar Pradesh vs. Nandu Vishwakarma and Others***⁶. Hence, the conviction and sentence against the Appellant be set aside and the Appellant be acquitted of the offence. Should the Court not be inclined to acquit him then he be convicted only under Section 325 of the IPC.

5. Learned Additional Public Prosecutor stridently opposing the contentions canvassed by Learned Senior Counsel for the Appellant, sought to convince this Court that the evidence of P.W.7 unerringly points to the guilt of the Appellant, who after failing to wake her mother, called the Appellant on his phone. He responded by telling her that the whole night the victim had irritated him which points to him being the perpetrator of the offence. The evidence of P.W.7 links the offence to the Appellant also for the reason that she had seen him in the morning of 08-09-2020 between 07.30 to 08.00 a.m. at their home and she along with her brother P.W.8, saw him get into his taxi and drive towards the bazar. P.W.8, the son had seen the Appellant and his mother asleep in their bed room at around 07.30 a.m., when he returned

⁴ (2015) 12 SCC 644

⁵ AIR 2018 SC 2395

⁶ (2009) 14 SCC 501



home after helping his sister open the grocery shop. The statements of P.Ws 7 and 8 in this context have not been demolished under cross-examination. Besides, P.Ws 2, 4, 5 and 6, the persons with whom the Appellant had spent the evening have stated that they all went to their respective homes as did the Appellant, thereby lending credence to the evidence of P.W.7 and P.W.8 regarding the presence of the Appellant in his home on the night of the incident. The evidence thus furnished also established that the Appellant had spent the night with the victim in their home. P.W.14, Dr. Pranav Rai, of Central Referral Hospital, Manipal, Gangtok has on examination of the victim revealed the gravity of the injuries on her. He has given the entire history of how on 09-09-2020 on examining the victim he had found her unconscious which necessitated a brain surgery post which she was placed on ventilator support. That, she never recovered from the condition of unconsciousness. It was urged that the victim's death two months after the injuries were inflicted was a clear indication that the cause of death was due to the injuries inflicted by the Appellant. That, the I.O. under cross-examination deposed that noises emanating from their parents room could not be heard by P.Ws 7 and 8, their room being located at a distance from their parents room. In fact, a practical test was also conducted by the I.O. during investigation as revealed in his cross-examination, which conclusively proved that P.Ws 7 and 8 could not hear any sounds from their parents room. The burden of proof set on the Prosecution has been clearly satisfied. Hence, the Judgment of the Learned Trial Court requires no interference.

6. Before delving into the merits of the case, I am of the considered opinion that this Court ought to first consider and



discuss the object and purpose of Section 313 of the Cr.P.C. A Division Bench of this Court in ***Suren Rai*** (*supra*) in Paragraph 90 held as follows;

“90. Section 313 Cr.P.C is an important section of the Code of Criminal Procedure. Section 313 Cr.P.C requires the Court to put questions to the accused for the purpose of enabling the accused “*personally*” to explain any circumstances appearing in the evidence against him. The section enables a direct interaction between the Court and the accused for the sole purpose of allowing the accused to provide his explanation to each and every incriminating circumstance appearing in the evidence. The statement is not to be taken on oath which is prohibited under sub-section (3) thereof. The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them. The answers, however, given by the accused may be taken into consideration in such enquiry or trial, and put in evidence for or against him in any other enquiry into, or trial for, any other offence which such answers may tend to show that he had committed. Under Section 313 Cr.P.C the accused has a duty to furnish explanation in his statement regarding any incriminating material that has been produced against him. It is not sufficient compliance with the section to generally ask the accused what he has to say after having heard the prosecution evidence. Every material circumstance must be questioned separately. Providing fair, proper and sufficient opportunity to the accused to explain the circumstances appearing against him should be the whole object of the Court in compliance with Section 313 Cr.P.C. The Court must be particularly sensitive when the accused is ignorant or illiterate and may not understand the language of Court. The questions must be simple and understandable even to an illiterate and ignorant of the law. Preferably the Court should avoid using legal language and keep the questions simple especially while dealing with people who are uneducated, illiterate, ignorant or simple. The question should be short and each new incriminating fact must be separately put to the accused. If the accused is unable to understand the language of the Court, the Court must translate the question in the language understood by the accused. It is obligatory on the accused while being examined to furnish explanation with respect to incriminating circumstances against him and the Court is duty bound to note such explanation even in a case of circumstantial evidence. Section 313 Cr.P.C. was enacted for the benefit of the accused.”



