2026:AHC:132529-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2343 of 1989

Ram Autar And Others .....Appellants(s)

Versus

State .....Respondents(s)

Counsel for Appellant(s)	:	Amit Saxena, Kunwar Bhaskar Parihar, Vikas Sharma
Counsel for Respondent(s)	:	D.G.A.

Court No. - 44

HON'BLE SIDDHARTHA VARMA, J.
HON'BLE JAI KRISHNA UPADHYAY, J.

1. Heard Sri Vikas Sharma and Sri Kunwar Bhaskar, learned counsel for the appellants and Sri Amit Sinha, learned A.G.A. for the State.

2. The instant Criminal Appeal has been filed against the judgement and order dated 07.12.1989 passed by the Ist Additional District & Sessions Judge, Kanpur Nagar, convicting the appellants Ram Autar, Rakesh Kumar Misra @ Doctor, Laddan Misra @ Mahesh and Smt. Rajdei under Sections 498A, 302, 323 of the Indian Penal Code *(hereinafter referred to as "I.P.C.")*, Police Station – Maharajpur, District - Kanpur Nagar.

3. On the 13th of January, 1986 at 10:00 AM, a first information report *(hereinafter referred to as "F.I.R.")* was lodged under Section 498A and 328 of I.P.C. alleging that the brother of the first informant

(Ganga Ram Sevak Pandey) had alleged that his sister Vijay Laxmi, who was married to one Rakesh Mishra @ Doctor in the summer of 1984, was all the time being tortured by the in-laws. After her marriage she had gone to her maternal home *(maika)* two or three times only. Everytime she had visited her *maika*, she used to complain about being tortured and beaten at her in-laws' house *(sasural)*. She, deceased, had told him that the in-laws were saying that her brothers may give money to the husband of Vijay Laxmi to do business or her brothers may make the husband of Vijay Laxmi a partner in their business. On 12.01.1986, he had stated that his brother Ganga Charan and the son of his other sister had gone to the house of Vijay Laxmi to bring her to her maternal home *(mayka)*. The son of the other sister was named Vijay Kishor @ Munna. When they asked the mother-in-law to send Vijay Laxmi to her mayka, she outrightly refused and again insisted on the demands which she had earlier made. Upon this Ganga Charan, the brother of the first informant, returned home. However, the *bhanja* i.e. Vijay Kishor @ Munna was left behind. On the next day i.e. on 13.01.1986 at around 10:00 AM, the *bhanja* went to the house of the first informant and informed the first informant and his brothers that his *mausi* i.e. Vijay Laxmi was not being permitted to go to her *maika* and that she was also being beaten by the in-laws. He also indicated that they were giving Vijay Laxmi something to eat and were saying that if she did not eat what was being given to her then they would beat her even more. The *bhanja* had stated that when he tried to intervene then he was also given a beating by the in-laws of Vijay Laxmi. Upon this, the first informant reached the matrimonial

house of Vijay Laxmi at Bausar, where he was informed that Vijay Laxmi was suffering from cholera. However, when the first informant inquired about the well being of Vijay Laxmi, then she informed that the in-laws had given her something to eat and because of which her tongue was faltering and she was not feeling very well.

4. To make the case look stronger, the first informant stated that the demands which were made by the in-laws were made in the presence of Dinesh Kumar, Shravan Kumar Shukla and Shriprakash Mishra. He had stated that upon the information reaching the mayka, the other two brothers i.e. Ganga Prasad Pandey and Ganga Sharan Pandey also reached Bausar, the matrimonial home of the sister. Upon seeing that the sister was not very well, Ganga Prasad Pandey and Ganga Sharan Pandey, the two brothers who had reached Bausar, made arrangements for transportation and took their sister to Kanpur. He himself i.e. Ganga Ram Sevak had come to the police station to get the F.I.R. lodged. The sister of the first informant, upon reaching Kanpur, however died on 13.01.1986 at 07:00 PM. The case was thereafter being investigated under Section 498A and 302 of the I.P.C. The inquest of the deceased was done in the presence of five witnesses namely Ganga Prasad, Shyam Shankar, Shyam Sundar, Arvind Kumar and Smt. Rekha Devi. Ganga Prasad was one of the brothers of the deceased. In the opinion of the panches, it was stated that the death had occurred on account of administration of poison. The inquest, which had commenced at 11:30 AM on 14.01.1986, got concluded on the very same day by 12:30 PM. Thereafter, the body was sent for postmortem. The postmortem report

was dated 15.01.1986 and was finally prepared at 03:45 PM. The two injuries which were on the body of the deceased were

