

Judicial Analysis of Examination of Accused Under Section 313 and Evidentiary Value of Statements

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Abstract

The principle of natural justice, known as Audi Alteram Partem, requires that a person be given a fair hearing before being convicted. Section 313 of the Criminal Procedure Code (CrPC) gives the court the authority to question the accused in order to fulfil this requirement. This means that the accused may be asked to provide an explanation of the circumstances linking them to the evidence against them, and the court must consider this explanation when making its decision. This is of great assistance to the accused, especially if he is not being represented. As also observed by Stephen, “an ignorant, uneducated man has the greatest possible difficulty in collecting his ideas and seeing the bearing of the facts alleged. He is utterly unaccustomed to sustained attention or systematic thought, and the criminal trial proceedings, which to an experienced person appear plain and simple, must be passing before the eyes and mind of the accused like a dream which he cannot grasp.” The significance of Section 313 in this situation is obvious; it mandates that the accused be questioned fairly and appropriately by the court so that the accused is made aware of the precise case that they would have to face and is given the chance to defend any points that may have been raised. This article is an attempt to shed light on the judicial significance of Section 313 CrPC and the evidentiary value of the statements recorded under this section in the current criminal justice regime.

Keywords: Statement of accused, evidentiary value, Audi Alteram Partem, criminal justice

INTRODUCTION

Section 313 temporarily removes all lawyers, prosecutors, witnesses, and other third parties from the courtroom in order to allow the accused to speak directly to the court about the evidence against them. This is done so that the accused can provide their own explanation of the circumstances and give the court a chance to hear their side of the story [1, 2]. The nature and scope of this section, as found out by the Supreme Court in *Shivaji Sahab Rao v. State of Maharashtra* [3], is that the court is required to inform the accused of all of the evidence that is being used against them, including any incriminating evidence. This concept underlined under Section 313 is said to be evolved out of the principle of natural justice of “Audi Alteram Partem”; however, as held in the celebrated Reena Hazarika’s case [4], “Section 313 cannot be seen simply as a part of Audi Alteram Partem. It confers valuable right upon

accused to establish his innocence and can well be considered beyond statutory right as a constitutional right to a fair trial under Article 21 of Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2) CrPC. The mere use of the word “may” [5] cannot be held to confer a discretionary power on the court to consider or not to consider such defense, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defense is acceptable or not and whether it is compatible or incompatible with the

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evidence available is an entirely different matter. If there has been no consideration at all of the defense taken under Section 313 CrPC, in the given facts of a case, conviction may also well stand vitiated [6].”

This section gives the accused the chance to defend himself by fully informing him of the prosecution’s charges against him and giving him the chance to respond to them in support of his innocence. However, there cannot be a generalized assumption that an accused is biased merely because of any omissions or insufficient questions that are made in response to the charges. There is no one-size-fits-all answer to this question, as the decision will depend on the specific facts and circumstances of each case. While the right of the accused to a fair trial is unquestionably important, the rights of the victim and society as a whole to change deviant behavior cannot be subordinated to the rights of the accused by elevating the latter above what is required for a fair trial [7].

Sub-section (2) of section 313 provides that, “No oath shall be administered to the accused when he is examined under sub-section (1).” The term “Oath,” is “inclusive of a solemn affirmation substituted by law for an oath, and by declaration required or authorized by law to be made before a public servant for the purpose of proof, whether in a court of justice or not Indian Penal Code, 1860, section 51 [8].” The statement of an accused under Section 313 of the Code of Criminal Procedure (CrPC) is thus not considered as evidence under Section 3 of the Indian Evidence Act, 1872 because it is not recorded after administering an oath to the accused [9], as also held in the case of *Raj Kumar Singh v. State of Rajasthan* [10]. However, as per the settled position of law in *Brajendra Singh v. State of MP* [11], “Statement of accused under section 313 CrPC which is supportive of the case of the prosecution can be used as evidence against the accused.” Notwithstanding this, the statements made by the accused cannot be used against him since he was not questioned under oath in the 313 examination to provide an explanation for his version of events or to argue against the evidence presented by the prosecution. Even though the court is not permitted to charge the accused for making false statements during the examination, the accused is free to remain silent or to make any false statement that does not bind him, as elaborately discussed in the case of *Sanatan Naskar & Anr v. State of West Bengal* [12].

