MRC-3-2023
CRA-D-716-2023 and CRA-D-659-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

MRC-3-2023
CRA-D-716-2023 and
CRA-D-659-2023

State of Punjab ...Appellant

Versus

Vinod Shah and another …Respondents

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
01.04.2026	06.04.2026	FULL PRONOUNCED	06.04.2026

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Ms. Pooja Nayar Sharma, D.A.G., Punjab.

Mr. Tarun Singla, Advocate (Legal Aid Counsel) and
Mr. Ashish Singla, Advocate
for the appellant/convict-Rohit Kumar Sharma in CRA-D-716-2023.

Mr. Swarn Kumar Sandhir, Advocate (Legal aid counsel)
for the appellant/convict, Vinod Shah, in CRA-D-659-2023.

Mr. Sanjeev Kumar, Advocate (Amicus Curiae).

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
37	10.03.2019	Doraha	302, 376-A IPC and Sections 3, 4, 8 of the Protection of Children from Sexual Offence Act 2012

Criminal Case number before the Sessions Court	CIS No.SC/509/2019
Date of Decision	24.03.2023
Date of order on the quantum of sentence	29.03.2023

Name of the accused/convict	**Vinod Shah**
Conviction under Sections	302, 363, 366 IPC and 6 of the POCSO Act

Sentence imposed upon the convict – Vinod Shah

Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
302 IPC	Death sentence subject to its confirmation by the Hon'ble High court of Punjab and Haryana, Chandigarh	50,000/-	RI for 01 year in case his death sentence is not confirmed by the Hon'ble High Court
6 of POCSO Act	Death sentence subject to its confirmation by the Hon'ble High Court of Punjab and Haryana, Chandigarh	50,000	RI for 01 year in case his death sentence is not confirmed by the Hon'ble High Court
363 IPC	05 years	50,000/-	RI for 01 year
366 IPC	05 years	50,000/-	RI for 01 year

Name of the accused/convict	**Rohit Kumar Sharma**
Conviction under Sections	302, 363, 366 IPC and 6 of the POCSO Act

Sentence imposed upon the convict – Rohit Kumar Sharma			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
302 IPC	Death sentence subject to its confirmation by the Hon'ble High Court of Punjab and Haryana, Chandigarh	50,000/-	RI for 01 year in case his death sentence is not confirmed by the Hon'ble High Court
6 of POCSO Act	Death sentence subject to its confirmation by the Hon'ble High Court of Punjab and Haryana, Chandigarh	50,000	RI for 01 year in case his death sentence is not confirmed by the Hon'ble High Court
363 IPC	05 years	50,000/-	RI for 01 year
366 IPC	05 years	50,000/-	RI for 01 year

1. On the evening of Mar 09, 2019, the victim 'N', whom this Court would affectionately refer to as '*Laadli'*, was allegedly abducted by the appellant/convict Vinod Shah, aged 21, who was her paternal cousin (*Bhaanja* of *Laadli's* father), and after that the appellant/ co-convict Rohit Sharma, aged 19, joined him, and both of them committed rape upon her in an uninhabited godown, and subsequently, strangulated her and also inflicted brick blows on her head, and both acts of assaults resulted in her death, and for this crime, both Vinod and Rohit were arrested, prosecuted, and upon conviction by the trial Court, were awarded death sentences, in addition to the other sentences as captioned above.

2. The Trial Court had sent the murder reference to this Court under §366(1) CrPC, 1973, for its confirmation, whereas the convicts Vinod Shah and Rohit Kumar Sharma have

come up before this Court through separate appeals under §374(2) CrPC, challenging the judgment of conviction and order of sentence, seeking their acquittal.

3. We have heard Mr. Swarn Kumar Sandhir, for the convict, Vinod Shah, Mr. Tarun Singla and Mr. Ashish Singla for the convict, Rohit Kumar Sharma, Ms. Pooja Nayar Sharma, DAG, for the State of Punjab, and also Mr. Sanjeev Kumar, Advocate, as Amicus curiae. We have also gone through the record.

4. On Mar 10, 2019, at 01:50 AM, i.e., the night intervening March 09 and 10, the victim's mother [PW1] informed the police about the incident in question, and her statement was recorded in a memo (Ruqa), and endorsements were also made therein. [Ext PW12/A, PW12/B, P1 & P2].

