

**2022 LiveLaw (SC) 1027**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
SANJAY KISHAN KAUL; J., ABHAY S. OKA; J.  
CRIMINAL APPEAL NO. 122 OF 2021  
Kalicharan & Ors. *versus* State of Uttar Pradesh**

**Code of Criminal Procedure, 1973; Section 313 - Questioning an accused under Section 313 CrPC is not an empty formality - Accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. (Para 22)**

**Code of Criminal Procedure, 1973; Sections 215 and 464 - When the Court of appeal is called upon to decide whether any failure of justice has been occasioned due to omission to frame a charge or error in the charge, the Court is duty bound to examine the entire record of the trial including all exhibited documents, depositions and the statements of the accused recorded under Section 313. (Para 20)**

**Code of Criminal Procedure, 1973; Chapter XVII - Objects of provisions regarding framing of charge - To make the accused aware of the accusations against him on the basis of which the prosecution is seeking to convict him - Accused should be in a position to effectively defend himself. An accused can properly defend himself provided he is clearly informed about the nature of the allegations against him before the actual trial starts. (Para 16-17)**

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**J U D G M E N T**

**ABHAY S. OKA, J.**

**FACTUAL DETAILS**

**1.** Mainly two issues arise in this appeal. The first issue is regarding the omission to frame a proper charge in accordance with Section 213 of the Code of Criminal Procedure, 1973 (for short, 'CrPC'). The second issue is of the consequence of the failure of the learned Trial Judge to put material circumstances brought on record in the prosecution evidence to the accused in their statements under Section 313 of CrPC. In short, this Court will have to examine whether there is a failure to comply with the requirements of Sections 213 and 313 of CrPC. If the answer to the said question is in the affirmative, the next question will be whether prejudice has been caused to the accused due to failure to comply with the aforesaid provisions and whether it has caused a failure of justice.

**2.** The present appeal arises out of the judgment and order of the Fast Track Sessions Court at Bulandshahr. The Fast Track Court convicted the accused Bangali who is not before this Court for the offences punishable under Section 148 of the Indian Penal Code (for short, 'IPC'), Section 302 of IPC as well as Section 307 read with Section 149 of IPC. The Fast Track Court convicted Kalicharan (accused no.1), Yaad Prakash (accused no.2),

Diwan Singh (accused no.3), and Smt. Shakuntala Devi (accused no.4) for the offences punishable under Section 148 of IPC, Section 302 read with Section 149 of IPC and Section 307 read with Section 149 of IPC. Yaad Prakash (accused no.2) was also convicted for the offence punishable under Section 25 of the Arms Act, 1959. Two separate appeals were preferred before the High Court of Judicature at Allahabad. One appeal was preferred by the accused Bangali and the other one was preferred by accused nos.1 to 4. By the impugned judgment, the appeals were dismissed.

3. Accused Bangali did not challenge the impugned Judgment. Accused nos.1 to 4 have preferred this appeal. We must note here that appellant no.3 Diwan Singh (accused no.3) raised a plea in the present appeal that on the date of the commission of the alleged offence, he was a juvenile in conflict with law. Accordingly, by the order dated 8<sup>th</sup> February 2021, this Court directed the learned District and Sessions Judge to hold an inquiry into the said plea. A finding was rendered by the learned District and Sessions Judge holding that on the date of commission of the offence, appellant no.3 Diwan Singh (accused no.3) was a juvenile in conflict with law. Therefore, by the order dated 1<sup>st</sup> July 2021, the conviction of appellant no.3 was set aside and the present appeal to that extent was allowed.

4. We may note here that for the same incident, two separate First Information Reports (FIRs) were registered. The first FIR was against all the five accused for all the IPC offences and the second FIR was against appellant no.2 (accused no.2) for the offence punishable under Section 25 of the Arms Act.

