

SCOPE & SIGNIFICANCE OF EXAMINATION OF ACCUSED UNDER SECTION 313, Cr.P.C.

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Section 313 of the Cr.P.C. gives power to the court to examine the accused.

PURPOSE OF EXAMINING THE ACCUSED:

The purpose of empowering the court to examine the accused under section 313, Cr.P.C is to meet the requirement of the principle of natural justice *audi alteram partem* (that no one should be condemned unheard). This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated against him and the court must take note of such explanation. In a case of circumstantial evidence, the same is necessary to decide whether or not the chain of circumstances is complete. (**Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan; AIR 2013 SC 3150**)

SCOPE & OBJECT OF SECTION 313, Cr.P.C.:

The scope and object of examination of the accused under section 313, Cr.P.C. is:-

1. **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 them. (**Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507**);
2. **to test the veracity of the prosecution case.**

The examination of the accused is not a mere formality, the questions put to the accused and answers given by him, have great use.

The scope of section 313 of the Cr.P.C. is wide and is not a mere formality. The object of recording the statement of the accused under section 313, Cr.P.C. 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. (**Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507**)

METHODOLOGY FOR RECORDING THE STATEMENT:

In **Dharnidhar v. State of U.P. & Others; 2010 AIR SCW 5658**, the court held that the proper methodology to be adopted by the court for recording the statement of the accused under section 313, Cr.P.C., is to invite attention of the

accused to the incriminating circumstances and evidence and invite his explanation. In other words, it provides an opportunity to an accused to tell to the court as to what is the truth and what is his defence.

In the case of **Dehal Singh v. State of Himachal Pradesh; AIR 2010 SC 3594**, the court held that the statement of the accused under section 313, Cr.P.C. is recorded without administering oath. Therefore, it cannot be treated as evidence within the meaning of section 3 of the Evidence Act, 1872.

It is pertinent to reproduce section 313, Cr.P.C. to make further discussion.

“ **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 plain reading of section 313 would clearly show that **questioning under clause 1(a) is discretionary whereas the questioning under clause 1(b) is mandatory** as the object is to afford an opportunity to the accused to personally explain any circumstance, appearing in evidence against him. (**State of Kerala v. Rajappan Nayar; 1987 Cri.L.J. 1256**)

Section 313, Cr.P.C. (1) (b) casts a duty on court to give an opportunity to the accused to explain the incriminating material against him. (**State of Maharashtra v. Sukhdev Singh; AIR 1992 SC 2100**) (**Basavaraj R. Patil v. State of Collector; AIR 2000 SC 3214**) (**Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507**).

In every enquiry or trial:

The accused can be examined under section 313, Cr.P.C. in every enquiry or trial.

As per section 2(g) of the Cr.P.C.:-

“enquiry means any enquiry other than a trial conducted under this Code by a Magistrate or Court”

The trial of the accused commences after framing of charge.

“Accused”

For the purpose of section 313, Cr.P.C. accused means the accused then under-trial and under-examination by the court, and does not include an accused over whom the court is exercising jurisdiction in another trial. [**Karamalli Gulamalli; (1938) 40 Bom. LR 1092 (1939)**]

“Personally”

The word ‘personally’ would show that the opportunity afforded to the accused to explain his stand on the incriminating circumstances is in addition to what his Counsel would have already done by way of cross-examination. Therefore, it would be premature to examine the accused to explain personally any circumstance when he has not exhausted the opportunity to cross examine the witnesses. [**B. Chainraj v. Asstt. Collector of Central Excise; (1989) (1) Crimes 229, 231 (MAD)**]

“At any stage”

The power to question the accused under section 313 (1)(a) of the Cr.P.C., is a discretionary power which the court may exercise at any time during the trial or enquiry even before framing a charge. (**Emperor v. Genu Gopal; (1929) 31 Bom LR 1134**)

“Explain any circumstance.....in the evidence against him”

Under section 313, Cr.P.C. (1)(b), it is mandatory for the trial Judge to put to the accused every such piece of evidence which appears incriminating against him and reply of the accused shall be sought thereto. (**State of Nagaland v. Lipok Ao; 2007 Cr.L.J. 3395 (DB) (Ajai Singh v. State of Maharashtra; AIR 2007 SC 2188)**)

