

**SECTION 313 OF THE
CODE OF CRIMINAL
PROCEDURE, 1973.**

Recording of statements under Section 313.

The principle behind recording of statement under section 313 is that the accused must be given an opportunity to explain the material against him. It is a rule of fair play and natural justice.

The provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim "audi alteram partem".

Section 313 of Criminal Procedure Code uses the expression "to explain any circumstances appearing in the evidence". The word "evidence", employed in this section is not defined in the Code of Criminal Procedure. However, it is defined in section 3 of the Evidence Act which means and includes all "statements" which the Court permits or requires to be made before it by witness, in relation to matters of fact under inquiry, such statements are called "oral

Section 313 provides for two stages when the statement of the accused can be recorded:

- 1) The court 'may' at any stage of the trial,
- 2) The court 'shall' after the witnesses of the prosecution have been examined.

The word "may" in Clause (a) of Sub-section (1) in Section 313 of the Code indicates that even if the court does not put any question under that clause the accused cannot raise any grievance about it.

However, if the court fails to put the needed question under Clause (b) of the Sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him.

It is not sufficient to generally ask the accused that, "having heard the prosecution evidence what he has to say about it". The accused must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questions put to him must be fair and must be couched in a manner which even an ignorant or illiterate person may be able to appreciate and understand.

(Ajmer Singh v. State of Punjab, 1953 CriLJ 521)

- The word 'generally' in section 313(1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it.
- The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and what are the circumstances to which an explanation is needed.



**WHETHER STATEMENT
RECORDED UNDER
SECTION 313 CAN FORM
A SOLE BASIS FOR
CONVICTION?**

- Since no oath is administered to the accused, the statements made by the accused will not be evidence *stricto sensu*. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers.
- Then comes sub-section (4) which says that 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 had committed. Therefore, though not strictly evidence, sub-section (4) permits that it

Whether it can form a sole basis for conviction was answered by the Hon'ble Supreme Court in the case of Raj Kumar Singh @ Raju v. State of Rajasthan, 2013 (82) ACC 431.

It was held that a statement under section 313 CrPC. 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 CrPC cannot be used to fill up the gaps left by the prosecution witnesses in their depositions.

Thus, the statement of the accused is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution. In case the prosecution's evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of his statement cannot be made the sole basis of his conviction.

Section 313 (5) provides that the court may permit the accused to file written statement as sufficient compliance of the section.

The question whether it was indispensably mandatory that the accused himself should be questioned or whether the court could allow the advocate to answer such questions on behalf of the accused at least in some exigent conditions was discussed by the Hon'ble Supreme Court of India in the case of State of Punjab v. Hari Singh, AIR 2009 SC 1966.

The following were the observations:

“An accused (who is already exempted from personally appearing in the Court) makes an application to the court praying that he may be allowed to answer the questions without making his physical presence in court on account of justifying exigency the court can pass appropriate orders thereon, provided such application is accompanied by an affidavit sworn to by

- A. A narration of facts to satisfy the court of his real difficulties to be physically present in court for giving such answers,*
- 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 it is open to the court to supply the questionnaire to his advocate (containing the questions which the court might put to him under Section 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself

...The accused should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire [as a matter of precaution the Court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for answers]. If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the court, he shall forfeit his right to seek personal exemption from court during such questioning.”

If the evidence brought on record is sufficient to bring home guilt of the accused, the omission to put any particular circumstances to the accused under section 313, does not, ipso facto, vitiate the proceedings unless any prejudice caused to the accused is established by him.

If Appellate Court or revisional Court comes across that the trial Court had not put any question to an accused even if it is of a vital nature, such omission alone should not result in setting aside the conviction and sentence as an inevitable consequence. Effort should be made to undo or correct the lapse. If it is not possible to correct it by any means the Court should then consider the impact of the lapse on the overall aspect of the case. After keeping that particular item of evidence aside, if the remaining evidence is sufficient to bring home the guilt of the accused, the lapse does not matter much, and can be sidelined justifiably. But if the lapse is so vital as would affect the entire case, the appellate or revisional Court can endeavor to see whether it could

TO SUM UP...

