

**EXAMINATION OF THE ACCUSED UNDER SECTION 313 Cr.P.C. -
APPRECIATION AND INTERPRETATION**

Presentation on behalf of District Janjgir-Champa

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PURPOSE & OBJECT

1. We all know it is fundamental principle of Natural Justice - ***Audi Alteram Partem i.e.***, no one should be condemned unheard. The intent behind recording statement of accused under Section 313 CrPc is to provide opportunity to accused to explain circumstances appearing against him and for the court, to have an opportunity to examine the accused and to elicit an explanation from him.

2. *In this regard, the Hon'ble Apex Court in the matter of **Raj Kumar Singh v. State of Rajasthan AIR 2013 SC 3150** held while appraising the provisions under Section 313 CrPC, observed that "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."*

3. *The Law Commission in its 41st Report had observe that this section establish a direct dialogue between the court and the accused for the purpose of enabling the accused to give his explanation.*

STATUTORY PROVISION

1. Old Provision

Section 342 of code of criminal Procedure 1898 deals about examination of accused. Section 313 of code of Criminal Procedure has similar provision.

Section 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.]

- Thus section 313 of the code gives power to the court to examine the court at any stage of the trial. This power is discretionary because section 313 (1)(a) crpc has mentioned the term "may". But after the prosecution witness have been examined then it is mandatory for the court to examine the accused because section 313 (1)(b) crpc has use the term "shall".

Rules and Order (Criminal) about section 313 Crpc

A chapter 6 of Chhattisgarh Rules and Order (Criminal) deal about the examination of accused. Rule 161 to 168 discuss about the details procedure about examination of accused, Rule 161 of the said Rules and Order prescribe the scope for the examination "The question put should be confined to the points brought out in the evidence and should not be in the nature of cross examination of the accused, nor should the power given by the section be used to elicit information from the accused to fill up gaps in the prosecution evidence."

Rule 162 - It is generally desirable to remind the accused of the chief points in the testimony of each witness and to question him upon each. The accused seldom takes any written notes of the prosecution evidence and it may be unfair and unjust to expect him to remember all these points.

Rule 163 - A generally and vague question such as "You have heard what the witnesses have said. What have you to say?" is to be deprecated. It is usually best to refer to each witness separately for among other reasons, the partiality or otherwise of each witness is a subject upon which the accused should ordinarily be given a hearing.

While examining the accused the following points are to be considered:

a) **No oath shall be administered** to accused when he is examined under sub section (1) of CrPc. As no oath is taken to examine accused the statements given by him cannot be taken as an evidence.

b) **Accused is not compelled to speak**- right to keep silence is right of accused governed by our Constitution. The accused is at liberty to answer them or refuse to do so. No punishment can flow from his refusal to answer or giving false answers. All that is permissible in such cases for the Court is to draw adverse inference from refusal to answer as it thinks just.

In the case of **Phula Singh v. State of Himachal Pradesh AIR 2014 SC 1256** the court held that accused has the right to maintain silence during examination or even remain in complete denial when his statement under section 313, Cr.P.C. is being recorded. But in such an event adverse inference could be drawn against him.

c) **Accused statement should be in Plain and simple language-** It may be seen that the language in which Section 313 of Criminal Procedure Code, 1973 is couched is plain and simple language .

In **Tara Singh Vs State 1951 SCC online SC 49** Hon'ble Supreme Court held that- It is not sufficient compliance to string together a long series of facts and ask a accused what he has to say about them.

d) **Each answer should be recorded separately-** The examination should be thorough and only with a view to enable the accused to explain the circumstances against him to the best of his ability.

e) **No vital or salient or incriminating point should be left out-** Vital imcriminating point left out might result in prejudice. If any vital point is left out it cannot be used against the accused. Any such lapse on the part of the Court may prove fatal.

f) **Questions to be framed on the basis of evidence adduced against the accused-** It was never intended by the legislature that the court should not frame its questions on its own initiative but should depend upon questions to be supplied to it by prosecution by way of adducing evidence against accused basing on charges framed.

g) **Proper care has to be taken while examining deaf and dumb-** It is duty of court to observe whether the accused, though a deaf, mute had sufficient intelligence to understand the criminal character of the act committed by him and take assistance of interpreter or person who is capable of understand signs of accused or even in writing.

h) Hon'ble Supreme Court in **Kishore Bhadke Vs State of Maharashtra (2017) 3 SCC 760** has held - Substantial compliance is mandatory if there are more than one accused examination of accused recorded in part of different date then is regarded as substantial compliance of the provision.

Recording of statement u/s 313 CrPC through counsel In Summons

Trial:

Hon'ble Supreme Court **TGN Kumar Vs State of Kerala (2011) 2 SCC 772** has held - In summons case, when personal appearance of accused has been dispensed with under sec. 205, a discretion is vested in Magistrate to dispense rigour of personal examination of accused under sec. 313 as well.

Recording of statement u/s 313 CrPC through counsel In Warrant Trial

Hon'ble Supreme Court in **Basavaraj R. Patil & Other Vs State of Karnataka (2000) 8 SCC 740** has held - As per majority in exigent conditions Court can allow the counsel for the accused to answer the questions on his behalf for this accused required to file before the court an application and an affidavit sworn by himself.

- (a) A narration of facts to satisfy the court of his real difficulties to be physically present in court for giving such answer.
 - (b) An assurance that no prejudice would be caused to him, in any manner by dispensing with his personal presence during such questioning.
 - (c) An undertaking that he would not raise any grievance on that score at any stage of the case.
- If the Court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit the court to supply the questionnaire to his advocate and fix the time within which the same has to be returned duly

answered by the accused together with a affidavit that those answers were given by the accused himself. He should affix his signatures on all sheets.