The accused may or may not avail the opportunity for giving his explanation. (**Subhash Chandra v. State of Rajasthan; (2002) 1 SCC 701**)

Attention of the accused must specifically be drawn to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Court is under legal obligation to put all incriminating circumstances before accused to 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. Circumstances not put to the accused in

his examination under section 313, cannot be used against him. (**State of U.P. v. Mohd. Iqram & Anr; AIR 2011 SC 2296**)

“Examination U/s. 313, Cr.P.C. more than once”

If examination of the accused under section 313 has taken place, the court can call the accused to answer incriminating circumstances again. There is no implied prohibition on calling upon the accused to again answer questions. However, power to call the accused to answer questions more than once, after conclusion of the prosecution evidence should not be used in a routine or mechanical manner. (**Rajan Dwivedi v. CBI; 2008 Cri.L.J.; 1440 (1447) DEL**)

“Shall after the witnesses for the prosecution have been examined” etc.

The provisions of section 313, Cr.P.C. are for the benefit of the accused. Section 313 (1)(b) is mandatory in nature and in order to provide an opportunity to the accused to obtain the full benefit of the section, it is the duty of the court to examine the accused after cross-examination and re-examination, if any of the prosecution witnesses is over. (**Nathu Kasthurchand; 1924 (27) BOM LR 105**)

If fresh prosecution witnesses are examined after the examination of the accused, it is obligatory to further examine the accused under section 313, Cr.P.C. (**Emperor v. Bhau Dharma; (1928) 30 Bom LR 385**)

“Proviso to section 313 (1)(b)”

‘Summons Case’

In a summons case where the court has dispensed with the personal attendance of the accused, it may also dispense with his examination under section 313, Cr.P.C.

‘Warrant Case’

Whether examination of the accused under section 313, Cr.P.C can be dispensed with in a warrant case?

As far as warrant cases are concerned, it appears that no discretion is given to the court in section 313 (1)(b). But in the case of **Basavaraj R. Patil v. State of Collector; AIR 2000 SC 3214**, the Apex Court has held that as a general rule, it is necessary that in all cases the accused must answer the questions put to him under section 313(1)(b) by personally remaining present in the court. However, if remaining present involves undue hardship and large expense the court can dispense such examination even in warrant cases after adopting a measure to comply with the requirements of section 313, Cr.P.C. in a substantial manner.

For this the accused must be required to file before the court an application with an affidavit sworn-in by himself with the prayer that he may be allowed to answer the questions without his physical presence in

the court on account of justifiable exigencies. The application and the affidavit of the accused must also contain the narration of undue hardship and large expense etc., the assurance that no prejudice would be caused to him by dispensing with his personal presence and an undertaking that he would not take any grievance on that score at any stage of the case.

It is also observed that section 313, Cr.P.C. does not envisage the examination of the Counsel in place of the accused and reiterated the law laid down by the Apex Court by three Judges Bench in **Bibhuti Bhushan Das Gupta v. State of West Bengal; AIR 1969 SC 381** and later on followed in **Shivaji Sahebrao Bobade v. State of Maharashtra; (1973) 2 SCC 793**.

In **K. Anbazhagan v. Supdt. of Police; AIR 2004 SC 524**, SN Variava J. who gave a majority judgment with Justice Thomas in **Basavaraj R. Patil** case (supra) reiterated the general rule that the accused must answer the questions put to him under section 313 (1)(b), by personally remaining in the court. And only in exceptional circumstances of undue hardship and large expense etc., the general rule of personal presence can be dispensed with. In this case the court held that the accused was holding the position of Chief Minister of Tamil Nadu and there was no exceptional exigencies or circumstance such as to undertake a tedious long journey or incur a whopping expenditure to appear in the court to answer the questions under section 313, Cr.P.C. Thus, none of the facts which have weighed with the consideration of the court in **Basavaraj R. Patil** case (supra), were available in the given case.

In **Inspector, Customs, Akhnorr, Jammu and Kashmir v. Yashpal; (2009) 4 SCC 769**, **Basavaraj R. Patil** case (supra) was followed in less serious warrant cases.