5. *Laadli's* mother, who testified as PW1, stated that she has seven children, out of whom four are sons, and three are daughters, and the victim was aged 7½ years. *Laadli's* father testified as PW2 and stated that his daughter was aged 7½ years and her date of birth was Oct 08, 2011, as per Ext P3.

6. The prosecution examined PW7 Sunita Devi, In-charge of Municipal Co-Ed School, Doraha, to prove the date of birth of *Laadli* through the school record, which was tendered in evidence as PW7/A and PW7/B.

7. *Laadli's* mother, PW1, testified that on March 9, 2019, at around 3-4 P.M., she, along with her husband [PW2] and children, was present at their home. At that time, the accused Vinod Shah, who is related to them being her husband's nephew [*Bhaanja*], came to their house, carrying liquor. He offered her husband drinks, and then both Vinod Shah and her husband drank liquor. After taking liquor, her husband left for some work. Thereafter, Vinod Shah took her daughter (*Laadli*) on the pretext of getting her candies. However, *Laadli* did not return. She testified that Vinod Shah and Rohit had committed rape upon her daughter and murdered her.

8. *Laadli's* father testified as PW2 and stated that on Mar 09, 2019, at about 3:00 PM, when he, and his wife [PW1] and children, were present in their house, then at that time the accused Vinod Shah, (whom PW2 identified as the same person present in the Court), and who is related to him as his nephew, visited his house and was having liquor with him. Accused Vinod Shah offered liquor to *Laadli's* father [PW2], and then both of them drank. Later on, PW2 states having left the house for work and to purchase clothes.

9. PW3 Ravi Kumar testified that on Mar 09, 2019, when he was outside his house, the victim's father, [PW2], came and told him that his daughter *Laadli* had been taken away by Vinod Shah, who was his nephew. He stated that Vinod Shah had taken her on the pretext of getting her toffees; however, she did not return. On this, PW3-Ravi Kumar, along with Laadli's father [PW2], started searching for her, but they could not find her. After that, PW3 Ravi Kumar stated that he went to his workplace, where he received a call from a boy, Shubham's brother, who resides near the house of the accused, Rohit. The said boy informed Ravi [PW3] that the accused Rohit had mentioned about the location of the victim and requested Ravi [PW3] to accompany him to that place. On this, PW3 Ravi Kumar went along, and on reaching, the accused Rohit was found present there. The accused Rohit said that he would be in a position to tell about the girl [*Laadli*], subject to the condition that no one would give him any beatings. On this, the accused Rohit took them to the place where the dead body of the victim had been kept alongside the wall to conceal it. The accused Rohit said that earlier the girl [*Laadli*] was alive, and she was kept in a tied condition. On this PW3 Ravi Kumar told the accused Rohit that he should have told them about this during the lifetime of the victim so that she could have been saved. On this, the accused Rohit replied to PW3 Ravi Kumar that he was frightened and had become perplexed. PW3 Ravi Kumar testified that he had noticed that the victim was lying naked and had injuries on her body, including her mouth and private parts. On this PW3 Ravi Kumar slapped the accused Rohit for not informing earlier, and the accused Rohit ran away from the spot, and PW3 Ravi informed the victim's parents about the incident. During the trial, PW3 Ravi identified both the accused, Vinod Shah and Rohit Kumar Sharma, present in the Court.

10. PW2 *Laadli's* father stated that when they started searching for his daughter, Vishal gave beatings to the accused Rohit, and on this, the accused Rohit confessed that he, along with Vinod [Accused], had committed rape upon his daughter [*Laadli*] and, after that, murdered her and threw her dead body in the godown near Kali Mata Mandir.

11. PW2 *Laadli's* father stated that he had reached the godown and had taken out the dead body of his daughter from the godown at 9:30 PM, and at that time the lower garment (Payjami) was absent from her body, and there was an injury on her face and her teeth were broken.

12. PW11 ASI (retired) Mahinder Pal, testified that on Mar 09, 2019, when he was present in the police station, then SHO Inspector Karnail Singh [PW13], had received information that a dead body of a minor girl was lying at a vacant godown near railway

lines Lakkar Mandi, Doraha and he directed PW11 to reach the spot and take necessary action on receiving such information.