> *"(i) Abrasion 2½ cm x 2 cm on (Rt) Paraspinal region 2 cm lateral to midline at the level of 10th & 11th Dorsal Spine.*
>
> *(ii) Abrasion 3 cm x 2 cm on the left Paraspinal region 3 cm lateral to midline at the level of 11th & 12th Dorsal Spine.*

5. Also, since the *bhanja* i.e. Vijay Kishor @ Munna had alleged that he was also injured while the in-laws were beating the deceased, his injuries were also examined and an injury report was prepared on 13.01.1986 itself. The three injuries, which were found on Vijay Kishor, are being reproduced here as under:

> *"(i) Bruise on left side of moxbridge 1 cm medial to medial angle of left eye. Size 2.1 cm x 1.8 cm.*
>
> *(ii) Bruise in the ant. aspect of Rt. Thigh & above Rt. knee joint size 4.6 cm x 2.1 cm some bluish in colour*
>
> *(iii) e/o pain in back*
>
> *Opinion:- Injuries No. i & ii are simple caused by some hard & blunt object and duration is about one day*

6. The viscera report, which was sent after the conclusion of the post-mortem, was received on 27.10.1986 and in the stomach, portion of intestine, kidneys and spleen, the poison "zinc phosphide" was found.

7. After the police had submitted its report and the case was taken cognizance of by the Sessions Court, charges were framed under Section 302 and 498A of I.P.C. for the killing and torturing of the deceased vis-a-vis Rakesh Kumar Misra @ Doctor, Laddan Misra @ Mahesh *(Jeth)*, Ram Autar (Father-in-law) and Smt. Rajdei (Mother-in-law). For the injuries caused to Vijay Kishor @ Munna, charges were framed under Section 323 of I.P.C. Upon the commencement of the trial from the side

of the prosecution as many as ten witnesses were examined. The PW-4, Dr. A.K. Tiwari, was brought as a court witness also.

8. PW-1, Ganga Sewak, was the brother of the deceased and had got the F.I.R. lodged and he deposed about the incident in question resulting in death of his sister. He had proved the written report Exhibit Ka-1 and he had also proved the F.I.R. Exhibit Ka-12. He had testified as to how, to begin with, on the 12.01.1986, his younger brother Ganga Charan and bhanja, Vijay Kishor @ Munna, had gone to fetch his sister. When the in-laws had refused to send the sister, then Ganga Charan had gone back to his house while the nephew had stayed back. The PW-1 had again told as to how the nephew came running to him on 13.01.186 and told about the entire incident. He also told about the injuries he had sustained. Upon getting the news, he alongwith his younger brothers Ganga Prasad and Ganga Charan reached the matrimonial home of the deceased where he found Kamta Mishra and Rakesh Kumar were present who, upon being asked, had told him that she was suffering from cholera. When he reached his sister she also told him that she was suffering from cholera and then he had testified that he went to a doctor called Dr. Ramesh Kumar Sharma who had refused to treat her as he could not understand the illness. When the doctor scolded Vijay Laxmi, the deceased, and had asked her as to what exactly had happened then she had stated that her husband and her mother-in-law had given her some medicine because of which her condition had deteriorated. Thereupon, the other brother of the deceased and the first informant i.e. Ganga Prasad took the sister on a tempo to Kanpur and on the way she died. He had stated that to the

scribe he had told that Vijay Laxmi was administered some medicine by her mother-in-law and her husband, but why the specific allegation had not been mentioned in the F.I.R., he did not know. He had, however, stated that when he had reached the matrimonial home of his sister, she was very much speaking. Vijay Kishor @ Munna, *bhanja*, quite often used to go to the sister's matrimonial home, but he had never informed him i.e. PW-1 about the maltreatment which was being meted out to his *mausi*. He had stated that Rakesh Kumar Mishra @ Doctor and Vijay Laxmi used to stay in a separate unit of the house. He had also stated that there was no froth coming out of the mouth of the deceased while she was alive or even after she had died.

9. PW-2, Shri Kant Shukla, was the Executive Magistrate, Kanpur. He had deposed about the panchayatnama being prepared by him relating to the dead-body of Vijay Laxmi. He was also the person who had sent the body for postmortem.