The article will discuss the various aspects of the examination of the accused under Section 313 of the CrPC, including the purpose of the examination, the procedure for the examination, and the rights of the accused during the examination. The role and significance and the jurisprudence evolved out of the provision till date is dealt with in depth in this article.

OBJECT AND SCOPE OF THE SECTION

As stated in the introduction, Section 313 affords the accused the right to self-defense by fully disclosing the allegations brought against him and allowing him the opportunity to refute them in support of his innocence. As held by the Supreme Court in *Ashok Kumar v. State of Haryana* [13], The examination of the accused is a requirement of the court, and in addition to making sure that it is followed, the court must remember that the accused has an opportunity to defend his actions. The accused has the choice to either speak just in a simple denial while remaining mute or, as an alternative, to give his version of events and the reasons for his claimed participation in the crime. These are the declarations the accused makes without concern for or the ability to be cross-examined by another party. However, if the statements made are untrue, the court has the right to draw unfavorable conclusions and issue any necessary consequences as required by the law. The main goal of this section is to create a direct conversation between the court and the accused, as previously stated. The court must present every important incriminating piece of evidence to the accused and give them the opportunity to respond and explain.

Once such statements are documented, the court must then decide how and to what extent they can be used as evidence during the investigation and trial. The truth of any exculpatory admission made by the accused, if any, can be verified using the accused’s statement. It can be considered during any investigation or trial, but it isn’t strictly admissible as evidence in the case. Section 313(4) explicitly

states that the answers given by the accused can be considered in the investigation or trial, and used as evidence for or against the accused in any subsequent investigation or trial for any subsequent offense that the answers may suggest they committed. In other words, the usage is permitted in accordance with the code's rules, but it is subject to certain restrictions. However, statements made under this section should not be considered on their own but rather in the context of the evidence presented by the prosecution. The courts may rely on a portion of the accused's statement and find them guilty in light of the other evidence against them presented by the prosecution [14].

First, the scope of this section is that the process of questioning the accused would begin following the examination of prosecution witnesses or the conclusion of prosecution arguments and prior to the examination of defense witnesses or the start of defense arguments [15]. Therefore, the accused would only be able to present a defense once they were aware of the witnesses and evidence used against them. It would be required to hear from the accused about the evidence presented against him. The basis for such accusations against the accused has been and will continue to be *Audi Alteram Partem*. Therefore, this clause would give the accused the chance to defend himself against any allegations made by the prosecution's witnesses and evidence [16].

Second, it is possible that the accused was not previously given a chance to present his defense or circumstances [17]. In this case, the accused would be ready to speak, whether the warning was accurate or not. The defense of the accused, however, would not be a prepared or staged one and might instead be sincere if there had been no prior warning. This notion would also be proven false practically. Regardless of the circumstance, whether or not he had been forewarned, the accused would always respond or explain things in the way he desired.

Third, the accused would not be required to take an oath when giving his opinion on the events cited in the evidence [18]. The accused has access to this facility in order to keep him from testifying against himself. The defense would not utilize the accused's explanation from the stage 313 examination of the accused materially against him without any supporting evidence. It is because they have only ever been used as supporting evidence, not as the only basis for a conviction [19].

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Fifth, if the accused chooses to be silent throughout the process of examination, then accused shall not be made liable for the punishment by taking the situation of he being silent during the whole procedure as the sole basis [20]. This right and protection for the accused has been taken care of the legislators in the manner of inserting Section-313(3) [21].

Sixth, the decision to take into account the answers provided by the accused during this specific examination has been left up to the court's or the judge's discretion. Such responses may be used against him in the course of the investigation or the trial process, but only at the judge's or court's discretion. However, the accused would not be directly punished for his responses. It can be explained in the following way: If the accused has committed an offence "A" but hasn't admitted it in accordance with Section 313 but the prosecution has proven it beyond a reasonable doubt, then such an answer would not be taken into consideration for the trial or inquiry related to such "A" offence but could be used to prove the commission of the offence 'B'. The prosecution can exploit this circumstance to its advantage in any subsequent trial by arguing that since the defendant lied under oath during a prior examination, it is possible that his current testimony will likewise be inaccurate or fraudulent and cannot be used as evidence [22].