13. After that, PW11 ASI (retired) Mahinder Pal reached the spot where he met Ravi Kumar [PW3] and the victim's father [PW2]. ASI PW11 called Sunil Kumar [PW10], the photographer on the spot who clicked photographs [Ext P1 to P6] of the dead body.

14. The factum of recovery of the dead body of the victim from the godown is stated by the photographer [PW10], who had taken her photographs and tendered those in evidence, and they were exhibited as P1 to P6.

15. After that, PW11 ASI (retired) Mahinder Pal took the dead body of the deceased to the dead House of Civil Hospital, Ludhiana, and deposited the same vide Ext P11/A. After that, as per the version of PW 11, at midnight, around 1:30 AM, the victim's mother [PW1] visited the police station, where she made her statement to the investigator, based on which the police registered FIR [Ext PW13/A] and the police proceedings were tendered in evidence as Ext PW 13/B.

16. PW11 ASI (retired) Mahinder Pal stated that the investigator had conducted the investigation at the spot in his presence and had collected blood stained earth, sealed it, taken it into possession. He testified that the Investigator instructed him along with the lady officer to get the postmortem examination of *Laadli* conducted.

17. As per the postmortem report, the time between *Laadli's* death and her postmortem examination was 16 to 18 hours. The postmortem started on the Mar 10, 2019, at 2:15 PM. The report of the postmortem examination was tendered in evidence as Ext PW8/B & PW14/A, and as per the postmortem report, the doctors found evidence of sexual assault. PW8 Dr. Surbhi Singhal, who conducted the victims' gynecological examination, noticed that her hymen was torn and it was bleeding. There was a laceration over the left labia majora. She stated that she had taken 3 vaginal swabs and handed them over to the police to detect the presence of spermatozoa. The other doctor, PW14 Dr. Anmol Ratan, also conducted the examination other than her gynecological examination and stated that they had noticed a fracture in the occipital left parietal region and multiple bruises over the neck and cheek. The final opinion of the team of doctors was that the cause of the death was asphyxia due to throttling, along with head injury, and all the injuries were antemortem in nature and were sufficient to cause death in the ordinary course of nature.

18. PW11 Retired ASI Mahinder Pal testified that after postmortem examination of the victim, the clothes that she was wearing were handed over to the police, which were taken

into possession vide Memo PW4/A. PW11-ASI Mahinder Pal also testified that they had received one sealed parcel containing swabs and one sealed envelope containing police papers, which were given by the investigator, and he had deposited all of them at MHC, Police Station Doraha.

19. PW13 Inspector Karnail Singh, who was the Station House Officer of the police station concerned, testified that he had received a phone call about one dead body of a minor girl lying in a vacant godown near railway lines, Lakkad Mandi, Doraha. On this information, he deputed ASI Mahinder Pal [PW11] and instructed him to reach the spot. PW11, upon reaching, got the dead body photographed, and sent the dead body of the deceased to the dead House of Civil Hospital, Ludhiana. After that, at midnight around 1:30 AM, the victim's mother [PW1], made a complaint Ext P1.

20. PW13 Inspector Karnail Singh testified that they had raided the house of both the accused Vinod and Rohit, but they were not found present at the house.

21. PW13 testified that he, along with the police party, accompanied by Ravi [PW3] and *Laadli's* father [PW2], went towards the place of occurrence, from where he collected blood-stained earth and put the same in the box and sealed the same with his seal impression 'KS', which was handed over to ASI Mahinder Pal [PW11]. He also stated that he had prepared a rough site plan, PW11/C, on the identification of the place of occurrence at the instance of Ravi [PW3] and *Laadli's* father, PW2.

22. PW13 Investigator Inspector Karnail Singh testified that he had prepared an inquest report PW13/D of the victim, and after that, he recorded a statement Ext P4 of the victim's father under §175 CrPC and handed over the application Ext PW8/A to ASI Mahinder Pal Singh [PW11] and ASI Dimple [PW12] to conduct a postmortem examination of the victim.

23. PW13 Inspector Karnail Singh testified that after the post-mortem examination, the clothes of the deceased were handed over by the Doctors to Constable Rupinder Kaur [PW4], which were taken into possession vide Memo PW 4/A.

24. The prosecution examined PW12 ASI Dimple, and she proved the endorsement made on PW12/A, that is, on the statement of PW1-complainant, based on which FIR was registered.