1. Section 313 CrPC , is the fundamental principle of fairness because section 313 Cr.P.C. prescribes a procedural safeguard for an accused, giving him an opportunity to explain the facts and circumstances appearing against him in the evidence and this opportunity is valuable from the standpoint of the accused.
2. The object of Section 313(1)(b) Cr.P.C. is to bring the substance of accusation to the accused to enable him to explain each and every circumstances appearing in the evidence against him. The provisions of this section are mandatory
3. The provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion. So far as Section 313 Cr.P.C. is concerned, undoubtedly, the attention of the accused must specifically be brought to

4. If there is no evidence or circumstance appearing in the prosecution evidence implicating the accused with the commission of the crime with which he is charged, there is nothing for the accused to explain and hence his examination under Section 313 of the Code would be wholly unnecessary and improper. In such a situation the accused cannot be questioned and his answers cannot be used to supply the gaps left by witnesses in their evidence.
5. On the plain language of Section 313, it is evident that in a summons case, when the personal appearance of the accused has been dispensed with under Section 205 of the Code, a discretion is vested in the Magistrate to dispense with the rigour of personal examination of the accused under Section 313 of the Code as well.
6. Dispensation with the personal examination of an accused in terms of the said provision is within the trial court's discretion, to be exercised keeping in view certain parameters, enumerated therein and not as a matter of course.

8. Where there are more than one witnesses who have deposed as to the same fact, it is not necessary that statement of each witness must be put the accused separately. It is open for the court to club the statements and put only one question.
9. The accused has to be informed that the inculpatory statements made by him may be taken into consideration in the trial. The court is under an obligation to put the accused to notice as aforesaid before recording his statement. If the accused is not given such warning or notice, in a given case, serious prejudice may be caused to the accused (**Laxman alias Laxmayya Gangaram Zinna v. State of Maharashtra, 2012 BomCR(Cri) 1**).
10. When the defence of the accused is of total denial, there can be no prejudice caused to the accused for not being put any particular question separately or clubbing 2 or 3 questions etc. So also, absence of Advocate for the accused at the time of recording 313 statement of the accused would cause no prejudice to the accused and the

IN EVERY TRIAL, THE COURT IS REQUIRED TO DO THE FOLLOWING: -

- 1) Giving the opportunity to accused to question the admissibility of the evidence of prosecution witness.
- 2) Giving the opportunity to accused to impeach the credit of any of the prosecution witnesses under section 155 of the Indian Evidence Act or move application under S.340 CrPC for perjury.
- 3) Clearly identify the admissible and inadmissible evidence.
- 4) Clearly identify the facts proved or not proved by the prosecution.
- 5) Clearly assess if there is any presumption to be granted to the prosecution against the accused.
- 6) Identify and record the circumstances and evidence appearing against the accused.

WHAT ACTUALLY HAPPENS...

- 1) Admissibility of the evidence is stalled till the time of final judgment.
- 2) Extreme reluctance of the trial courts or even of counsels to get into S.340 CrPC.
- 3) Low awareness about Section 155 of the Indian Evidence Act on the defense side, and thus falsehood gets propagated.
- 4) Absolutely mechanized way of questioning.
- 5) Composite questions put to the accused at the stage of recording statement under section 313 with the result that the entire exercise is rendered meaningless.

CONCLUSION

The recording of statement under section 313 is not a mere empty formality. The trial court can only question the accused on proven circumstances or on proven evidence. If the admissibility of the evidence is not decided then there is a big danger that what ever being asked to the accused could be based on inadmissible evidence or based on the evidence of a witness who may be punished under perjury.

The CrPC mandates and binds the trial court to look into the prosecution case in totality. 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.

The attention of the accused is required to be to every inculpatory material so as to enable him to