Seventh, it is clear from sub clause 5 of Section 313 that the prosecution and defense attorneys may receive any kind of assistance in developing the questions to be asked of the accused during this stage of the trial. The court may also allow the accused to submit a written statement in order to comply with this section or condition. Through the 2008 amendment to the Code of Criminal Procedure, this facility has been made available.

TO WHAT PROCEEDINGS DOES 313 APPLIES: SUB-SECTION [1]

In order to overturn the position expressed by some high courts that this provision does not apply to summons trials, the words “In every inquiry or trial” have been included at the beginning of this sub-section.

It is now clear that it applies to:

- All trial whether under the warrant [23], summons [24], or summary [25] procedure subject to the proviso in the case of the summons trial;
- All inquiries where there is an accused person.

On the other hand, the section has no application to any proceeding where there is no “accused” for example, (a). Inquiry under section 117 [26]. (b). Proceedings under section 125 [27]. The accused can be questioned under Section 313 of the Code of Criminal Procedure (CrPC) in every inquiry or trial.

As per section 2(g) of the CrPC.

“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.

STAGE OF EXAMINATION

Sub-section (1) has two parts, dealing with two stages at which the power may be used by the court [28], with different incidents:

- a. According to its first section, the court has the discretion to ask the accused any questions without first giving him a heads-up [29], as long as there is something in the prosecution’s case that calls for an opportunity for him to respond [30].

According to section 313(a), the court may, but is not required to, examine the accused at any point throughout the investigation or trial to get an explanation for any circumstances that could be used against them. The power granted by section 313(1) (a) CrPC may be used at the court’s discretion [31].

Therefore, it is optional to examine the accused before the conclusion of the prosecution’s case without first giving a warning [32].

The words “may” and “shall” in clauses (a) and (b), respectively, make it clear that the court has the authority to interrogate the accused at any point of the investigation or trial. In section (b), the court is required to do so before the accused presents his defense [33].

In the case of *Emperor v. Genu Gopal* [34]; According to the ruling, the court may utilize the discretionary authority to interrogate the accused under section 313 (1) (a) of the CrPC at any point during the trial or investigation, even before formulating a charge.

- b. The court must examine the accused as part of the second portion [35], and the scope of this inquiry is expanded. After the prosecution’s witnesses have been questioned, this is the time before the accused is called to the stand to present his defense. The accused must now be broadly questioned by the court in order to give him a chance to clarify any facts that the prosecution witnesses have brought to light. The term “generally” denotes that the interrogations shouldn’t resemble cross-examination or treat the accused unfairly. However, even though the examination required by subsection (1) (b) is required, failure to conduct it or any flaws discovered during it would not invalidate a conviction if there was no prejudice, [36] or miscarriage of justice [37].

In the case of *State of Nagaland v. Lipok Ao* [38, 39], it was held, under section 313(1) (b), of the CrPC, the trial judge must present to the accused every item of evidence that looks to be damning against him, and the accused's response must be sought.

The accused can be further questioned in light of the new evidence against him if any prosecution witness has been re-examined, but this cannot be done after erasing the entirety of the previously conducted, on-record, section 313 questioning [40].

To provide the accused the chance to provide an explanation if he so chooses, attention must be particularly brought to incriminating pieces of evidence. All incriminating evidence must be presented to the accused in court in order to get his reaction. This clause is required in nature, imposes a binding obligation on the court, and grants the accused a comparable entitlement. Situations that were not brought up during the accused's examination pursuant to section 313 cannot be utilized against him [41].

WHEN EXAMINATION IS MANDATORY

Given that the word "may" is used in Section 313(1) (a), the court is free to decide whether to examine the accused while the prosecution is presenting evidence. However, because the word "shall" is used in Section 313(1) (b), the court must question the accused for clarification of the charges after the prosecution has finished its case and before the defense has a chance to present its case. However, there may be one circumstance in which the 313(1) (b) compulsory or mandatory provision may be waived, namely in a summons case where the accused's personal appearance is already waived. The Hon'ble Supreme Court in *Nar Singh v. State of Haryana* [42], when addressing the polarity in the aforementioned provisions/clauses, noted, among other things, that there are two kinds of examination under Section 313 CrPC. "*While the second under Section 313(1) (b) CrPC occurs after the prosecution witnesses have been cross-examined but before the accused is called to present his defense, the first under Section 313(1) (a) CrPC relates to any stage of the investigation or trial. The latter is universal and required whereas the former is specific and optional.*"