25. PW11 ASI (Retired) Mahinder Pal testified that the Investigator [PW13] had received information from *Laadli's* parents [PW1 & PW2] and Ravi Kumar [PW3] about the

presence of the accused near the railway station, Doraha, to board the train. Upon receiving such information, he, along with a police party and the complainant [*Laadli's* mother], reached the railway station at Doraha, where both the accused were standing. *Laadli's* mother [PW1], her father [PW2], and Ravi Kumar [PW3] identified the accused, and on this, the investigator apprehended them. PW11 testified that the accused were interrogated and arrested vide memos Ext PW11/D and PW11/E.

26. PW13 Inspector Karnail Singh stated that he received credible information from complainant *Laadli's* mother [PW1], *Laadli's* father [PW2], and Ravi [PW3] about the presence of accused Rohit and the accused Vinod Shah near the railway station, and on this, he had arrested them from the Railway Station and also recovered train tickets, which were taken into possession and were tendered in evidence and were marked as DA & DB.

27. PW13 Inspector Karnail Singh stated that on Mar 12, 2019, when he was interrogating the accused Vinod Shah, then the accused Vinod Shah made a disclosure statement [under §27 of the Indian Evidence Act, 1872] in which the accused Vinod Shah stated about committing rape upon the victim [*Laadli*] along with his co-accused Rohit, and strangulating the victim and after that also hitting her head and face with the brick and concealing his blood stained jeans, blood stained brick, underwear and lower of victim, in the corner of the godown. PW11 testified that on Mar 12, 2019, during the investigation, the investigator interrogated accused Vinod Shah who disclosed that he had concealed his blood stained jeans, lower and underwear of the deceased, and the brick with which they had committed her murder in the corner of the vacant godown near Railway line, Lakkar Mandi, Doraha, and he could get the same recovered. The disclosure statement was tendered in the evidence as Ext PW11/J.

28. PW13 testified that after recording the disclosure statement, accused Vinod Shah got recovered bloodstained brick, jeans, underwear, and the lower of the victim as mentioned in his disclosure statement. The same were sealed and taken into possession vide the recovery memo Ext PW11/K. PW11 ASI (Retired) Mahinder Pal testified that after making the disclosure statement [Ext PW11/J], Vinod Shah led the police to the place in the vacant godown where he got recovered blood-stained clothes of the deceased, blood-stained brick, and jeans of the accused, which were converted into separate parcels and sealed by seal impression 'KS'.

29. PW11 ASI Mahinderpal testified that the investigator interrogated the accused Rohit, and the accused Rohit disclosed that he had kept concealed his t-shirt, which was blood-stained, in the bed of his room, and that the same can be recovered. Rohit's disclosure

statement was tendered in the evidence as Ext PW11/L. After that, the accused Rohit Kumar Sharma led the police party to the disclosed place and vide memo Ext PW11/M, and got recovered the blood-stained t-shirt from the bed of his room. PW13 Inspector Karnail Singh also stated that after recording the disclosure statement by the accused Rohit Kumar, he got recovered a bloodstained T-shirt as per his disclosure statement. PW13 Inspector Karnail Singh further submitted that he had sealed the parcel containing the t-shirt with a seal bearing 'KS', had handed over the specimen seal to ASI Mahinder Pal Singh [PW11], and had also prepared a rough site plan, Ext PW13/H of the site of recovery.

30. PW13 Inspector Karnail Singh was recalled for further examination, and he tendered in evidence, parcels MO1 to MO7. The MO1 and MO1/A were the bloodstained soil; MO2 contained a red and black T-shirt with reddish-brown color stains (MO2/A); MO3 contained a pink-colored salwar with reddish-brown color stains (MO3/A) and a green-colored underwear (MO3/B). MO4 contained a pair of blue jeans with reddish-brown color stains and one brick with reddish-brown color stains (MO4/A and MO4/B). MO5 contained blood samples of Vinod, MO6 contained blood samples of Rohit, and MO7 contained swabs of the victim-deceased.

31. After the prosecution's evidence was completed, both the accused, in their respective statements recorded under §313 CrPC, denied all the incriminating circumstances as incorrect and in answer to the last question stated that they have been falsely implicated and claimed innocence.