PUTTING SEPARATE AND SIMPLE QUESTIONS ABOUT EACH MATERIAL CIRCUMSTANCE:

It is not sufficient compliance to string together long series of facts and ask the accused what he has to say about them. He must be questioned simply and separately about each material circumstance which is intended to be used against him.

The questioning must be fair and framed in a form which an ignorant and illiterate person may be able to appreciate and understand. Even if the accused is not illiterate, his mind is apt to be perturbed when he is facing a trial of murder. Therefore, it is required that each material circumstance should be put simply and separately in a way that an illiterate person can appreciate and understand. [**Tara Singh v. State of Punjab; AIR 1951 SC 44**]

The practice of putting the entire evidence against the accused in a single question and giving an opportunity to explain the same is improper as the accused

may not be in a position to give a rational and intelligent explanation. (**Naval Kishore v. State of Bihar; (2004) 7 SCC 502**)

This opportunity of examination under section 313 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. (**Naval Kishore v. State of Bihar; (2004) 7 SCC 502**)

It is imperative that each and every question must be put to the accused separately and their answers must also be recorded separately. (**Nicolau Almeida v. State; 1988 (2) Crimes 774, 781 (Bom) (DB)**] [**Kalpna Rai v. State; AIR 1998 SC 201**] [**Hyder Khan v. State of Karnataka; 2006 Cri.L.J. 3143 (3145)**]

Recording of statement of the accused persons simultaneously and putting same set of questions to all the accused may cause prejudice to the accused, hence, it was held not proper. [**State of Maharashtra v. Goraksha Ambaji Adsul; 2006 Cri.L.J. (NOC) 45**]

Recording of statements shall be in full and not in monolithic answers. [**Dada Saheb Patalu Misal v. State of Maharashtra; 1987 Cri.L.J. 1512 (BOM) (DB)**]

EXAMINATION OF ACCUSED IN CASES OF CIRCUMSTANTIAL EVIDENCE

In **Munish Mubar v. State of Haryana; AIR 2013 SC 912 - (Dr. B.S. Chauhan and FMI Kalifulla, JJ)**, the court 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. The same view was taken in the case of **Mushir Khan v. State of M.P.; AIR 2010 SC 762**. Please also see: **Transport Commissioner, Andhra Pradesh, Hyderabad and Another v. Sardar Ali and Another; AIR 1983 SC 1225**.

In **Munish Mubar** case (supra), the court observed that “**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.**”

In this case accused appellant and deceased both having illicit relation with co-accused, the car of appellant was found parked at Airport where the deceased was to arrive and the car was moved out of parking area after arrival of the flight, presence of the appellant at the place of occurrence proved by his telephonic records. Articles recovered on disclosure made by the appellant found to contain human blood, the appellant gave no explanation as to the parking of his car at the Airport or about the recoveries made at his instance. Circumstance clearly connect appellant with crime. And merely making the bald statement under section 313 by the accused that he was innocent and recoveries had been planted and the call records were false and fabricated documents, is not enough as none of the said allegations made by the appellant could be established.

The court held that the accused was expected to explain the reason for which he had gone to Airport and why the car had remained parked there for several hours.

In **Madhu @ Madhurantha and Another v. State of Karnataka; AIR 2014 SC 394 – (Dr. B.S. Chauhan and S.A. Bobde, JJ.)**, the court held that in cases where the accused was last seen with the deceased victim (last seen – together theory) just before the incidence, it becomes the duty of accused to explain the circumstances under which the death of victim occurred and further it is obligation on the part of the accused while being examined under section 313, Cr.P.C. to furnish some explanation regarding the incriminating circumstances associated with him. And the court must take note of such explanation even in a case of circumstantial evidence to decide whether or not the chain of circumstances is complete. (As has also been held in **Mushir Khan @ Badshah Khan and Another v. State of Madhya Pradesh; AIR 2013 SC 762** and **Dr. Sunil C. Dennial; AIR 2013 SC (Cri) 193**)

INCONSISTENT PLEAS

In the case of **State of Madhya Pradesh v. Balu; AIR 2005 SC 222**, the court rejected the plea of non-consideration of the plea of accused recorded under section 313, Cr.P.C. to the effect that there was animosity between the family of the victim and the accused because defence of consent was taken by the accused. Thus these are two inconsistent pleas which were not found acceptable.