10. PW-3, Vijai Kishore, was the *bhanja*, who was related to the deceased and the PW-1, and had deposed about the fact relating to his presence at the time of the beating of Vijay Laxmi by the family members of Rakesh Kumar Misra @ Doctor. He had also detailed about the fact that Vijay Laxmi was forced to eat something and it had later on resulted in her death. Even though the PW-1 had stated that the *bhanja* had stayed back on 12.01.1986, he had stated that after his *mama* had left the matrimonial home of the deceased, he had also returned home and on his return journey he had visited some farmer to get wheat etc. which he intended to sell for weiging and thereafter he had gone back to

his *mausi's* house where he witnessed that the *mausi* was being beaten and when he intervened, he was also beaten by them with *danda* (stick). His nose was therefore bleeding. However when the in-laws of the *mausi*, the next morning, went for answering the call of nature, he ran away from the house of his *mausi* and went straight to the house of PW-1. He informed that in the night Rakesh Kumar Misra @ Doctor, husband of the deceased, had dissolved some medicine in water and had given it to Vijay Laxmi. Despite the fact that *mausi* was unable to drink that medicine, Rakesh Kumar Misra had still administered it to her. He had stated that when he had come back in the evening on 12.01.1986 then no one by the name of Kamta Mishra was there at the house of his *mausi*. About the medicine which was administered, questions were put to him and he had stated that he had no knowledge as to what kind of medicine it was, but the husband of his *mausi* had spread her mouth and had forcefully poured it into the mouth. Whether her *mausi* had resisted, he did not know. He had not seen the colour of the medicine. After the medicine was administered, water was also given to his *mausi*.

11. PW-4, Dr. A.K. Tiwari, was the doctor who had proven the post-mortem report, Exhibit Ka-7, which was prepared by him. He had stated that the injuries which were there on the body of the deceased were not serious in nature and could have been caused because of the fact that she was taken on a tempo to the hospital. He had stated that the viscera which was preserved, was sealed in his presence and the viscera was sent to the C.M.O. Office. What number was there on the preserved bottle, he did not know. When the bottle was taken to the Office of the C.M.O., he

did not know and where from the Office of the C.M.O. the bottle had gone that also he did not know.

12. PW-5 was Dr. D.R. Verma who had examined the injuries of the *bhanja*, Vijay Kishor @ Munna.

13. PW-6, Dr. Ramesh Chandra, was the doctor to whom the PW-1 had taken his sister in the evening on 12.01.1986. This doctor was taken to the house of the sister i.e. Vijay Laxmi and he had advised her to be taken to Kanpur for proper treatment.

14. PW-7 was Constable Raj Narayan Singh who had proved the G.D. entry about the arrest of Ram Autar, father-in-law of the deceased.

15. PW-8, Chitrangad Singh, was the Investigating Officer. He had clearly stated that the PW-3 Vijay Kishor @ Munna had stated in his statement under Section 161 of Cr.P.C. that Kamta Mishra was present at the time when the beating etc. of the deceased was being done. He had stated that he had not taken any statement of the chemical examiner who was to conduct the test on the viscera. The viscera was sent to the C.M.O. Office by Constable Rajpal, PW-10.

16. PW-9 was Constable Upendra Kumar Dubey who had proven the chick, prepared by him.

17. PW-10 was Constable Rajpal who had stated that he had taken the sealed bottle from the Office of the C.M.O. on 21.03.1986 to the Forensic Science Laboratory.

18. Dr. A.K. Tiwari, PW-4, who had conducted the post-mortem was called again as a court witness and had told about the fact that zinc phosphide was responsible for the death of the deceased. Thereafter, the

statement of the four accused persons namely Ram Autar, Rakesh Kumar Misra @ Doctor, Laddan Misra @ Mahesh and Smt. Rajdei were recorded under Section 313 of Cr.P.C. Upon the conclusion of trial when the judgment of conviction was passed by the learned Ist Additional District and Sessions Judge, Kanpur Nagar on 07.01.1989, the instant Appeal was filed.

19. The appellant no. 4, Smt. Rajdei, died during the pendency of the appeal and the appeal, therefore, was dismissed as abated vis-a-vis the appellant no. 4.