WHEN EXAMINATION IS NOT NECESSARY

It is established law that not every circumstance calls for the accused to be examined as described in the previous section. The accused should not be cross-examined by the court if there are no circumstances in the evidence that seem to be against him. Inappropriate and inaccurate replies cannot be taken into consideration. When the accused has admitted guilt to the charge, the issue of the examination does not come up. In a similar vein, it is not necessary to bring up an accusation during cross-examination if the accused has already given an admission. When there is no evidence, the legislature does not intend to demand an explanation from the accused.

ACCUSED

An accused person is someone who is now being tried and being cross-examined by the court for the purposes of section 313 of the Criminal Procedure Code; this excludes an accused person over whom the court has jurisdiction in another matter.

The accused must be personally examined, with the exception of cases involving legal entities and those covered by the new proviso, as the current clause grants the accused a personal privilege [43]. An explanation of the attorney is not in conformity with Section 313 even if the accused may be represented by the attorney for a variety of purposes under the Code [44]. On the other hand, the prosecutions or the accused's attorney must be consulted by the court in this subject [45]. Personal examination is obviously not an option when the accused is a legal entity, such a corporation. In this situation, the testimony of a director or other authorized representative of the corporation would be sufficient [46].

Since the examination must be of the accused personally [47], his personal attendance may be required by the court for this purpose, even were exempted under section 205 [48]. The new proviso

makes this explicit. Therefore, under section 313(1) (b) CrPC, the attorney for the accused may only be questioned in cases in which the accused has been granted personal exemption. Therefore, Section 313 does not allow for the examination of the defense attorney on behalf of the accused outside of summons cases [49].

However, if the accused, who is already exempt from personal exemption, applies to the court, pleading for permission to answer the question without being required to appear in person and providing an affidavit about his physical inability to do so the court may, in exceptional circumstances, send the accused a questionnaire for his response through his attorney, provided the latter provides an assurance that he will do so. The court will also set a deadline for the accused to file the aforementioned questionnaire and its response with the court. The adoption of such a course of exceptional urgency would not go against the legislative intent of section 313 in this case [50].

In the case of *B. Chainraj v. Asstt. Collector of Central Excise* [51], it was held that the inclusion of the word “personally” indicates that the accused will have the opportunity to discuss his position regarding the damning facts in addition to what his attorney will have previously covered during cross-examination. As a result, since the accused has not yet had an opportunity to cross-examine the witnesses, it would be dangerous to ask the accused to explicitly explain any circumstance.

MANNER OF EXAMINATION

In *Dharnidhar v. State of U.P. & Others* [52], The court ruled that calling the accused’s attention to the facts and circumstances that may be used against him and asking for an explanation is the right procedure for the court to follow while recording the accused’s statement under Section 313 of the Criminal Procedure Code. In other words, it gives the accused the chance to explain to the court what is true and what his defense is.

QUESTION TO BE PUT

The consensus opinion on asking questions of the accused during an examination under Section 313 was that the questions must be fair and written in such a way that even an uneducated or illiterate accused may understand and respond to them [53]. The accused should not be asked questions about the prosecution’s case in general but rather on each specific substantial circumstance that appears to be against him [54]. The questions should be written in English, translated into the accused person’s language, and then recorded in English. However, the court’s presiding officer must certify that the questions were properly translated into the accused’s language and presented to them [55]. The judge is not required to extract more information from the accused on how the victim died after questions were asked of him advertising all the facts [56]. And most important, the court does not mandate that you prepare standard questions to ask each accused person or that you do so [57].