In **Kanchan v. State of U.P.; 1982 CrLJ 1982 All Cr 304 1633**, the accused took inconsistent pleas of alibi and private defence which were not acceptable.

IMPORTANT CAUTIONS WHILE MAKING USE/APPLICATION OF THE STATEMENT UNDER SECTION 313, CR.P.C.:

1. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of other evidence against him led by the prosecution. But such statement of under section 313, Cr.P.C. should not be considered in isolation but in conjunction with the prosecution evidence. [**Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507**]
2. **Conviction cannot be based merely on the statement of accused under section 313, Cr.P.C.:**

Conviction of the accused cannot be based merely on the statement made under section 313, Cr.P.C. as it cannot be regarded as a substantive piece of evidence. [**Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507**] [**Manu Sao v. State of Bihar; (2011) 1 SCC (Cri) 370**]

In **Rafiq Ahmad @ Rafiq v. State of U.P.; AIR 2011 SC 3114**, the court observed:-

“It is true that the statement under section 313, Cr.P.C. cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of evidence.....”

3. Adverse Inference against the accused:

In the case of **Phula Singh v. State of Himachal Pradesh; AIR 2014 SC 1256 – (Dr. B.S. Chauhan and S.A. Bogde, JJ.)**, 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.

As has been held in **Ram Naresh and Others v. State of Chhattisgarh; AIR 2012 SC 1357, Munish Mubar v. State of Haryana; AIR 2013 SC 912 and Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan; AIR 2013 SC 3150**, the court held that the accused has a duty to furnish an explanation in his statements under section 313, Cr.P.C. regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under section 313, Cr.P.C. is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law.

The option lies that the accused to maintain silence coupled with simplicitor denial or, in the alternate 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. [**Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507**]

False denial made by the accused of established facts can be used as incriminating evidence against him. [**Munna Kumar Upadhyay @ Munna Upadhyay v. State of Andhra Pradesh; AIR 2012 SC 2470**]

An adverse inference can be taken against the accused only and only if the incriminating materials stood fully established and the accused is not able to furnish any explanation for the same. [**Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan; AIR 2013 SC 3150**]

4. Statements in Bail Petition:

The statement of the accused made on his behalf by his Counsel in the bail application cannot be read as his admission as it was not put to the accused in his statement under section 313, Cr.P.C. [**Randhir Singh v. State; 1980 Cri.L.J. 1397 (Del - DB)**]

5. The statement of co-accused under section 313, Cr.P.C. cannot be used against main accused for obvious reason that the accused has no opportunity to cross examine the co-accused. But the answers given by the accused may be put in evidence for or against him in any other inquiry or trial.

6. In **Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan; AIR 2013 SC 3150**, the court observed that no matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused and seek his explanation as regards the incriminating material surfaced against him.

The court also observed that the circumstances which are not put to the accused in his examination under section 313, Cr.P.C., cannot be used against him and have to be excluded from consideration.

7. **Whether no answer/evasive or untrustworthy answer by the accused under section 313, Cr.P.C. justifies his conviction on this score?**

In **Nagaraj v. State (Tamil Nadu); (2015) 4 SCC 739**, the Supreme Court observed that in the impugned judgement the High Court has found the answers of the accused under section 313, Cr.P.C. evasive and untrustworthy and held this to be another factor indicating his guilt.

Making the above observation, the Supreme Court clarified the legal position in this context, thus:-

“In **Parsuram Pandey v. State of Bihar; (2004) 13 SCC 18** the Supreme Court has held that section 313, Cr.P.C. is imperative to enable an accused to explain away any incriminating circumstances proved by the prosecution. It is intended to benefit the accused and by way of its corollary, it benefits the court also in reaching the final conclusion and 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.**”

In **Sher Singh v. State of Haryana; AIR 2015 SC 980**, the Supreme Court has recently clarified that because of the language employed in section 304-B, IPC which deals with dowry death, the burden of proving innocence shifts to the accused which is in stark contrast and dissonance to a person's right not to incriminate himself. It is only in the back-drop of section 304-B that an accused must furnish credible evidence which is indicative of his innocence either under section 313, Cr.P.C. or by examining himself in witness-box or through defence witnesses, as he may be best advised. Having made this clarification, refusal to answer any question put to the accused by the court in relation to any evidence that may have been presented against him by the prosecution or the accused giving an evasive or unsatisfactory answer, would not justify the court to record a finding of guilt on this score. The burden is cast on the prosecution to prove its case beyond reasonable doubt and once this burden is met, the statements under section 313 assume significance to the extent that the accused may cast some incredulity on the prosecution version.