20. Sri Vikas Sharma and Sri Kunwar Bhaskar, learned counsel appearing for the appellants have made the following submissions:

> ***(i)*** Learned counsel for the appellants submitted that even though the conviction was on the basis of the fact that some poison had been administered to the deceased, there was absolutely no eye-witness to the fact that any poison was administered. He submitted that there was a possibility of the fact that because the matrimonial life of the deceased was not a happy one, she had herself taken the poison. He had stated that at the time of the lodging of the F.I.R., the PW-1 had stated that the deceased had told him that something had been given to Vijay Laxmi to eat. To corroborate this evidence, the PW-3 gave his statement but he had clearly stated that something was mixed in water and was administered to her and she was made to drink the same and thereafter water was also given to her. Learned counsel for the appellants further submitted that there was every

possibility that the deceased herself had taken the poison earlier and thereafter the in-laws were trying to give her medicines without understanding the reason for her illness. Even the PW-1, had though stated in the examination-in-chief that his sister had told him that the in-laws had given something to eat but, in the cross-examination he had stated that she had categorically stated that she was suffering from cholera. He had stated that Dr. Ramesh Chandra, the PW-6, had stated that the condition of the patient was not good and, therefore, the version of the PW-1 who had stated that her husband and her mother-in-law had given to her poison mixed in the medicine, could not believed as she was not in a condition to speak.

(ii) Learned counsel for the appellants submitted that the PW-3 had wrongly been shown as an eye-witness of the alleged incident. His age was only 12 years at the time he was testifying in the court. He was shown as a shopkeeper. He had given a contradictory statement that the husband had not given the medicine but it was in fact given by Laddan Misra i.e. *jeth* of the deceased and also nothing was given to her to eat but something was mixed in water and was given to her. This witness had denied the presence of Kamta Misra but the I.O. had stated that in fact Kamta Misra was throughout there and in his statement under Section 161 of Cr.P.C. the PW-3 had also stated that Kamta Misra was present at the spot. Learned counsel stated therefore that the PW-3 was an unreliable witness.

(iii) Further, learned counsel for the appellants stated that "zinc phosphide" was a pesticide which could not be given on the sly. It had a bitter taste and had a bad/foul smell and if it had to be given forcefully then the person who was being administered and was in a good health would resist the taking of it tooth and nail. However, if she had taken it herself then it was a different matter altogether. He had stated that the injuries as had been opined by the doctor who had conducted the post-mortem were also not the injuries which were a result of beating etc. but were a result of the fact that she had got injured by the tempo on which she was being carried to the hospital.

(iv) Even the injuries of the PW-3, he submitted, had appeared to be self inflicted. He had stated that the PW-3 had himself stated that he had after getting the beating, gone to deal with some shopkeepers and had also weighed wheat etc. This could not have happened if he had already received a beating and he was bleeding.

(v) The three brothers namely Ganga Prasad, Ganga Charan and Ganga Sharan were very much witnesses of what had happened and in fact Ganga Prasad and Ganga Sharan had also accompanied her to the hospital at Kanpur but they were never produced in the witness box.

(vi) Learned counsel for the appellants stated that the viscera report itself was shrouded in mystery. After the doctor who had conducted the post-mortem had sealed the viscera, it was nowhere

entered in any register. Who received it and took it to the Office of the C.M.O. and who thereafter kept guard over it, was not clear from the case of the prosecution. Which viscera and whose viscera, the PW-10, Constable Rajpal, had taken from the Office of the C.M.O. to the Forensic Science Laboratory, was not clear. Even the expert at the forensic science laboratory was not produced. The accused persons were neither confronted by the viscera report nor were they confronted with the viscera while the statements of their were being recorded under Section 313 of Cr.P.C.

21. With regard to the above argument, learned counsel for the appellants relied upon the judgment of the Apex Court in **Chandan Pasi & Ors. versus The State of Bihar** reported in **2025 SCC OnLine SC 2599**. He relied upon the paragraphs no. 6 to 9 of this judgment and the same are being reproduced here as under:

> *"**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.*
>
> ***7.1.** In **Sanatan Naskar v. State of W.B**[4], this Court as follows, regarding the scope of the examination under Section 313 CrPC:*
>
> > *"**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. ...*

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-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. ...”*

(emphasis supplied)

7.2. *In* ***Indrakunwar v. State of Chhattisgarh***[5]*, this Court, through one of us (Sanjay Karol, J.), after consideration of various judgments formulated the following principles vis-à-vis this Section:*

> *“****35.*** *A perusal of various judgments15 rendered by this Court reveals the following principles, as evolved over time when considering such statements.*
>
> ***35.1*** *The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.*
>
> ***35.2*** *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.

