

Examination of the Accused U/Sec.313 Cr.P.C

SHAIK REYAZ,
Judi. Magistrate of I Class,
Ponduru, Srikakulam Dist.

U/Sec.313 of the Code of Criminal Procedure, (Cr.P.C), the court can examine the accused imposing the questions of incriminating material or accusation appearing against him and obtain the answers from them.

Scope & object:

The provisions of Sec.313 Cr.P.C is not inconsistent with Article 20(3) of the Constitution of India. This section empowers the court to examine the accused after the evidence for the prosecution has been taken. Its object is to give the accused an opportunity of explaining any circumstances which may tend to incriminate him and thus to enable the court, in case where the accused is undefended, to examine the witnesses in his interest and to establish a direct dialogue between the court and the accused. This section embodies fundamental principle 'Audi Alteram Partem'. It is not a mere formality, but the answers given in the examination have great use. Accused can put forward his own version with regard to his involvement in the crime. Any failure on the part of the accused in his examination u/Sec.313 of Cr.P.C may have the effect of curtailing his right in the event he takes up a specific defence. Besides, the answers given by him, in his statement, if incorrect or incomplete, may also jeopardize him, as such answers may have the effect of strengthening the prosecution case against him.

The real object of the examination is to enable a Judge to ascertain from time to time a prisoner, particularly if he is undefended, what explanation he may desire to offer regarding any fact stated by a witness, or after the close of the

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The Hon'ble Supreme Court in ***Kalp Nath Rai v. State [AIR 1998 SC 201]***, held that 'Sec.313 is intended to afford opportunity to an accused to explain any circumstance appearing in the evidence against him. It is trite that an accused cannot be confronted during such questioning with any circumstance which is not in evidence. Sec.313 is not intended to be used as an interrogation. No trial court can pick out any paper or document from outside the evidence and abruptly slap it on the accused and corner him for giving an answer favourable or unfavourable'.

The accused has the right to make a statement u/Sec.313 Cr.P.C which has to be considered by the court for what it is worth. ***Sidheswar Ganguly v. The State of W.B [AIR 1980 Cri.L.J.273]***.

Methodology:

The examination of the accused under Clause (1)(a) is discretionary, while the examination under Clause (1)(b) is mandatory. In the first part, the court has discretion to question the accused at any stage of an inquiry or trial without previously warning him, while under the second part, the court is required to question him generally on the case after the witnesses for the prosecution have been examined and before he is called for his defence. If fresh prosecution witnesses are examined after the examination of the accused it is obligatory on the Magistrate to further examine the accused. It is immaterial whether the examination of the accused takes place before or after the framing of the charge. The question of examination u/Sec.331(1)(b) Cr.P.C would not arise before a charge is framed.

The discretion to dispense with the examination of the accused u/Sec.313 Cr.P.C lies on the court and it is for the Court to decide whether in given facts,

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such discretion should be exercised or not. **Lingaraj Real Estates and Development v. State of Orissa, [2010 (3) Crimes 196 (Ori)].**

In **Dharnidhar V. State of U.P [AIR 2010 SCW 5658]** the Apex 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.

The first and foremost thing is that the Court should frame the questions in such a careful manner that the question should not give rise to an ambiguous answer. The questions put to accused must be simple and intelligible and the Court should have examined the accused separately and not jointly. In the examination, it is not necessary to put entire prosecution evidence and elicit answer but only those circumstances which are adverse to the accused. The circumstances are to be put and not the conclusion. Recording the statements of all the accused persons under Section 313 Cr.P.C jointly at a time by putting common questions is not permissible.

The court can examine the accused as often as it thinks necessary to do so, the object of the section being to see whether the accused can give an innocent explanation of the facts spoken against him. There is nothing in the language of the section which would prevent the court from examining the accused even after the defence evidence has been recorded. **Rusi Biswal v. N. Devi [AIR 1954 SC 65].**

No oath shall be administered to the accused when he is examined under section 313 Cr.P.C, hence it cannot be treated as evidence within the meaning of Section-3 of Indian Evidence Act, 1872. 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

Examination u/Sec.313 Cr.P.C prosecution witnesses in their depositions. Thus, the statement of accused is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence led by 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.

The Hon'ble Apex Court in ***Ajit Kumar Vs State of Bihar [(1972) 2 SCC 451]*** held that if an accused is not asked questions on his motive for the crime it may be prejudice him and thus vitiate the trial.