However, in the recent case of *Meenakshi and Ors. v. The State of Karnataka* [58], the learned session’s judge, according to the Karnataka High Court, created two sets of questionnaires because there were two accused. However, the questions in the two sets were remarkably similar, lengthy, and the Sessions Judge had faithfully transcribed the testimony in the examination-in-chief into questions. The Sessions Judge’s queries were thus structured in a way that did not further the purposes of Section 313 of the Code. The High Court continued by saying that [59]:

“The practice has been to prepare as many sets of questionnaires as the number of accused are. In all the sets, same questions are repeated, but to show that every accused is questioned individually, the signature of only one accused is taken on each set of questionnaires. Preparing the questionnaires equal to number of accused is not the correct procedure and it is also a waste of time. It is enough if only one set of questions is prepared, but what is required is to frame distinct questions as against every accused. If a witness speaks at a time against two or more accused, a single question against them may be framed but their answers must be recorded separately one after

another. In the year 2009, amendment was brought to section 313 CrPC. Probably with a view to saving the time of the trial court judges, they are permitted to take the assistance of the Public Prosecutors and the defense counsel in preparing the questions. Therefore, the trial court judges may direct the Public Prosecutors and the defense counsel to submit the questions to be put to the accused, and the questions prepared by them may be adopted after scrutiny and modification if required."

The Karnataka High Court thus called out the guidelines given below for the subordinate courts to follow while dealing with the accused under section 313 CrPC [60]:

1. Only the incriminatory evidence must be picked out from oral and documentary evidence.
2. The questions must be framed in a simple language, as far as possible in short sentences.
3. The attention of each accused must be drawn to the evidence adverse or against him or her.
4. Sometimes, a witness may give evidence as regards the collective overt act of two or more accused and in that event a single question may be framed, but each accused must be questioned individually, and their answers must be recorded separately.
5. It is also possible that two or more witnesses may speak identically regarding the overt act of an accused. In that event, the substance of their evidence may be put in a single question.
6. The attention of the accused must be drawn to the marked documents and material objects if they are incriminatory.
7. The accused must be questioned regarding various types of mahazars or panchanamas only if they contain incriminatory evidence.
8. Accused need not be questioned in regard to evidence given by the formal witnesses, for example, an engineer who has drawn the sketch of scene of occurrence, a police constable submitting the FIR to the Magistrate, a police constable carrying seized articles to FSL, a police officer who has only submitted the charge sheet without conducting investigation, etc., unless anything incriminatory is found in such evidence.
9. If there are two or more accused, it is not necessary to prepare as many sets of questionnaires as the number of accused are. It is enough to prepare a single questionnaire, but the question must be directed towards a particular accused individually or two or more accused collectively. When a question is framed pointing out collective overt act of two or more accused, the answer of each accused must be recorded separately one after another.
10. By virtue of amendment brought to CrPC, the trial court judges may take the assistance of the Public Prosecutors and the defense counsel for framing the questions.
11. In case the Public Prosecutor or the defense counsel submits a set of questions, the trial court judges must scrutinize and adopt them with or without modification.
12. The court should record the answer or explanation given by the accused and should not insist upon the accused to give answer in one word, "false" or "true."

Also, the Supreme Court in the recent case of *Premchand v. The State of Maharashtra* [61] *inter alia* held that [62]:

"The exercise under section 313 instead of being ritualistic ought to be realistic in the sense that it should be the means for securing the ends of justice; instead of an aimless effort, the means towards the end should be purposeful. Indeed, it is optional for the accused to explain the circumstances put to him under section 313, but the safeguard provided by it and the valuable right that it envisions, if availed of or exercised, could prove decisive and have an effect on the final outcome, which would in effect promote utility of the exercise rather than its futility."

Thus, it becomes the duty of the court to question and examine the accused under section 313 of the CrPC, fairly, so as to ensure no miscarriage of justice.

RIGHTS OF THE ACCUSED

Unquestionably, an accused person's right to silence under Section 313(3) of the Code is consistent with his or her privilege against self-incrimination as stated in Article 20(3) 24 of the Indian

Constitution. In addition, an accused individual is shielded from perjury charges due to any false replies he may provide in response to his examination under the abovementioned rule. However, it is established law that in these situations, the Court would be allowed to draw any conclusions it saw fit, including any that were unfavorable to the accused and allowed by the law. In fact, it is well-established law [63] that, while an accused's silence or failure to explain the circumstances that are presented as evidence against him may prove to be another link in the chain of events against him, courts must be careful to ensure that the accused's silence never serves as a substitute for the prosecution's case-supporting evidence. However, it is well established in law [64] that the "falsity of the defense cannot take the place of proof of facts which the prosecution must establish in order to succeed." In a similar vein, false answers provided by an accused in his statement under Section 313 CrPC may provide an additional link in the chain of circumstances to complete the chain.