35.3 *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.*

35.4 *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.*

35.5 *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.*

35.6 *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.*

35.7 *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.*

35.8 *This statement is to be read as a whole. One part cannot be read in isolation.*

35.9 *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.*

35.10 *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.*

35.11 *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.*

> ***35.12*** *Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision."*

7.3. *In* ***Raj Kumar v. State (NCT of Delhi)***[6] *as subsequently approved by a bench of three-Judges in* ***Aejaz Ahmad Sheikh v. State of U.P. and Another***[7]*, the Court laid down the following factors:*

> *"**22.** The law consistently laid down by this Court can be summarised as under:*
>
> ***22.1.*** *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.*
>
> ***22.2.*** *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.*
>
> ***22.3.*** *The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.*
>
> ***22.4.*** *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.*
>
> ***22.5.*** *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.*
>
> ***22.6.*** *In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.*
>
> ***22.7.*** *In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.*

> ***22.8.*** *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."*

[See also: ***Ranvir Yadav v. State of Bihar***[8] *and* ***Naresh Kumar v. State of Delhi)***[9]*]*

8. *Having duly considered the position of law and principles as above, we now examine the statements of the appellant(s) recorded under this Section. For ready reference, the statements are reproduced below:*

Appellant No.1 (Chandan Pasi) statement:

> *"My name is Chandan Pasi, My Father's name is Birendra Pasi …*
>
> *1. Question: - Did you listen to the Deposition of the Witnesses?*
>
> *Answer: - Yes*
>
> *(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM, with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?*
>
> *Answer: False statement.*
>
> *(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?*
>
> *Answer: False allegations.*
>
> *(4) Question: - Whether you want to Say anything in your defence?*
>
> *Answer: I am innocent."*

Appellant No.2 (Pappu Pasi) statement:

> *"My name is Pappu Pasi @ Hindustan Pasi …*
>
> *1. Question: - Did you listen to the Deposition of the Witnesses?*
>
> *Answer: - Yes*
>
> *(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM with common intention along with other accused persons killed the Informant's*

father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False Allegation.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegation.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

Appellant No.3 (Gidik Pasi) statement:

"My name is Gidik Pasi …

1. Question: - Did you listen to the Deposition of the Witnesses?

Answer: - Yes

(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False Allegation.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegations.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

9. The statements extracted above reveal a sorry state of affairs- an abject failure on the part of the Court in complying with the basic tenets of law. The statements given by all three persons are carbon copies of each other. How such statements

> *can pass muster at the hands of the learned Trial Judge is something which we fail to understand. Out of the four questions asked, directly related to the sequence of events, were only two. The second question was as general as can be, with reference to only the bare allegations, to which an omnibus denial was issued. The third was also of similar nature, saying that it has been alleged and evidenced, and nothing further. This cannot be said to be the putting of every material circumstance. It is equally disturbing for us to see that in the desire to secure a conviction for the accused persons, the prosecutor also let their duty of assisting the Court in conducting the examination of the accused under this section fall by the wayside. The prosecutor is an officer of the Court and holds a solemn duty to act in the interest of justice. They cannot act as a defence lawyer, but for the State, with the sole aim of making the gauntlet of punishment fall on the accused. [See:* ***Sovaran Singh Prajapati v. State of U.P.***[10]*]*

22. He further relied upon a judgment in **Kalicharan & Ors. versus State of Uttar Pradesh** reported in **(2023) 2 SCC 583**. Since the learned counsel for the appellants relied upon the paragraphs no. 16, 17, 20, 21 and 22 and they are being reproduced here as under:

> *"**16.** There are provisions made in CrPC in Chapter XVII regarding the framing of charge. The object of the said provisions is obviously to make the accused aware of the accusations against him on the basis of which the prosecution is seeking to convict him. The object of the provisions regarding the framing of charge is that accused should be in a position to effectively defend himself. An accused can properly defend himself provided he is clearly informed about the nature of the allegations against him before the actual trial starts. That is why there are elaborate provisions in CrPC in that behalf. Sub- section (1) of Section 212 is material for our consideration which reads thus:*
>
> > *"**212. Particulars as to time, place and person**.—(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.*

What is more important for this case is Section 213 which reads thus:

> *"**213. When manner of committing offence must be stated**.—When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose."*