Where an accused had already been examined at the close of the prosecution evidence and no further evidence has been adduced after that date, the Magistrate is not required to examine the accused further, merely because he framed a new charge after the date. ***Sita Ram Singh v. State [AIR 1958 Pat.462 (463)]***. But, if further evidence had been adduced after the amendment of the charge or forming of the charge or framing of altogether new charge, then, it is obligatory on the trial Judge to further examine the accused to enable him to explain the new evidence appearing, against him and failure to do so would cause prejudice to the accused.

The entire evidence of each witness against the accused should not be covered by a single question to be put to the accused who was asked to explain the same. Such practice is deprecated by Supreme court as held in ***Dharnidhar V. State of U.P [AIR 2010 SCW 5658]***.

In a joint trial drawing up a common set of questions against several accused is improper. ***State of M.P. v. Ram Prakash p1989 CrLJ 1585 (MP)***.

Where the Magistrate committed a serious irregularity in not specifically asking the accused during his examination under this section about the circumstances under which he made the confession, it was held that the

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irregularity was not fatal to the case as the accused had adduced evidence to explain the confession.

Sec.313(1)(b) does not deal only with one point in time at the trial stage and the court can call the accused to answer the incriminating circumstances again. There is no implied prohibition in calling upon the accused to again answer questions. However, power to call the accused to answer questions more than once, after the conclusion of prosecution evidence should not be used in a routine or mechanical manner. **Rajan Dwivedi v. CBI [2008 Cri.L.J.; 1440 (1447) DEL]**

The examination under this section must not be treated as a formal affair as it shall be necessary that each and every circumstances appearing in evidence against him shall be separately and distinctly put to him and further the question shall not be lengthy.

Silence and failure of the accused to explain the circumstance appearing in evidence against him is a strong circumstance which can be used against him. **Avtar singh v. State of Punjab [(2002) 7 SCC 419]**. No presumption arises, *ipso facto*, from the silence of the accused person. The fact of silence may, with all the other circumstances of the case, be taken into court in a proper case, but even then, it must be clearly borne in mind that an accused person always has a right to remain silent if he wishes, and the silence of the accused must never be allowed, to any degree, to become a substitute for proof of the prosecution of its case.

In a summons case, where the court has dispensed with personal attendance of the accused, it may also dispense with his examination under clause (b) of Sec.313 Cr.P.C. **Barjinder Singh Hamdard v. State of Punjab [2010 (1) Crimes 1046 (P&H)]**. Even before this addition of the word 'personally', their Lordships of Hon'ble Supreme Court were of the view that a

Examination u/Sec.313 Cr.P.C pleader could not represent an accused u/Sec.313 except when the accused was a company. ***Deo Lakhan v. State of Bihar [1963(2) Cri.L.J.385]***. Now, decisions expressing the contrary view that the statement of accused u/Sec.313 can be recorded through his counsel stands overruled as far as warrant trial is concerned. Examination of accused u/Sec.313 Cr.P.C can be through his counsel, when his personal attendance was exempted by the Magistrate u/Sec.205 of Cr.P.C. ***Chandu Lal Chandrakar v. Puran Mal [1989 Cri.L.J 296]***. Where the court has dispensed with the personal attendance of the accused in a summons case, his examination u/Sec.313(1)(b) of the Cr.P.C may also be dispensed with. ***Sudhan Das v. smt. Hemlata Das [1990(1) Crimes 422 (423) Gauhari]***.

The statement made in defence by accused u/Sec.313 Cr.P.C can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement u/Sec.313 Cr.P.C cannot be made the sole basis of his conviction. There is no impediment in law for a court to found conviction of an accused on his confession made by him during his examination u/Sec.313 Cr.P.C. The statement u/Sec.313 Cr.P.C is not made on oath and is not strictly speaking evidence, yet the statement, so made, can indeed, be taken into consideration at the trial against the accused for the purpose of arriving at the guilt or otherwise of the accused. The statement of the accused can be used to test the veracity of the exculpatory portion of the confession of the accused. The statement of an accused may be taken into consideration in an inquiry or trial but is not strictly evidence in the case. An accused when he makes his statement does not depose as a witness because no oath is administered to him. Conviction of the accused cannot be based merely on his statement recorded under this section which cannot be regarded as evidence, in the absence of any other evidence connecting the accused with the commission of crime. The court 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 statement made under this section must be considered not In isolation but in conjunction

Examination u/Sec.313 Cr.P.C with the evidence adduced by the prosecution. Answer given by the accused should be considered in conjunction with the other prosecution evidence. The defence plea taken by the accused in examination u/Sec.313 Cr.P.C would be taken into consideration, it is not necessary for the accused to produce separate evidence for proving the same.