5. The prosecution case, in brief, is that on 6<sup>th</sup> December 2000 at about 1.30 pm, the informant Atar Singh (PW-1) was carrying soil for levelling a lane by his bullock cart. When he reached near the house of Shankar, accused no.1 Kalicharan and his sons, Yaad Prakash (accused no.2), and Diwan Singh (accused no.3) resisted PW-1 and forced him to turn back his bullock cart. There was an altercation between accused nos.1 to 3 and PW-1. The said three accused went back to their house and came back with weapons. The allegation is that the accused Bangali came with a chura (razor). Accused no.1 was carrying a lathi. Accused no.2 Yaad Prakash was carrying a country-made pistol of 315 bores. Accused no.3 Diwan Singh and accused no.4 Shakuntala Devi were carrying axe in their hands. Accused no.4 Shakuntala Devi is the wife of accused no.1 and mother of accused nos. 2 and 3. The allegation made in the FIR is that accused no.2 fired four to five shots from his country-made pistol which hit deceased Harpal Singh who died on the spot. As a result of this incident, the conflict started and the accused Bangali who was armed with a razor attacked PW-1's sister Rani, who succumbed to the injuries caused by Bangali. Malkhan Singh, Ram Autar, Smt. Saroj, Smt. Rajni and Smt. Rani Devi came to rescue the deceased Rani. However, the said persons were attacked by accused nos.1,3 and 4 with weapons in their hands. These persons suffered injuries at the hands of the said three accused. The accused nos. 2 and 4 also sustained injuries in the fight. It must be noted here that though in the FIR, a case was made out that deceased Harpal Singh died to bullet injuries caused by bullets fired by accused no.2 Yaad Prakash, in the evidence, the prosecution witnesses and in particular PW-1, deposed that due to commotion caused by firing of shots by accused no.2, Harpal Singh fell down and later on he was attacked by the other accused. The injuries caused by sharp weapons led to his death. Apart from the evidence of recovery, the prosecution mainly relied upon the evidence of eye-witnesses of PW-1 Attar Singh and PW-2 Malkhan Singh who were allegedly injured at the hands of the accused.

## **SUBMISSIONS**

6. Shri Rakesh Khanna, the learned senior counsel appearing for the appellants pointed out at the outset that one of the five accused, Diwan Singh has been acquitted by this Court and therefore, only four accused were involved in the incident. He, therefore, submitted that the allegation of unlawful assembly made by the prosecution cannot be accepted as there was no assembly of five or more persons. He, therefore, submitted that Sections 148 and 149 of IPC could not be invoked. He invited our attention to the fourth charge framed against the accused. He pointed out that the said charge alleges that accused no.2 Yaad Prakash opened fire with a country-made revolver and the bullet injury sustained by Harpal Singh caused his death. He pointed out that there was no charge framed that the accused killed Harpal Singh after he fell down by using weapons in their hands. He submitted that as can be seen from the judgments of the Sessions Court and High Court, it has been held that Harpal Singh did not receive any firearm injury but he suffered injuries due to the assault made by the accused nos.1,2 and 4 by weapons in their hands. He submitted that the accused were misled due to the failure to frame proper charge. He submitted that though PW-1 and PW-2 deposed that Harpal Singh is not the victim of bullet injury caused by the firearm used by accused no.2, while recording statements of the accused under Section 313, the only circumstance put to the accused is that Harpal Singh died due to four to five shots fired by accused no.2, Yaad Prakash. He pointed out that the circumstance that the accused attacked Harpal Singh with the weapons in their hands which ultimately cause the death of Harpal Singh has not been put to the accused persons. He submitted that a serious prejudice has been caused to the accused due to the failure to frame proper charge and by failure to put material circumstances to the accused in their statement under Section 313 of CrPC. He, therefore, submitted that the conviction of the appellants nos.1,2 and 4 is vitiated and they deserve to be acquitted. He also pointed out that the applications for a grant of exemption from surrendering made by the appellants were rejected by this Court by order dated 29<sup>th</sup> July 2019. The custody certificates show that appellants nos.1,2 and 4 are in custody since 19<sup>th</sup> August 2019.