17. *The emphasis is on giving details of the manner of committing offence. Unless the particulars such as specific Sections of the penal statute as well as the time and place of the commission of the alleged offence are incorporated in the charge, the accused will not be in a position to properly defend himself. Even these particulars may not be enough in many cases to enable the accused to properly defend himself. That is why there is a specific requirement incorporated in Section 213 that if the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose. Illustration (e) to Section 213 provides that when the charge contains an allegation that 'A' is accused of the murder of 'B' at a given time and place, the charge need not state the manner in which 'A' murdered 'B'. Going by the charge framed in this case, it is alleged therein that it was accused no.2 who murdered deceased Harpal Singh by firing bullets from his pistol. Though the case of the prosecution as can be seen from the evidence is that accused nos.1, 3 and 4 committed the murder of Harpal Singh by using sharp weapons in their hand, there is no charge framed against accused nos.1, 3 and 4 alleging that they murdered Harpal Singh. As there is no charge framed against accused nos.1,3 and 4 of committing the murder of Harpal Singh, Illustration (e) will not apply. Therefore, it was necessary to frame a charge in terms of Section 213 by stating the manner of committing the offence of murder by accused nos. 1,3 and 4.*

20. *When the Court of appeal is called upon to decide whether any failure of justice has been occasioned due to omission to frame a charge or error in the charge, the Court is duty bound to examine the entire record of the trial including all exhibited documents, depositions and the statements of the accused recorded under Section 313.*

21. *At this stage, we must refer to the requirement of the examination of the accused under Section 313 of CrPC. Section 313 of CrPC reads thus:-*

> *"**313. Power to examine the accused**.—(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.]"*

The questions in separate statements of the accused nos. 1 to 4 recorded by the Trial Court are almost identical. Question no.5 is the only question put to them about the evidence adduced against them on the charge of murder of Harpal Singh. Question no.5 put to accused no.3 reads thus:-

> *"Ques 5 – That it has come up in prosecution evidence that on being exhorted by accused Kalicharan,* ***accused Yaad Prakash fired 4-5 shots at complainant Atar Singh and his family members with his country made pistol with intention to kill, that hit complainant's cousin Harpal Singh and he died on the spot****.*
>
> *What do you have to say in this regard?"*
>
> *(emphasis added)*

22. *Such a case was not at all made out by the prosecution in the evidence before the Court. The material brought on record by the prosecution witnesses (PW-1 and PW-2) is to the effect that Harpal Singh died due to injuries sustained as a result of an attack made by accused nos.1,3 and 4 on him by sharp weapons. These material circumstances brought on record against the accused on which their conviction is based were never put to the accused. What was put to the accused was not the case made out by the prosecution in the evidence. No questions are asked in the Section 313 statement about the post-mortem of the body of Harpal Singh. It is not put to the witness that the cause of death of Harpal Singh was due to haemorrhage and shock as a result of injuries caused by sharp weapons. Questioning an accused under Section 313 CrPC is not an empty formality. The requirement of Section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be*

able to properly defend himself. In paragraph 21 of the decision of this Court in the case of ***Jai Dev v. State of Punjab***[1]*, it was held thus:-*

> *"**21.** 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 [1951 SCC 1060 : AIR 1953 SC 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 1 (1963) 3 SCR 489 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 points 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 questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case***

> ***against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity.*** *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."*
>
> *(emphasis added)*
>
> *In paragraph 145 of the well known decision of this Court in the case of* ***Sharad Birdhichand Sarda v. State of Maharashtra***[2]*, it was held thus:*
>
> > *"****145.*** *It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court.* ***In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration.****"*
> >
> > *(emphasis added)*

23. For the same argument learned counsel for the appellants also relied upon **Samsul Haque versus The State of Assam** reported in **(2019) 18 SCC 161**. Since he relied upon the paragraphs no. 13, 21 and 22 of this judgment and the same are being reproduced here as under:

> *"****13.*** *In the aforesaid context learned Senior Counsel has referred to the judgment of this Court in* ***Sharad Birdichand Sarda v. State of Maharashtra***[1] *to contend that if the circumstances are not put to the accused in his statement under Section 313 of the Cr.P.C., they must be*

completely excluded from consideration because the accused did not have any chance to explain them. This is stated to be the consistent view of this Court starting from 1953 in the case of ***Hate Singh Bhagat Singh v. State of Madhya Bharat***[2]*. Learned Senior Counsel also referred to the judgment in* ***Sujit Biswas v. State of Assam***[3] *for the proposition that the very purpose of examining the accused persons under Section 313 of the Cr.P.C. is to meet the requirement of the principles of natural justice, i.e., audi alteram partem. The accused, thus, must be given an opportunity to explain the incriminating material that has surfaced against him and the circumstances which are not put to the accused in his examination under Section 313 of the Cr.P.C. cannot be used against him and must be excluded from consideration.*