32. We must point out that during the course of arguments, no submissions were made on the convicts' behalf regarding wrong questions or absence of questions under §313 CrPC, 1973, analogous to its predecessor, §342 CrPC, 1898, and the present successor, §351 BNSS, 2023. However, at the time of dictating the judgment, we noticed various flaws in the recording of the statement under §313 CrPC.

33. We are able to prima facie point out the following incriminating evidence, which was not put to the accused Vinod Shah and Rohit Sharma [without expressing any opinion on its proof or analysis].

34. The first question under §313 CrPC, put to the accused Vinod Shah, on page 159 of the Trial Court Record, reads as follows:

> *Q. It is in evidence against you that on 09.03.2019 to 10.03.2019 from 3:00 p.m, in the area of unhabituated ground, Lakkar Mandi, Doraha, you along with your co-accused Rohit Kumar Sharma kidnapped the prosecutrix (minor) D/o of Mxxx and Sxxx from their lawful guardianship and without their consent with intention to have illicit intercourse with*

> *her and you both committed rape upon the victim/minor and in course of such commission inflicted injury which causes her death and committed aggravated penetrative sexual assault upon prosecutrix and you both committed murder of the victim by intentionally causing her death. What you have to say about it?*
> *Ans. it is wrong.*

35. A perusal of the evidence, including FIR and the statements of PW1 and PW2, clearly points out that it was not the accused Rohit who had kidnapped the victim from her parent's house but Vinod Shah who had allegedly come to their house and kidnapped her. A wrong question was put to Vinod, stating that he, along with Rohit, had kidnapped the victim from her parent's lawful guardianship, and similarly, in the first question put to Rohit, it was stated that he, along with Vinod Shah, had kidnapped the victim from her parent's lawful guardianship. There was no reason to put this kind of question to Rohit and simultaneously to draw the attention of Vinod by wrongly stating beyond the facts and evidence that Rohit had also kidnapped the victim from her parent's home. Thus, the question has to be again framed and put properly.

36. In the third question, what was put to the accused was that PW2 had also stated in terms similar to what was stated by PW1. This is not the spirit of §313 CrPC, where the legislative mandate is to put incriminating circumstances appearing in evidence against the accused to enable such an accused to understand and to afford an opportunity to explain.

37. A perusal of statements of both the accused Vinod Shah and Rohit under §313 CrPC clearly points out the omission in putting to them the most material evidence of sexual assault and associated injuries as observed during the post-mortem examination conducted by a team of doctors, of which PW8 Doctor Surbhi had examined the victim on her gynecological aspect, that is, on the aspect of sexual assault. The question regarding the murder of the victim was proved through PW14 Dr. Anmol, but the version of PW8 Dr. Surbhi, who had gynecologically examined the victim, was not properly put. Such a question is mentioned on page #3 [pg161 and 166 of TCR], which reads as follows: -

> *" Q. It is further in evidence against you that PW-8 Dr. Surbhi Singhal, Medical Officer, has deposed that she being member of Medical Board consisting of herself Dr. Anmol Rattan and Dr. Ravneet, vide police request Ex.PW8/A, has conducted postmortem examination of deceased/prosecutrix D/o Mxxx. She further deposed that the cause of death in this case in their opinion was asphyxia probably due to throttling alongwith head injury. All the injuries were ante-mortem in nature and were sufficient to cause death in ordinary nature. Additional cause was kept pending for the report of Chemical Examiner. She further*

proved copy of postmortem report Ex.PW8/B. What you have to say about it ?

Ans. It is wrong."

38. A perusal of the said question does not mention about the injuries on the victim's private parts and about the sexual assault/rape inflicted on *Laadli*, but it refers to the postmortem report as a whole. In fact, the contents of the post-mortem report were proved by PW8 in her testimony, and it was the testimony of PW8, Dr. Surbhi Singhal, which was the primary evidence and was corroborated by the contents of the post-mortem report, Ext PW8/B. PW8 Dr. Surbhi Singhal had explicitly mentioned in her testimony that they had split the postmortem examination into two parts. She had examined the gynecological aspect, whereas the other doctor had examined the other aspects. Thus, the factum of rape was explicitly dealt with by PW8 Surbhi Singhal, and no question was put to either of the accused regarding her opinion that the victim was subjected to rape. *Laadli* was murdered after she was subjected to rape, and had she not been sexually assaulted, there would have been no motive to conceal evidence by killing her. Thus, primarily, we are dealing with the case of rape, and the most important question, i.e., the evidence that the victim was raped ,was not put to the accused, despite the fact that PW8 had explicitly stated about her noticing injuries on the private parts of the deceased and had confirmed the offense of rape. Since the attention of none of the accused was drawn to the factum of rape, on this score alone, this is a highly defective questioning under §313 CrPC, 1973.