In the instant case, it has been held that the High Court was not correct in drawing an adverse inference against accused because of what he has stated or what he has failed to state in his examination under section 313, Code of Criminal Procedure.

**OMISSION TO QUESTION THE ACCUSED ON ANY INCRIMINATING CIRCUMSTANCE OR EVIDENCE,
OR
EFFECT OF NON-COMPLIANCE OF SECTION 313, Cr.P.C.:**

In **Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra; (1973) 2 SCC 793: (AIR 1973 SC 2622)**, the Court considered the fallout of the omission to put a question to the accused on vital circumstance appearing against him and the Court has held that the appellate court can question the counsel for the accused as regards the circumstance omitted to be put to the accused and held as under:-

“...It is trite law, nevertheless fundamental, that the prisoner’s attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate Court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate Court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial Court he would not have been able to furnish any good ground to get out of the circumstances on which the trial Court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, Cr.P.C., the omission has not been shown to have caused prejudice to the accused...”

The same view was reiterated by the Court in **State (Delhi Administration) v. Dharampal; AIR 2001 SC 2924** wherein the Court has held as under:-

“Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate Court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him...”

In **Gyan Chand and Others v. State of Haryana; AIR 2013 SC 3395, Dr. B.S. Chauhan and S.A. Bobde, JJ**, Plea to non-compliance of the provisions of section 313, Cr.P.C. was taken for the first time before the Supreme Court. But there was no material showing as to what prejudice has been caused to the accused persons, if facts of conscious possession was not put to them. Thus the court held that the trial was not vitiated for non-compliance of the provisions of section 313, Cr.P.C.

Mere defective/improper examination under section 313, Cr.P.C. is no ground for setting aside the conviction of the accused, unless it has resulted in prejudice to the accused. Unless the examination under section 313, Cr.P.C. is done in a perverse way, there cannot be any prejudice to the accused. (**SC Bahri v. State of Bihar; AIR 1994 SC 2420**) (**Shobhit Chamar v. State of Bihar; AIR 1998 SC 1693**).

Where the examination of the accused under section 313, Cr.P.C. recorded by the trial court was an empty formality, all the incriminating materials when not put to him, the acquittal of the accused husband for offence under section 302 and 304B, IPC was upheld. (**B. Venkat Swamy v. Vijaya Nehru; 2008 AIR SCW 5908 (5913, 5914)**) (**Latu Mahto v. State of Bihar; (2008) 3 SCC (Cri) 500; (2008) 8 SCC 395**) (Conviction under section 302/149, 34 – not sustained)

In **Nar Singh v. State of Haryana; AIR 2015 SC 310**, the Supreme Court laid down:-

“...Any omission on the part of the Court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. In so far as non-compliance of mandatory provisions of S. 313, it is an error essentially committed by the Trial Court, the same has to be corrected or rectified in the appeal.”

In the above case the Court observed that:-

“The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance of S. 313 has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under S. 313 it cannot be inferred that any prejudice had been caused to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice...”

“...Hence, if all the relevant questions were not put to accused by the trial court and when the accused has shown that prejudice was caused to him, the appellate court is having power to remand the case to examine the accused again under S. 313 and may direct

remanding the case again for re-trial of the case from that stage of recording of statement under S. 313 and the same cannot be said to be amounting to filling up lacuna in the prosecution case.”

In **Nar Singh’s** case (supra), the Supreme Court held that:-

“...Accused in the instant case is prejudiced on account of omission to put the question as to the opinion of Ballistic Expert which was relied upon by the trial court as well as by the High Court. Trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions under S. 313 cannot enure to the benefit of the accused. Therefore the matter is remitted back to the trial court for proceeding with the matter afresh from the stage of recording statement of the accused under S. 313...”