21. *The most vital aspect, in our view, and what drives the nail in the coffin in the case of the prosecution is the manner in which the court put the case to accused No.9, and the statement recorded under Section 313 of the Cr.P.C. To say the least it is perfunctory.*

22. *It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put to the accused so that the accused gets a fair chance to defend himself. This is in recognition of the principles of audi alteram partem. Apart from the judgments referred to aforesaid by the learned Senior Counsel, we may usefully refer to the judgment of this Court in* ***Asraf Ali v. State of Assam***[7]*. The relevant observations are in the following paragraphs:*

> *"21. Section 313 of the Code casts a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom 7 (2008) 16 SCC 328 that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.*
>
> *22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it*

> *would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed 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."*

24. Relying upon the abovementioned judgments, learned counsel for the appellants submitted that in the absence of the confrontation of the viscera and its report vis-a-vis the accused persons, the viscera and its report could not be relied upon by the prosecution for the purposes of the conviction of the accused. In this regard, learned counsel for the appellants relied upon a judgment of Supreme Court in **Sujit Biswas v. State of Assam** reported in **(2013) 12 SCC 406**. The relevant portion of this judgment is the paragraph no. 20 and the same is being reproduced here as under:

> *"**20.** It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 CrPC, is to meet the requirement of the principles of natural justice i.e. audi alteram 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 CrPC, 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."*

25. Also, learned counsel for the appellants relied upon the judgment in **Maheshwar Tigga versus State of Jharkhand** reported in **(2020) 10 SCC 108**. Since he relied upon the paragraphs no. 7 to 9 of this judgment, they are being reproduced here as under:

> *"**7.** A bare perusal of the examination of the accused under Section 313 CrPC reveals it to be extremely casual and perfunctory in nature. Three capsuled questions only were asked to the appellant as follows which he denied:*
>
> > *"Question 1. There is a witness against you that when the informant V. Anshumala Tigga was going to school you were hiding near Tomra canal and after finding the informant in isolation you forced her to strip naked on knifepoint and raped her.*
> >
> > *Question 2. After the rape when the informant ran to her home crying to inform her parents about the incident and when the parents of the informant came to you to inquire about the incident, you told them that "if I have committed rape then I will keep her as my wife".*
> >
> > *Question 3. On your instruction, the informant's parents performed the "Lota Paani" ceremony of the informant, in which the informant as well as your parents were present, also in the said ceremony your parents had gifted the informant a saree and a blouse and the informant's parents had also gifted you some clothes."*
>
> ***8.** It stands well settled that circumstances not put to an accused under Section 313 CrPC cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.*
>
> ***9.** This Court, time and again, has emphasised the importance of putting all relevant questions to an accused under Section 313 CrPC. In Naval Kishore Singh v. State of Bihar [Naval Kishore Singh v. State of Bihar, (2004) 7 SCC 502 : 2004 SCC (Cri) 1967] , it was held*

to be an essential part of a fair trial observing as follows: (SCC p. 504, para 5)

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

26. Also reliance was placed upon the judgment of **Asraf Ali v. State of Assam** and since he relied upon paragraphs 21, 22 and 24 of this judgment and the same are being reproduced here as under:

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

> ***22.*** *The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in S. Harnam Singh v. State (Delhi Admn.) [(1976) 2 SCC 819 : 1976 SCC (Cri) 324 : AIR 1976 SC 2140] while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.*
>
> ***24.*** *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."*

27. Sri Amit Sinha, learned Additional Government Advocate, however, opposed the Appeal and submitted that no advantage could be taken by the appellants of the fact that the appellants were not confronted with viscera and its report. Definitely, the viscera was sealed and was sent to the C.M.O. Office and from there, in the sealed state, it was sent to the forensic science laboratory. He also submitted that the PW-1 and the PW-3 were reliable eye-witnesses and that the deceased had stated in the presence of the PW-1 and PW-3 that poison was administered to her then it could not be in any way doubted. Also, he submitted that the PW-3 was a young boy of 11 years at the time of occurrence and, therefore, he could while he was keeping guard of his *mausi* go outside and also deal with customers and this did not mean that he was in any manner not present at the spot and was only trying to

make out a case. He further submitted that since the deceased was bodily weak even if the bitter taste and the bad smell of the poison were there she might have not resisted while it was being administered.