In ***Munna Kumar Upadhyaya v. State of Andhra Pradesh [AIR 2012 SC 2470]***, it is held that the statement made by the accused u/Sec.313 Cr.P.C serves dual purpose. Firstly, it affords an opportunity to the accused to explain the circumstances appearing against him and secondly, to use the denials of established facts as incriminating evidence against him. If the accused gives incorrect or false answers during the course of his statement u/Sec,313 Cr.P.C, the court can draw adverse inference against him.

If the prosecution has not placed any incriminating evidence, any admission made by the accused will be of no avail unless the admission constituted an admission of guilt of any offence. ***Asokan v. State of Kerala 1982 CrLJ 173, 179 (Ker-DB)***.

Where the accused made partly inculpatory and partly exculpatory statement, court cannot act upon such statements. ***Nara Gangaram v. State [1970 CrLJ 621] (Bom-DB)***. Where the statement recorded u/Sec.313 contains both exculpatory and inculpatory parts, only inculpatory part of the statement may be taken into consideration by the Court. The statement of the accused recorded u/Sec.313 has to be accepted or rejected as a whole. However, inculpatory part of the statement can be accepted, even if the exculpatory part of the statement is found false by the court after close scrutiny. It is permissible to the court to take into account even the inculpatory statement ignoring the exculpatory statements if it accords with the evidence on record and to press it to the arena of appreciation. ***Rukshana Bee v. State of Chattisgarh [2008 CrLJ 3668 (3672) (Chatt)]***. Apart from the inculpatory and explanatory parts, if there is

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an admission of the accused in his statement u/Sec.313 Cr.P.C in relation to other facts and circumstances, they can be acted upon as his admission within the parameters of S.58 of the Indian Evidence Act. The part of the statement of the accused u/Sec.313 Cr.P.C can be taken note of which makes admission in respect of certain facts other than inculpatory part and exculpatory part.

An omission to put material questions to accused causing prejudice to him is not curable. ***Bashir Ahmed v. State [1977 CrLJ 919 (J&K)]***.

Use and Evidentiary Value:

Though the statement of accused u/Sec.313 Cr.P.C is not substantive evidence, it cannot be taken into consideration when judging the prosecution as well as defence evidence. ***Ajant Singh v. State of UP [1977 U.P. Cr.C. (All.) 3]***. The statement recorded u/Sec.313 Cr.P.C cannot be regarded as evidence. In ***Jogendra Nath v. Emperor [AIR 1934 Cal. 734]***, Calcutta High Court observed that the statement of the accused exculpating himself and implicating the other accused is not evidence against the accused jointly tried with him as a co-accused. The statement of the accused, though not evidence as defined in Sec.3 of the Indian Evidence Act, can be used against him in aid of the prosecution case established relying on the definition of 'proved' in this section. Where such statement is exculpatory it cannot be used against another accused in support of his conviction. It would be dangerous to do so. ***Rajani Kant Keshav Bhandari v. State [AIR 1967 Goa 21]***.

The statement made in defence by accused u/Sec.313 Cr.P.C can be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Sec.313 of Cr.P.C cannot be made the sole basis of his conviction. ***Mohan Singh v. Prem Singh [2003 Cri.L.J. 11 (SC)]***.

Conclusion:

Examination u/Sec.313 Cr.P.C is made to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish an explanation of the incriminating material which had come against him in the trial. The answers given by the accused in the examination u/Sec.313 Cr.P.C cannot be used to fill up the gaps left by the prosecution witnesses in their evidence. The statement of the accused u/Sec.313 Cr.P.C cannot be made a basis for his conviction as it is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence lead by the prosecution, though it cannot be a substitute for the evidence of the prosecution. In case the prosecution evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of the statement of accused cannot be made the sole basis of his conviction. An adverse inference can be drawn against the accused only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same in his examination U/s.313 Cr.P.C.

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