EVIDENTIARY VALUE OF THE STATEMENTS

The remarks made by the accused cannot be used against him since he was not questioned under oath in the 313 examinations to provide an explanation for his version of events or to argue against the evidence presented by the prosecution. Even though the court is not permitted to prosecute the accused for making false statements during the examination, the accused is free to remain silent or to make any false statement that does not bind him. In the ruling issued in *Sanatan Naskar & Anr v. State of West Bengal* [65], the Hon'ble Apex court thoroughly examined the purpose, procedure, and results of the accused's examination under Rule 313. It was noted that, "The answers by an accused under Section 313 of the CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the CrPC is wide and is not a mere formality. The essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the CrPC. As already noticed, the object of recording the statement of the accused under Section 313 of the 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 thereof, 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 simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in 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. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313 (4) of CrPC 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. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the CrPC as it cannot be regarded as a substantive piece of evidence" [66].

It is now established that remarks made by the accused or the replies provided by the accused are not significant pieces of evidence and are not the only grounds for convicting the accused. The testimony of the accused may be utilized to properly evaluate the evidence and decide whether to accept or reject it.

In *Mohan Singh v. Prem Singh & Anr* [67], Hon'ble 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."

In *Dehal Singh v. State of H.P* [68], Hon'ble Apex Court again observed:

"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. The appellants have not chosen to examine any other witness to support this plea and in case none was available they were free to examine themselves in terms of Section 315 of the Code of Criminal Procedure which, inter alia, provides that a person accused of an offence is a competent witness of the defense and may give evidence on oath in disproof of the charges. 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 defense to disprove the charge, his version can be tested by his cross-examination."

Finally, in *Rajender v. State (NCT of Delhi* [69], it was held that the law on the point is very clear. A statement made by an accused under Section 313, CrPC. can be used as an aid to lend credence to the evidence led by the prosecution, but cannot be sole basis for the conviction [70]. Statements under section 313 are not substantial piece of evidence because statement of the accused cannot be cross-examined.

These declarations will be particularly helpful when the prosecution's evidence is somewhat ambiguous in the eyes of the court and if the accused is able to clarify the circumstances surrounding the prosecution's evidence, the prosecution's evidence will be lost or lapse. The remarks of Section 313 are further ties to the circumstances because if he doesn't explain, the court will come to a strong consensus regarding the accused's guilt [71].

Section 313(5), which was added in 2009, specifies that the prosecution and defense can assist the court in asking questions on the examination of Section 313, and the accused may respond to such questions in writing, similar to a written statement.

It is possible to object to Clause (5) on the grounds that it subverts the purpose of Section 313 of the CrPC, namely the spontaneity of the questioning and responding. The solution to this objection, however, is that article (5) is not a required rule and furthermore, nowhere does it forbid the court from asking the question without the assistance of the prosecution and the defense. Instead, it enhances the expressiveness of Section 313 of CrPC.

ANALYSIS

Several judgements of the Supreme Court and the High Court finds out the lacunae in the exercise of power by the trial courts, which is conferred upon them by section 313 of CrPC. As is mentioned in the

previous sections of this article, several guidelines have been provided by the High Court as well as the Supreme Court which according to them, will pave the way for the subordinate courts to manage to exercise their power of examining the accused person or persons [72] in an efficient and reasonable manner. The subordinate courts are often found to be procedurally erroneous when it comes to the exercise of power under contingent provisions of law like section 313 or for that matter in cases of conviction by the trial court in cases of rarest-of-rare phenomenon. For example, the recent of *Manoj v. State of Madhya Pradesh* [73] wherein the supreme court framed certain guidelines for the trial courts which are to be followed by them while exercising the power of sentencing any person accused of a crime calling out for capital punishment.