39. The evidence of the fact of the rape, which the prosecution wanted to establish against the accused was also through scientific evidence by way of DNA Ext PX, to demonstrate that the blood found on the cloth items discovered i.e., on the Jeans by Vinod Kumar and the t-shirt by Rohit, Ext PW11/K and Ext PW11/M, pursuant to their respective disclosure statements, i.e., Ext PW11/J and Ext PW11/L, matched with the DNA of the victim's blood. The circumstance of the presence of the victim's blood on the t-shirt and the Jeans was not put to either of the accused in their statements recorded under §313 CrPC.

40. The t-shirt had been discovered by memo Ext PW11/M, pursuant to the accused Rohit Sharma's alleged disclosure statement [Ext PW11/L] under Section 27 of the Indian Evidence Act, 1872. In Ext PX, the DNA report of the FSL allegedly stated that the victim's blood was detected on the t-Shirt [MO2] & blood stains on it [MO2/A]. The said DNA report, Ext PX and the incriminating evidence therein against the accused Rohit Sharma was not put to the accused Rohit Sharma under §313 CrPC.

41. In Ext PX, the DNA report of the FSL, allegedly stated that the victim's blood was detected on the Jeans [MO4]. The Jeans had been discovered by memo Ext PW11/K, pursuant to Vinod Shah's alleged disclosure statement [Ext PW11/J] under Section 27 of the Indian Evidence Act, 1872. Similarly, the said DNA report, Ext PX, and the incriminating evidence therein against the accused Vinod Shah was not put to the accused, Vinod Shah, under §313 CrPC.

42. In addition to this, various documents were either incorrectly put or not put at all, like some of the exhibits were cumulatively put from PW13/A to PW13/J, and Ext PW11/A to PW11/M. The attention of the accused was not explicitly drawn towards the material evidence. Thus, the incriminating evidence and material objects were not at all put to any of the accused in their statements under §313 CrPC.

43. Another defect, which looks to be typographical, is on page 4 [TCR 162] of the statement of Vinod and its copy, i.e., the statement of Rohit at page 4, [TCR 167] under §313 CrPC, where Inspector Karnail Singh [PW13] was referred to as PW12, whereas he was PW13.

44. The questions have not been put by drawing incriminating factors, but the selected portions of the examination-in-chief of prosecution witnesses have been put.

45. The most important defect is that although the Trial Court had convicted and sentenced the accused/convicts by relying upon the DNA report as apparent in paras 29, 32, and 33 of the judgment, whereas the DNA report Ext PX was never put to any of the accused in a statement under §313 CrPC.

46. The prominent concern for this Court is the manner of investigation, omission in putting all the incriminating evidence to the accused under §313 CrPC, and its repercussions on the trial, and in our considered opinion, if not put would cause prejudice to the accused because to put the entire testimony of PW1 and incorrectly stating that the testimony of PW2 was in similar terms, and to answer such long questions would be incomprehensible for ordinary people. The DNA report, Ext PX alone, is the most crucial document, and if it is read in evidence without affording an opportunity to the accused under §351 BNSS [§313 CrPC, 1973] to explain the same, it is most likely to cause prejudice to the accused Rohit Sharma and Vinod Shah. In addition to not putting the above-mentioned documents and reports to the accused under §313 CrPC, 1973, the manner in which the entire incriminating circumstances were put to the accused is contrary to the spirit of §313 CrPC, 1973. All these deficiencies, which amount to irregularities, are

curable, and once cured, shall neither cause any prejudice to the accused nor failure of Justice to any.

47. Given the above, we are left with no other option but to set aside the judgment of conviction and sentence and remand the matter back to the Trial Court to resume the trial from the stage of recording the statements of both the accused under §351 BNSS, 2023 [§313 CrPC].

48. In State of Punjab v. Sonu Singh, MRC-2-2025, 2026-PHHC-043950-DB, decided on March 19, 2026, by this Division Bench, holds,

> [146]. Criminal Justice warrants meticulously following the procedural standards of proof to pin criminal liability, whereby every 'i' ought to be dotted and every 't' ought to be crossed. The yardstick of a fair criminal trial is the quality of the investigation, not just a perfunctory completion, and the quality of the trial, not its mere disposal.