7. Shri Vinod Diwakar, learned Additional Advocate General for the State of Uttar Pradesh firstly submitted that the advocate for the accused had cross-examined the material prosecution witnesses including the two eye-witnesses on the prosecution case that Harpal Singh died due to assault made by the appellant nos.1,2 and 4 by the weapons in their hands. Therefore, there was no prejudice caused to them on account of the failure of the Court to frame a proper charge. Moreover, the appellants were aware of the prosecution case as reflected in the evidence of PW-1 and PW-2 and therefore, the failure of the learned Trial Judge to put the circumstance to them in their statement under Section 313 is not at all fatal. He submitted that both the Courts have believed the testimony of PW-1 and PW-2. He submitted that injuries on the person of deceased Harpal Singh and injuries found on the injured persons including PW-1 and PW-2 were consistent with the prosecution case. He would, therefore, submit that no interference is called for in this appeal as two persons have been brutally murdered and several others were injured.

## **CONSIDERATION OF SUBMISSIONS**

### **APPLICABILITY OF SECTIONS 148 AND 149 OF IPC**

8. We have given careful consideration to the submission. As pointed out earlier, the present appellants were convicted for the offence punishable under Section 148 of IPC. All of them were convicted for the offences punishable under Sections 302 and 307 with the aid of Section 149. The condition precedent for attracting offences punishable under

Sections 148 and 149 is that there should be an unlawful assembly as provided in Section 141 of IPC. Section 141 of IPC defines “unlawful assembly” to mean an assembly of five or more persons. In this case, the four appellants and accused Bangali were named in the charge sheet. As noted earlier, appellant no.3 - accused no.3 Diwan Singh was acquitted by this Court by order dated 1<sup>st</sup> July 2021 by setting aside the conviction as against him. Therefore, for considering the question whether there was an unlawful assembly, appellant no.3 Diwan Singh will have to be kept out of consideration. Then only four accused remain. Hence, the charge under Sections 148 and 149 of IPC cannot be sustained.

**EFFECT OF OMISSION TO FRAME PROPER CHARGE AND OMISSION TO PUT RELEVANT CIRCUMSTANCES TO ACCUSED IN THEIR STATEMENT UNDER SECTION 313 OF CRPC.**

9. Now, we turn to the charge framed by the Trial Court against the accused. The only charges framed for the offence under Section 302 of IPC in relation to deceased Harpal Singh were the third and fourth charges. The official English translation of the said two charges made by the High Court reads thus:

“Third: That on the above said date, time and place, you the accused Yaad Prakash opened 4-5 gunshots with the country pistol holding in your hand at the complainant Atar Singh and his family members with intention to kill them that hit to the cousin brother of complainant namely Harpal Singh. Thus, you the accused Yaadram committed the murder of Harpal Singh. Thus, you have committed offense punishable under Section 302 IPC which is within the cognizance of this Court.

Fourth: That on the above said date, time and place, you the accused Yaad Prakash out of the accused persons, had opened fire with country pistol at Harpal Singh in furtherance of your common object and committed murder of Harpal Singh on the spot which is punishable offense u/s 302/149/IPC and is within the cognizance of the Court.”

(emphasis added)

10. Thus, both the charges allege that appellant no.2 Yaad Prakash (accused no.2) fired 4-5 gunshots with his countrymade pistol which hit Harpal Singh and therefore, Harpal Singh was killed by accused no.2. That is the third charge framed by the Trial Court. The fourth charge was again on the basis of the allegation that it was the injury caused by bullets fired from the country-made pistol of accused no.2 which caused the death of Harpal Singh. The fourth charge indicates that the other accused were roped in only with the aid of Section 149 of IPC.