An ascertainable logic behind the attitude of the superior courts of framing of guidelines for the subordinate courts time and again for procedural clarity or whatever the reason might be, is that that the understanding of the superior courts of the land that “it is they, who have been conferred with the inherent powers of interpretation of law, and not the subordinate courts, which are just supposed to follow the letter of law.” This position is true to a great extent, since most of the substantial matters decided by the subordinate court ends up appealing in the Higher Courts; maybe due to the easy accessibility of justice, non-satisfaction of the litigating parties, or maybe because a case can be presented before an appellate court only after it has been adjudicated upon by the subordinate court. Here, it is not argued that none of the decisions of the subordinate court are erroneous; many of them are, but what is being attempted to be conveyed here is that, it is not true for all the decisions, which are given by the subordinate courts. In several cases, the Supreme Court renders rulings that set aside High Court decisions and reinstate decisions made by lower courts.

The position of the subordinate judiciary, as it stands in today, must be considered before expecting it to be vigilant enough to analyze, interpret, and apply the true letter and spirit of law to a particular case in a particular manner.

First, the biggest reason for which the Indian Judiciary is famous, “Overburden.” It is reluctant to mention the growing crime rates and the number of cases being filed every day in the subordinate courts of India, since it is not unprecedented for any prudent person of the country. Everyday rush in the courtrooms, adjournments upon adjournments, cases upon cases and faces upon faces. Subordinate courts of India have 4 crore pending number of cases as of 2021, which in comparison to the High Courts of the Country, is 86% higher in number and in comparison, with the Supreme Court, is 98% higher. The practical situation of the subordinate courts is much different than that of the one which is displayed to the public via statutes and movies. A judge, and for that matter every officer of the court, are human beings, and it is next to impossible for any human being to be apt in every given circumstance. This being the status of the subordinate judiciary, it calls for a more defined, and organized structure of law.

Second, corruption and immorality at the ground level serves as one of the main causes of miscarriage of justice. Justice, at least by the legal professionals of the country should not be seen as a medium of earning the living, but should be seen as a contributor to the well-being of the entire nation. It is again reluctant to mention the corrupt practices that are carried out in the courtrooms; however, a small corrupt act of the players of the courtroom leads the case to be the prey of a huge procedural error and thus it ends up being appealed in the Higher Court, where again the erroneous exercise of the subordinate court is found, and the Superior courts feel free to get new guidelines to the subordinate courts, which according to them, would help the trial courts to decide the subsequent matter efficiently. The guidelines then are again manipulatively utilized by the parties to secure justice individually, and the vicious cycle goes on and on again. It is to be understood that the phenomenon of issuing guidelines for the subordinate courts on the basis of a single case does not make the process of delivering justice easy, rather makes it more complicated, as not all the cases appear with the same facts and circumstances, and both the parties to the trial being aware of the actual facts and circumstances, it is the judge who is on trial.

What has been attempted to bring into the attention here is that, judicial guidelines are very much susceptible to be altered and manipulated [74], especially when they are issued by High Courts. Judicial guidelines cannot be replaced with Legislative frameworks, since they are enacted and enforced after considering all the socio-legal norms and constitutional values and guidelines are meant just to serve the courts so as to ensure efficient and effective functioning. The Hon'ble union minister of Home Affairs has recently declared that the government will come up with the new drafts of IPC and CrPC [75]. Let us just hope that these new drafts will most probably understand the need of the hour of the judiciary and prove itself remedial for the condition from which the subordinate judiciary of the country is going through.

CONCLUSION

It is impossible to overstate the importance of the requirements under Section 313 CrPC. The aforementioned clause is not just contained in Audi Alteram Partem, rather [76] “*confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2) CrPC.*” The required compliance with the rules under Section 313 CrPC, however, has unhappily remained an elusive goal despite its importance being sometimes emphasized by different Courts. In fact, the Hon'ble Apex Court in *Satbir Singh v. State of Haryana* [77], while lamenting on the Courts' casual and cursory approach towards the compliance of Section 313 CrPC, reiterated, “It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice ‘Audi Alteram Partem’ as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.” Unquestionably, despite the numerous benefits and importance of the provisions under Section 313 CrPC, the aforementioned law has sadly continued to be veiled in ignorance, neglect, and contempt. Given the necessity of the aforementioned provision, it would not be an exaggeration to say that Section 313 CrPC is an unsung hero of criminal law, worthy, and deserving of the forbearance of its long-overdue debts by both courts and the criminal apparatus.

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