49. Section 351 BNSS, 2023, which corresponds to §342 CrPC, 1898, and §313 CrPC, 1973, reads as follows:

> 351. (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.

50. The interpretation and the extent of §313 CrPC have evolved over time, and the following judicial precedents of the Hon'ble Supreme Court would be relevant.

51. In Tara Singh v. The State, [1951] S.C.R. 729;1952-INSC-40, June 1, 1951, a four-Judge Bench of the Hon'ble Supreme Court holds,

[pg735-736]. The next point taken regarding the committal stage of the case is that the Committing Magistrate did not examine the appellant properly under sections 209 and 342 of the Criminal Procedure Code. Section 342 (1) states that "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may etc ... " And sub-section (3) states that "the answers given by the accused may be taken into consideration in· such inquiry or trial." Further, section 287 requires that "the examination of the accused duly recorded by or before the Committing Magistrate shall be tendered by the prosecutor and read as evidence." (This refers to the sessions trial). It is important therefore that an accused should be properly examined under section 342 and, as their Lordships of the Privy Council indicated in *Dwarkanath v. Emperor* [A.I.R. 1933 PC 124 at 130], if a point in the evidence is considered important against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and I cannot permit it to be slurred over. I regret to find that in many cases scant attention is paid to it, particularly in Sessions Courts. But whether the matter arises in the Sessions Court or in that of the Committing Magistrate, it is important that the provisions of section 342 should be fairly and faithfully observed.

[*pg737-738*]. Section 342 requires the accused to be examined for the purpose of enabling him "to explain any circumstances appearing in the evidence against him." Now it is evident that when the Sessions Court is required to make the examination under this section, the evidence referred to is the evidence in the Sessions Court and the circumstances which appear against the accused in that Court. It is not therefore enough to read over the questions and answers put in the Committing Magistrate's Court and ask the accused whether he has anything to say about them. In the present case, there was not even that. The appellant was not asked to explain the circumstances appearing in the evidence against him but was asked whether the statements made before the Committing Magistrate and his answers given there were correctly recorded. That does not comply with the requirements of the section.

52. In Hate Singh Bhagat Singh v. State of Madhya Bharat, (1951) SCC 1060, Nov 02, 1951, a three-Judge Bench of the Hon’ble Supreme Court holds,

[10]. Now the statements of an accused person recorded under sections 208, 209 and 342, Criminal Procedure Code, 1898 are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box. They have to be received in evidence and treated as evidence

> and be duly considered at the trial (Sections 287 and 342). This means that they must be treated like any other piece of evidence coming from the mouth of a witness and matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him. Nay more. Because of the presumption of innocence in his favour even when he is not in a position to prove the truth of his story, his version should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false. We feel that this fundamental approach has been ignored in this case.
>
> [34]. …We have stressed before the importance of putting to the accused each material fact which is intended to be used against him and of affording him a chance of explaining it if he can….

53. In Ajmer Singh v. The State of Punjab, [1953] 1 S.C.R 418;1952-INSC-73*, pg427*, Dec 10, 1952, a three-Judge Bench of the Hon'ble Supreme Court holds,

> …We are of the opinion that when the Sessions Judge is required by that section to make the examination of the accused, his duty is not discharged by merely reading over the questions and answers to the accused put in the committing magistrate's court and by asking him whether he has to say anything about them. It is not sufficient compliance with the section to generally ask the accused that having heard the prosecution evidence what he has to say about it. The accused must be questioned separately about each material circumstance which is intended to be used against him.

54. In Ram Shankar Singh v. State of West Bengal, [1962] Supp (1) S.C.R. 49;1961-INSC-291, Oct 10, 1961, a three-Judge Bench of the Hon'ble Supreme Court holds,

> *[pg62]*. In our view, the learned Sessions judge in rolling up several distinct matters of evidence in a single question acted irregularly. Section 342 of the Code of Criminal Procedure by the first sub-section provides, insofar as it is material: "For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court … shall … question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence". Duty is thereby imposed upon the Court to question the accused ganerally in a case after the witnesses for the prosecution have been examined to enable the accused to explain any circumstance appearing against him. This is a necessary corollary of the presumption of innocence on which our criminal jurisprudence is founded…
>
> *[pg64]*. ….In the present case, we are of the view, having regard to the circumstances, that the appellants have not been prejudiced, because of failure to examine them strictly in compliance of the terms of s.342 of the Code and that view is strengthened by the fact that the plea was not raised in the High Court by their counsel who had otherwise raised numerous questions in support of the case of the appellants.

