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Spl. Judge for trial of cases under
SC & ST (PoA) Act cum IV Addl.
District & Sessions Judge, Srikakulam.

**EXAMINATION OF THE ACCUSED UNDER SECTION 313 OF
CRIMINAL PROCEDURE CODE**

The purpose of empowering the court to examine the accused under section 313 Cr.P.C. is to meet the requirement of principle of natural justice audi alterum partem.

It was held by Honourable Supreme Court in Sanatan Naskar and another vs. State of West Bengal reported in AIR 2010 SC 3507 “ that the object of examination of accused under section 313 Cr.P.C. is to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain them. The examination of the accused is not a mere formality , the questions put to the accused and answers given by him, have great use.

3) It was held by Hon’ble Supreme Court in Dharnidhar vs. State of Utter Pradesh and others reported in 2010 AIR SCW 5658 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.

4) It was held by Hon’ble Supreme Court of India in Dehal Singh vs. State of Himachal Pradesh reported in AIR 2010 SC 3594 that “ the statement of accused under section 313 Cr.P.C. is recorded without administering oath. Therefore, it cannot be treated as evidence with in the meaning of Sec. 3 of the Evidence Act, 1872. Section 313 (1)(b) of Cr.PC.

Casts a duty on court to give an opportunity to the accused to explain incriminating material against him.

5) **Proviso to Sec.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’

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 reported in AIR 2000 SC 3214, the Hon’ble Supreme 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, C.P.C., in a substantial manner.

For this the accused must be required to file an application before the court along 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 was held by Hon’ble Supreme Court in K.Ambazhagan v. Superintendent of Police, reported in AIR 2004 SC 524 that “ that accused must answer the questions put to him under section 313 (1)(b) of Criminal Procedure Code by personally remaining in court and only in exceptional circumstances of undue hardship and large expenses etc., the general rule of personal presence can be dispensed with.

**PUTTING SEPARATE AND SIMPLE QUESTIONS ABOUT
EACH MATERIAL CIRCUMSTANCE**

* Accused must be questioned simply and separately about each material circumstances which is intended to be used against him.

* 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.

* The opportunity of examination under section 313 Cr.P.C. given to the accused, is part of a fair trial and if it is done in a slipshop manner, it may result in imperfect appreciation of evidence.

* It is imperative that each and every question must be put to the accused separately and their answers must also be recorded separately.

* 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.

EXAMINATION OF ACCUSED IN CASES OF CIRCUMSTANTIAL EVIDENCE

*** In Munish Mubar v. State of Haryana reported in AIR 2013 SC 912 - , the Hon'ble Supreme 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.**

*** Conviction cannot be based merely on the statement of accused under Sec. 313, Cr.P.C. :**

Conviction of the accused cannot be based merely on the statement made under Sec. 313 Cr.PC, as it cannot be regarded as a substantive piece of evidence.

1. An adverse inference can be taken against the accused only if the incriminating materials stood fully established and the accused is not able to furnish any explanation for the same.

2. The statement of 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.

* 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.

* Mere defective/improper examination under section 313 Cr.P.C. is not 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.

EXAMINATION OF COUNSEL:

A pleader authorized 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 authorized 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**)

* The accused cannot answer the questions with legal advice and consultancy , as it will not amount to examination of the accused personally.

JUDGMENT WRITING

* **A Judgment** must begin with clear recital of facts of the case, cause of action and the manner in which the case has been brought to the Court. First of all, the Presiding Officer must have essential facts in mind, and its narration should be without any error or mistake.

* **While** writing a judgment, Judge shall give a brief introduction and to narrate in the judgment about the facts brought before him, about the theory of the case. Judge should avoid repeating pleadings and the law in the judgment. Judge may, write judgment in a style he is comfortable with. It is advised to use clear sentence structures and organization.

* **It** is always better to use plain English.

* Section 354 of the Cr.P.C. prescribes the language of the judgment and requires the points for determination, the decision thereon, the reasons for the decision that it shall be dated and signed in open court.

* **It** is always better to avoid use of complicated language or phraseology just for the fun of it. Use simple verbs and keep them as close to the subject which they refer as possible. A judgment should not be prolix or verbose. The language should be sober and temperate and not satirical or factious. It is always better to prefer to use active voice rather than using passive voice .

* **For** easy understanding, proper use of Grammar and punctuation is always essential. Correct use of grammar definitely shows professionalism of a judge and thereby it makes writing much easier to understand. Judge should go through judgments of superior courts to appreciate the use of style and language in making judgment more professional .

* **BURDEN OF PROOF:**

* **The concept** of burden of proof is explained in Sections 101 to 114 of the Indian Evidence Act, 1872. Presiding Officer must keep in mind the rules determining burden of proof and the statutory exceptions to the general rules thereon. It is always essential to remember to state vividly and correctly who bears the burden to prove the case or issue stated and to what standard. In criminal cases, the principle is beyond all reasonable doubt whereas in civil cases, it is on the preponderance of probabilities with some exceptions where fraud is pleaded.

* **JUDGMENT** should refer to the principles applicable as to the case law and the statutory law. Application of the law the facts of a case is the crux of judgment writing. What we call appreciation of evidence in the judgment is done at this stage. Judge should evaluate the evidence as a whole for the both sides. This is where the ratio decidendi is stated and the case is decided finally.

* Avoid quoting editor's note in judgments. The Editors do not deliver judgments but prepare Head-note according to their understanding.

* The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. Presiding officer must go through the entire judgment to understand the ratio laid down in it.

* The Judgment , as provided in Section 354 of Cr.P.C. is to be written in the language of the Court, and that it shall contain the point or points for determination, the decision thereon and the reasons for the decision. This section also explains that the judgment shall specify the offence (if any) of which, and the section of IPC, or other law under it . If the accused is convicted and punishment to which he is sentenced. If the judgment is of acquittal, it shall state the offence of which the accused is acquitted and direct that accused should be set at liberty, if he is in judicial custody and his presence is not required in other case. Property order should carefully be noted in the result portion.

* **Appreciation** of evidence in criminal case differs to that of the appreciation of evidence in civil case because in criminal cases, the prosecution has to prove the guilt of accused beyond all reasonable doubt, whereas in civil cases, the case should be disposed of on principle of preponderance of probabilities . The truth or otherwise of the evidence has to be weighed pragmatically.

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