EXAMINATION OF COUNSEL:

A pleader authorised to appear on behalf of the accused does a lot of work for the accused and makes statements on his behalf like in bail petitions and other applications. The Supreme Court has held that a proposition that a Pleader authorised to appear on behalf of the accused can do all acts which the accused himself can do, is too wide. When the prosecution evidence is closed, the accused must be questioned for the incriminating evidence against him and his pleader cannot be examined in his place. [**Bibhuti Bhusan Das Gupta v. State of W.B.**; AIR 1969 SC 381; 1969 CrLJ 654 : **Basavraj R. Patil v. State of Karnataka**; AIR 2000 SC 3214 : 2000 CrLJ 4604 : 2000(4) Crimes 79 : (2000) 8 SCC 740; **Usha K. Srinivas**; AIR 1993 SC 2090 : 1993 CrLJ 2669 (SC); **Keya Mukherjee v. Magma Leasing Ltd.**; 2008 CLJ 2597 (2602) : AIR 2008 SC 1807 : (2008) 8 SCC 447; **Dakshinamoorthy v. Union Territory of Pondicherry**; (2002) MLJ (Cri) 402 L 2002 CrLJ 2359 (2365) (Mad.)] The accused cannot answer the questions with legal advice and consultancy, as it will not amount to examination of the accused personally. Denial of legal consultancy and advice to the accused at the time of examination under S. 313, Cr.P.C. would not amount to violation of fundamental right contemplated under Arts. 21 and 22(1) of the Constitution. [**Dakshinamoorthy v. Union Territory of Pondicherry**; (2002) MLJ (Cri) 402 L 2002 CrLJ 2359 (2365) (Mad.)]

‘AGE OF THE ACCUSED’

Estimation of the age given in the statement under section 313, Cr.P.C. should be accepted as correct. [**Raisul v. State of U.P.**; AIR 1977 SC 1822] [**Shravan Dasrath v. Datranga v. State of Maharashtra**; 1998 Cri.L.J. 1196 (Bom) (DB)]

Endorsement regarding age of the accused when he mentions his age at the time of his examination under section 313, Cr.P.C.

C.L. No. 5/2006 Admin 'G' Dated: 15th February, 2006

While taking orientation and inviting attention to court's Circular Letter Nos. 69 dated 13.8.1968, 117/VIIc-34 dated 5.8.1974, 89 /Admin. 'A' dated 3.5.1977, 71/VIIc-34 /Adm. 'G' dated 7.11.1981 and 33/ Admin, 'G' /VII-f-45 dated 13.5.1986. I am desired to say that the Hon'ble Court (coram Hon'ble Mr. Justice Imtiyaz Murtaza and Hon'ble Mr. Justice Amar Saran) in Cri. Jail appeal No.58 of 2001-Kaloo Vs. State of U.P. 2006(54) ACC 343 has been pleased to "direct all the Sessions Judges and Magistrates in the State of U.P. to make a positive endorsement as to their own estimate of the age of the accused when the accused mention their ages at the time of their examination under section 313 Cr. P.C. This endorsement must be made in each and every case even if the Court concerned is in agreement with the age as mentioned by the accused. This direction has become necessary because we are finding that the requirement in Rule 50 of the General Rules (Criminal) that the court must note down its own estimate of age in case it is not in agreement with the age mentioned by the accused, are more often than not being overlooked by trial courts. Only if the Court is required to record a positive finding about the age of the accused in each trial after looking to the age mentioned by the accused in his statement, other material on record, the court's subjective impression of the age, and in the event that the court deems it appropriate by getting the medical examination of the accused conducted or by seeking further documentary or other evidence of age, that we can ensure that the mandate of Rule 50 of the General Rules (Criminal) and directions of the Apex Court are observed in letter and spirit. Only by this exercise will a proper estimate of the age be available on record which is very necessary for deciding on questions of the appropriateness of the procedure adopted for the trial of the case, i.e. whether the trial of the accused should have been conducted according to the procedure prescribed under the Juvenile Justice Act or otherwise, what should be the appropriate sentence, if the accused is of very young age or he is very old, and certain cases whether death or life sentence would be the appropriate sentence considering the age of the Accused".