11. FIR was lodged on the basis of a written report made by PW-1 Attar Singh which was reduced in writing by one Murari Lal, a police constable. The official translation of the material part of the allegations in the said written report reads thus:

“...Thereafter, the accused persons went to their home and then Kalicharan armed with lathi, his sons namely Yad Prakash armed with country made pistol (315), Bangali armed with chhura and Diwan Singh armed with knife and Kalicharan’s wife Smt. Shakuntala Devi armed with an axe came on the spot with common object. On the noise, Harpal S/o Shriram, Smt. Rani Devi daughter of Mahipal, Malkhan Singh, Ram Autar S/o Mahilal, Smt. Saroj w/o Dhawal Singh, Smt. Rajni wife of Ved Prakash, Smt. Rani Devi wife of Atar Singh, Shriram s/o Mewaram, Ved Prakash s/o Mahipal, Satpal S/o Chhitar? Singh and Amar Singh s/o Shriram of our family arrived there. Thereon, accused Kalicharan exhorted saying, ‘DEKHTE KYA HO SALO KO JAAN SE MAAR DAALO (what are you looking for, kill the bastard).’ Thereupon, accused Yad Prakash fired 4-5 shorts on us with his country made pistol with intention to kill, which hit my cousin Harpal Singh. Due to it, Harpal Singh died on the spot....”

(emphasis added)

**12.** As noted earlier, only two eye-witnesses, namely, PW-1 Attar Singh, the informant and PW-2 Malkhan Singh were examined by the prosecution. PW-1 in his deposition before the Court proved his written statement on the basis of which FIR was registered. The English translation of the material part of his examination-in-chief reads thus:

“Kalicharan had lathi in his hand, Yaad Prakash had country made pistol, Bengali had dagger (chura). Diwan Singh had knife and Shakuntala Devi had axe. As they arrived, Kalicharan exhorted them to open fire. Thereupon, accused Yaad Prakash opened 4-5 fires and hearing the noise of fire, my family members namely Malkhan Singh, Ramavtar, Saroj, Rajni, my sister Rani Devi and my wife Rani, Harpal Singh and others had come. When stampede ensued due to fire then Harpal Singh fell down and the aforesaid accused persons assaulted Harpal with their respective weapons as a result of which Harpal died on spot.”

**13.** In the cross-examination, PW-1 stated that as accused no.2 had fired 4-5 gunshots, a stampede ensued. He stated that Harpal fell down but he was not aware whether bullets hit him or not. However, he accepted that in the First Information Report, he had stated that the gunshots fired by the accused no.2 hit Harpal Singh who died on the spot.

**14.** PW-2 Malkhan Singh is the only other eyewitness. He also came out with the same version in his examination-in-chief. He stated in the cross-examination that he was not aware whether Harpal Singh fell down due to a bullet injury.

**15.** We have quoted the third charge above which is based on the allegation in the FIR that Harpal Singh suffered injuries due to bullets fired by accused no.2 and that he died due to the bullet injuries. There is no charge framed that the death of Harpal Singh was caused due to assault made by accused nos.1,2 and 4 (present appellants). As noted by both the Courts, PW 3 Dr. R.K. Daware who performed the post-mortem on the body of deceased Harpal Singh stated that he suffered injuries caused by sharp-edged weapons like knives and chura. Neither he deposed that there were bullet injuries nor did post-mortem notes record such injuries.

**16.** There are provisions made in CrPC in Chapter XVII regarding the framing of charge. The object of the said provisions is obviously to make the accused aware of the accusations against him on the basis of which the prosecution is seeking to convict him. The object of the provisions regarding the framing of charge is that accused should be in a position to effectively defend himself. An accused can properly defend himself provided he is clearly informed about the nature of the allegations against him before the actual trial starts. That is why there are elaborate provisions in CrPC in that behalf. Subsection (1) of Section 212 is material for our consideration which reads thus:

**“212. Particulars as to time, place and person.—**(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

What is more important for this case is Section 213 which reads thus:

**“213. When manner of committing offence must be stated.—**When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.”

**17.** The emphasis is on giving details of the manner of committing offence. Unless the particulars such as specific Sections of the penal statute as well as the time and place of the commission of the alleged offence are incorporated in the charge, the accused will not

be in a position to properly defend himself. Even these particulars may not be enough in many cases to enable the accused to properly defend himself. That is why there is a specific requirement incorporated in Section 213 that if the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose. Illustration (e) to Section 213 provides that when the charge contains an allegation that 'A' is accused of the murder of 'B' at a given time and place, the charge need not state the manner in which 'A' murdered 'B'. Going by the charge framed in this case, it is alleged therein that it was accused no.2 who murdered deceased Harpal Singh by firing bullets from his pistol. Though the case of the prosecution as can be seen from the evidence is that accused nos.1, 3 and 4 committed the murder of Harpal Singh by using sharp weapons in their hand, there is no charge framed against accused nos.1, 3 and 4 alleging that they murdered Harpal Singh. As there is no charge framed against accused nos.1,3 and 4 of committing the murder of Harpal Singh, Illustration (e) will not apply. Therefore, it was necessary to frame a charge in terms of Section 213 by stating the manner of committing the offence of murder by accused nos. 1,3 and 4.

**18.** There are two provisions in CrPC that deal with errors or omissions in framing charge. The said provisions are Sections 215 and 464 which reads thus:

**“215. Effect of errors.—** No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.”

**464. Effect of omission to frame, or absence of, or error in, charge.—**(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision, is of opinion that a failure of justice has in fact been occasioned, it may,—

(a) in the case of an omission to frame a charge, order that a charge be framed, and that the trial be recommended from the point immediately after the

framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”

**19.** Section 215 lays down when errors in the particulars required to be stated in the charge can be treated as material. It lays down that the error cannot be said to be material unless the accused was misled by such error or omission and that such error or omission has caused a failure of justice. Section 464 deals with the effect of error or omission made while framing charges on the finding and sentence of the competent Court. The Section provides that the finding and sentence of the Court cannot be invalid merely on the ground of error in framing charge or omission in framing charge. The finding and sentence will be invalid only if in the opinion of the Court of appeal, the error or omission has occasioned a failure of justice.

**20.** When the Court of appeal is called upon to decide whether any failure of justice has been occasioned due to omission to frame a charge or error in the charge, the Court is duty bound to examine the entire record of the trial including all exhibited documents, depositions and the statements of the accused recorded under Section 313.

**21.** At this stage, we must refer to the requirement of the examination of the accused under Section 313 of CrPC. Section 313 of CrPC reads thus: -

**“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 questions in separate statements of the accused nos. 1 to 4 recorded by the Trial Court are almost identical. Question no.5 is the only question put to them about the evidence adduced against them on the charge of murder of Harpal Singh. Question no.5 put to accused no.3 reads thus: -

“Ques 5 – That it has come up in prosecution evidence that on being exhorted by accused Kalicharan, accused Yaad Prakash fired 4-5 shots at complainant Atar Singh and his family members with his country made pistol with intention to kill, that hit complainant’s cousin Harpal Singh and he died on the spot. What do you have to say in this regard?”

(emphasis added)

**22.** Such a case was not at all made out by the prosecution in the evidence before the Court. The material brought on record by the prosecution witnesses (PW-1 and PW-2) is to the effect that Harpal Singh died due to injuries sustained as a result of an attack made by accused nos.1,3 and 4 on him by sharp weapons. These material circumstances brought on record against the accused on which their conviction is based were never put to the accused. What was put to the accused was not the case made out by the prosecution in the evidence. No questions are asked in the Section 313 statement about the post-mortem of the body of Harpal Singh. It is not put to the witness that the cause of death of Harpal Singh was due to haemorrhage and shock as a result of injuries caused by sharp weapons. Questioning an accused under Section 313 CrPC is not an empty formality. The requirement of Section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the

accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself. In paragraph 21 of the decision of this Court in the case of **Jai Dev v. State of Punjab**<sup>1</sup>, it was held thus: -

“21. In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr Anthony has relied on a decision of this Court in *Hate Singh Bhagat Singh v. State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468] . In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the points used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under Section 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material.”