28. Having heard the learned counsel for the parties, we find that the deceased had four brothers but only PW-1 was active and the other brothers though had appeared on the scene, but never appeared in the court. Also, we find that the PW-1 in his statement-in-chief had stated that something had been forcefully administered to the deceased but in his cross-examination he had stated that the deceased had told him that she was suffering from cholera. Also, he had stated in his cross-examination that when the doctor had scolded her then she had divulged that in fact she had been administered something forcefully. This fact as was placed before us was not believable because at the time when the doctor i.e. Dr. D.R. Verma was looking after the deceased, he had opined that she was in a very bad condition and that she had to be taken to Kanpur Nagar and there was thus every possibility that she might not have spoken at all. The PW-3, we find, had throughout been consistently stating that something was mixed in water and then the deceased was made to drink the same. This story becomes very different from the story that the PW-1 had come up with that the deceased had told him while she was alive that she had been made to eat something. In a case where the guilty has to be punished with a punishment as grave as life imprisonment, the prosecution case has to be dealt very cautiously and when there was a definite digression in the cases taken by the PW-1 and the PW-3 then the Court should deal with the matter very prudently and

if there is inconsistency in the case taken by the prosecution witnesses then it should lean in favour of the accused.

29. Also, we find that the poison "zinc phosphide" is not such a poison which can be administered on the sly. It tastes bitter and has a very bad smell. Thus if a person who is hale and hearty is administered that poison then he or she would resist to the administration of the same and would get injuries on her body and if he or she would resist powerfully then the person who was administrating would also get injured. In the instant case, the mother-in-law who was an elderly person definitely would have got some injuries, but we find that no injuries were there either on the mouth of the deceased or on the persons who were trying to administer the poison because of the resistance put up by the deceased.

30. What is more, we find that neither the viscera nor the report with regard to it had been ever placed before the accused persons when their statements were being recorded under Section 313 of Cr.P.C. Even though questions were put with regard to poison being administered, no question was put with regard to the viscera and its report. Definitely, as per all the judgments which have been cited by the learned counsel for appellants, the viscera report should therefore not be taken into account at all.

31. What is more, the Court here again would lean in favour of the appellants and would decide, not to look into the viscera report because we find that after the viscera was sealed as per Dr. A.K. Tiwari, PW-4, it was not certain as to where the viscera was kept. No entry with regard to

its preservation in any register was produced before the Court. No one was produced before the court, who would have, with any responsibility, stated that he had taken the sealed viscera from the doctor who had sealed it to the Office of the C.M.O. Also, no one from the C.M.O. Office was produced to state that the viscera was kept in safe custody. Only the PW-10, Constable Rajpal, was produced who had stated that he had taken a sealed viscera to the forensic science laboratory. He did not state as to from whose custody he had taken the sealed viscera and he also did not state as to in whose hands he handed over the viscera. We also find from the entire evidence which has been placed before us that no one from the forensic science laboratory was produced to prove the fact that in fact the viscera had come in a sealed state or whether it was entered in some register and thereafter it was kept in the safe custody of some malkhana and thereafter it was taken by the PW-10, Constable Rajpal, to the laboratory. It was not shown that it was handed over by some responsible person and thereafter it was got received in the forensic science laboratory.

32. In view of what we have observed, we are definitely of the view that no reliance can be placed on the viscera report. The viscera report alone was a conclusive piece of evidence which would have gone to show that murder was done by the accused persons by administering poison and since the viscera report itself now becomes such an evidence which as per us cannot be read in evidence, we are definitely of the view that the appeal should be allowed and the accused be acquitted.

33. So far as the injury on the body of the PW-3 is concerned, we find that his case also is not very reliable as he himself had stated that on 12.01.1986, he had intermittently gone out of the house of his *mausi* and had also dealt with shopkeepers. Meaning thereby that if there were any injuries as were examined by the doctor, PW-6, then they could have been self inflicted only to make out a case.

34. We are thus of the view that the appellants namely Ram Autar, Rakesh Kumar Misra @ Doctor and Laddan Misra @ Mahesh be acquitted of all the charges for which they were tried.

35. The Appeal is **allowed**. The judgment and order dated 07.12.1989 passed by the Ist Additional District & Sessions Judge, Kanpur Nagar in Session Trial No. 180 of 1986 is hereby set-aside.

36. If the appellants are on bail, they need not surrender and their sureties and bail bonds be discharged. The trial court record be sent back to the concerned trial court.

(Jai Krishna Upadhyay,J.) (Siddhartha Varma,J.)

July, 3, 2026
M.S. Ansari

Digitally signed by :-
MOHD SAQIB ANSARI
High Court of Judicature at Allahabad