(i) The Supreme Court in **Nagraj** vs. **State represented by Inspector of Police, Salem Town, Tamil Nadu**⁷ has held that;

“15. In the context of this aspect of the law it has been held by this Court in *Parsuram Pandey v. State of Bihar* [(2004) 13 SCC 189 : 2005 SCC (Cri) 113] that Section 313 CrPC is imperative to enable an accused to explain away any incriminating circumstances proved by the prosecution. It is intended to benefit the accused, its corollary being to benefit the court in reaching its final conclusion; its intention is not to nail the accused, but to comply with the most salutary and fundamental principle of natural justice i.e. audi alteram partem, as explained in *Asraf Ali v. State of Assam* [(2008) 16 SCC 328 : (2010) 4 SCC (Cri) 278].
.....”

(ii) In **Sanatan Naskar** (*supra*), at Paragraphs 21, 22 and 23 it was held that;

“21. The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 CrPC 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 the judgments which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 CrPC.

22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC 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 therewith, 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 simpliciter 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-

⁷ (2015) 4 SCC 739



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.

23. 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) CrPC explicitly provide 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.”

(iii) The scope and object of Section 313 of the Cr.P.C. have been elucidated with clarity in the above judgments. The examination of an Accused under Section 313 Cr.P.C. is not a mere formality and is intended mainly for the benefit of the Accused. It is also to assist the Court in arriving at the truth of the matter. As far back as in 1951 [See **Tara Singh** vs. **The State**, AIR (38) 1951 SC 441], it was observed that the correct method of performing the duty under Section 342 Cr.P.C. (now Section 313 Cr.P.C.) is not to ask generally if the Accused has anything to say about the Charges or the evidence against him but to **place before him separately, one**



by one, in short sentences all the vital and salient parts of the evidence appearing against him in the simplest possible language so that he can realise what things he has got to explain.

(iv) It may relevantly be pointed out here that sub-section (5) inserted in Section 313 Cr.P.C. by the Act of 2009, enables the Learned Trial Court Judge to take the assistance of the Public Prosecutor and the Defence Counsel, for preparing the questions under Section 313 Cr.P.C, which are to be scrutinised by the Learned Trial Court Judge and adopted with or without modifications. Filing of written statement by the Accused to the questions put by him suffices to comply with the said provision of law.

(v) On careful perusal and consideration of the questions put to the Appellant under Section 313 Cr.P.C., it is evident that the sentences framed for examining the Appellant are in paragraphs, with three four questions rolled into one single question. It can reasonably be presumed that the questions were incomprehensible to the Appellant. Besides, the answer to every such question has not been recorded by the Learned Trial Court. Not only would the elaborate questions confound the Appellant but it would also cause him serious prejudice.

7. In the said circumstances, the matter is remanded back to the Court of the Learned Sessions Judge, West Sikkim, at Gyalshing, for re-trial, from the stage of examination of the Appellant under Section 313 of the Cr.P.C., in terms of the guidelines put forth by the Supreme Court in the catena of cases referred to and by this Court in **Suren Rai** (*supra*), bearing in mind the object and purpose of the provision.



- 8.** The entire exercise, as ordered above, is to be completed within a month from today.
- 9.** The case be restored to its original number in the File of the Learned Trial Court.
- 10.** Criminal Appeal stands disposed of accordingly.
- 11.** Copy of this Judgment be forwarded to the Learned Trial Court immediately for information and compliance, along with its records.

(Meenakshi Madan Rai)
Judge
21-09-2023

Approved for reporting : **Yes**