(emphasis added)

In paragraph 145 of the well-known decision of this Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra**<sup>2</sup>, it was held thus:

“145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration.”

(emphasis added)

**23.** Now coming to the facts of the case, not only that a charge was not framed on the allegation that the death of Harpal Singh was caused due to assault physically made by the accused and in particular accused nos. 1,2 and 4 by use of sharp weapons, a misleading charge was framed that Harpal Singh died due to bullet injuries sustained by the bullets fired by the accused no.2 with a pistol in his hand. There is every possibility of the accused getting misled due to the framing of such a charge and omission to frame the

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<sup>1</sup> (1963) 3 SCR 489

<sup>2</sup> (1984) 4 SCC 116



correct charge. What is more serious is that though the prosecution case made out during the trial clearly indicated that the death of Harpal Singh was not caused due to any bullet injury, the circumstance put to all the accused under Section 313 was that the death of Harpal Singh was caused due to four to five shots fired by accused no.2 by a country-made pistol. In fact, question no.5 in the statement of the accused under Section 313 clearly records that the bullets fired by accused no.2 hit Harpal Singh and he died on the spot. As can be seen from the oral evidence, the post-mortem reports and examination of the doctor, Harpal Singh did not receive any bullet injury. Still, the said allegation was put to all the accused in the examination under Section 313. Thus, not only that the charge framed was misleading, but most material circumstance brought on record against the accused in the evidence that Harpal Singh died due to injuries caused by the attack made by accused nos.1,3 and 4 was not put any of the accused. Thus, not only that the charge was misleading but the accused had no opportunity to explain the circumstance in which Harpal Singh was allegedly killed which was brought on record during the trial. Therefore, in the facts of the case, by reason of omission to frame a proper charge in terms of Section 213 of CrPC, and by reason of not putting important circumstances appearing in the evidence in the statement under Section 313 caused serious prejudice to the accused. The prejudice, in the facts of the case, has occasioned a failure of justice.

**24.** Therefore, we considered whether the case can be remanded for framing of a proper charge and for recording additional statements of the accused under Section 313. But the incident is of December 2000. Therefore, it will be unfair to the accused if they are called upon to answer the circumstances appearing against them in evidence about the incident which has taken place more than 22 years back. In fact, such a course will cause serious prejudice to the accused.

**25.** In the circumstances, the charge of committing the murder of Harpal Singh against accused nos. 1,2 and 4 cannot be substantiated. The accused nos. 1,2 and 4 were convicted for the offences under Section 307 of IPC with the aid of Section 149. However, Section 149 will not apply in this case. We may also note that the accused nos. 1,2 and 4 were in jail from 19<sup>th</sup> August 2019. Therefore, all of them had undergone a sentence for more than three years and four months. Accused no.2 was sentenced to undergo rigorous imprisonment for two years for the offence punishable under Section 25 of the Arms Act which he has already undergone.

**26.** Accused Bangali has not preferred any appeal. We may note here that the accused Bangali was convicted under Section 302 of IPC for committing the murder of Rani without the aid of Section 149 of IPC.

**27.** Hence, the appeal must succeed. We set aside the impugned judgments of the Sessions Court as well as the High Court to the extent to which accused no.1 Kalicharan, accused no.2 Yaad Prakash and accused no.4, Smt. Shakuntala Devi were convicted. They shall be forthwith set at liberty unless they are required to be detained in connection with any other offence. As noted earlier, accused no.3 Diwan Singh has already been acquitted under the order dated 1<sup>st</sup> July 2021.

**28.** The appeal is, accordingly, allowed.