- The court should keep photocopy or carbon copy of the questionnaire.
- If the accused fails to return the questionnaire duly answered he shall forfeit his right to seek personal exemption from such questioning.

EVIDENTIARY VALUE OF EXAMINATION UNDER SECTION 313 CRPC

As accused is not examined on oath under Section 313 CrPC to explain his version or his case against the evidence adduced by prosecution, his statement cannot be taken as evidence against him.

Significantly, in this regard Hon'ble Apex Court in the case of **Sanatan Naskar & Anr vs State Of West Bengal AIR 2010 SC 3570** held that“ The provisions of Section 313 (4) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, **the use is permissible as per the provisions of the Code but has its own limitations.** The Courts **may** rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section **should not** be considered in isolation but in **conjunction with evidence** adduced by the prosecution.

Question arises whether the statements given by accused or answers given by accused is substantive piece of evidence? Clearly, The answer would be NO, but his statement can be used for proper appreciation of evidence to accept or reject it.

In Mohan Singh v. Prem Singh & Anr., AIR 2002 SC 3582, Honorable apex Court held: *“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. 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.”*

further In the case of **Sumeti Vij Vs. Paramount Tech Fab Industries, AIR 2021 SC 1281** it is held that a statement of an accused recorded under Section 313 of the CrPC is not a substantive evidence of defence but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case against the accused.

Appreciably, one of the staggering features of the provision under Section 313 CrPC is that it dispenses away with the requirement of administering oath, therefore those statements cannot be treated as evidence as contemplated in Section 3 of Indian Evidence Act-

In this regard Honorable Apex Court in **Dehal Singh v. State of Himachal Pradesh, AIR 2010 9 SCC 85** observed that “Statement under Section 313 of the Code of Criminal Procedure is taken into consideration to appreciate the **truthfulness or otherwise** of the case of the prosecution and it is **not an evidence**. Statement of an accused under Section 313 of the Code of Criminal Procedure is recorded without administering oath and, therefore, the said statement **cannot be treated as evidence** within the meaning of Section 3 of the Evidence Act. **There is reason not to treat the statement under Section 313 of the Code of Criminal Procedure as evidence, as the accused cannot be cross-examined with reference to those statements.** However, when an accused appears as a witness in defence to disprove the charge, his version can be tested by his cross-examination.”

In **State of M.P. v. Ramesh, (2011) 4 SCC 786**, it has been held that “The statement of the accused made under Section 313 CrPC can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case. However, as such a statement is not recorded after administration of oath and the accused cannot be cross-examined. His

statement so recorded under Section 313 CrPC cannot be treated to be evidence within the meaning of Section 3 of the Evidence Act. 1872.

Considerably, the statements given by accused in 313 Cr.P.C examination cannot be used to fill up the laches on the part of prosecution-

Prosecution evidence is not sufficed to give conviction to accused then, inculpatory statements given by accused cannot be taken into consideration.

In **Raj Kumar Singh @ Raju @ Batya vs State Of Rajasthan reported in AIR 2013 SC 3150** hounourable apex court held that statement under Section 313 Cr.P.C. is recorded to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction. His answers to the questions put to him under Section 313 Cr.P.C. cannot be used to fill up the gaps left by the prosecution witnesses in their depositions.

An adverse inference can be taken against the accused **only and only** if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. However, the accused has a right to remain silent as he cannot be forced to become witness against himself.

DISCUSSING ABOUT EXAMINATION OF ACCUSED IN CASES OF CIRCUMSTANTIAL EVIDENCE-

Hon’ble SC in the matter of Munish Mubar v. State of Haryana AIR 2013 SC 912 held that it is obligatory on the part of the accused while being examined under section

313, Cr.P.C. to furnish some explanation with respect to the incriminating circumstances associated with him and the court must take note of such explanation even in a case of circumstantial evidence so as to decide whether or not the chain of circumstances is complete.

Circumstantial evidence is a close companion of actual matrix, creating a fine network through which can be no escape for the accused, primarily, because such facts when taken as a whole, do not permit us to arrive any other inference but one, indicating the guilt of accused.

WHEN IT IS NOT NECESSARY TO EXAMINE THE ACCUSED UNDER SECTION 313 OF CR.P.C.

It is settled law that it is not obligatory in each case to examine the accused under section 313 CrPc. If there are no circumstances appearing against the accused in evidence, then the court should not put any question to accused. When the accused had pleaded guilty to the charge, then the question of examination does not arise. In the same way when there is an admission made by the accused himself, then it is not necessary to put that allegation to the accused in examination. It is not intent of the legislature to elicit explanation from accused in which there is no evidence.

Non-applicability of Section 313 CrPC-

Firstly, it is not applicable to proceedings under chapter-VIII as a person proceeded under this chapter is not a person accused of any act or omission punishable by law.

Secondly, proceeding under Section 125 CrPC is of civil nature and the person proceeded against is not an accused person, thus Section 313 CrPC does not applies to proceeding under section 125 CrPC.

CONCLUSION

To sum up, the law mandates every incriminating evidence should be put to the accused separately. Section 313 CrPC is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court

is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Trial judge should take care that questions of an inquisitorial nature should be put an accused, simply because statements given by accused under this section is not sole base for conviction, presiding officer cannot it as formality as it carries much importance in appreciation of evidence. Hence, examination of accused under section 313 Cr.P.C. is not mere fomality.

District Judiciary, Janjgir-Champa (C.G.)