55. In State of Maharashtra v. Laxman Jairam, [1962] Supp. 3 S.C.R. 230;1962-INSC-60, *pg234-235*, Feb 16, 1962, a three-Judge Bench of the Hon'ble Supreme Court holds,

> …The object of examination under s. 342 therefore is to give the accused an opportunity to explain the case made against him and that statement can be taken into consideration in judging the innocence or guilt of the person so accused…..

56. In Jai Dev v. The State of Punjab, [1963] 3 S.C.R 489;1962-INSC-221; *pg509-511*, July 30, 1962, a three-Judge Bench of the Hon'ble Supreme Court holds,

> 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* [A.I.R 1953 S.C. 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 point used against the accused person has not been put to him, either the trial in vitiated or his conviction is rendered bad. The examination of the accused person under s.342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under s.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 s. 342 would be to enquire whether, having regard to all the question 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 s. 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.

57. In Bakhshish Singh Dhaliwal v. The State of Punjab, 1967(1) S.C.R. 211;1966-INSC-150, *pg225*, Aug 31, 1966, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [C-E]. It was also submitted that these War Diaries were not put to the accused when he was examined under s. 342 of the Code of Criminal Procedure and consequently, their use to the prejudice of the appellant to record findings against him was not justified. This submission is clearly based on a misapprehension of the scope of s. 342, Cr.P.C. Under that provisions, question are put to an accused to enable him to explain any circumstances appearing in the evidence against him, and for that purpose, the accused is also to be questioned generally on the case, after the witnesses for the prosecution have been examined and before he is called on for his defence. These War Diaries were not circumstances appearing in evidence against the appellant. They were, in fact, evidence of circumstances which were put to the accused when he was examined under s. 342, Cr.P.C. It was not at all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section; and consequently, the High Court committed no irregularity at all in treating these War Diaries as part of the evidence against the appellant.

58. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra, [1974] 1 S.C.R. 489,1973-INSC-151, *pg501*, Aug 27,1973, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [B-D]. It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not *ipso facto* vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction.

59. In Sharad Birdhi Chand Sarda v. State of Maharashtra, [1985] 1 S.C.R 88, 1984-INSC-121, *pg160*, July 17, 1984, a three-Judge Bench of the Hon'ble Supreme Court holds,

> …In this view of the matter, the circumstances which were not put to the appellant in his examination under s.313 [351 BNSS, 2023] of the Criminal Procedure Code have to be completely excluded from consideration.

60. In Ajay Singh v. State of Maharashtra, [2007] 7 S.C.R. 983; 2007-INSC-690, *pg990-991*, June 06, 2007, the Hon'ble Supreme Court holds,

> [11]. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.
>
> [12]. The word 'generally' in sub-section (l)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.
>
> [13]. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

61. In Asraf Ali v. State of Assam, [2008] 10 S.C.R. 1115;2008-INSC-840, *pg1124 - 1127*; July 17, 2008, the Hon'ble Supreme Court holds,

> [13]. Section 313 of the Code casts a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows

> as necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed similar view in S. Harnam Singh v. The State (AIR 1976 SC 2140), while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.
>
> [16]. Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion.
>
> [17]. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim *audi alteram partem*. The word "may" in clause (a) of sub-section(1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance for it. But if the court fails to put the needed question under clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him.
>
> [18]. In certain cases when there is perfunctory examination under Section 313 of the Code, the matter is remanded to the trial Court, with a direction to re-try from the stage at which the prosecution was closed.

62. In State of Punjab v. Hari Singh & Ors., [2009] 2 S.C.R. 470;2009-INSC-193, *pg484-485*, Feb 16, 2009, the Hon'ble Supreme Court holds,

> [31]. What is the object of examination of an accused under Section 313 of the Code? The section itself declares the object in explicit language that it is "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him".

63. In Inspector of Customs, Akhnoor J & K v. Yash Pal and Anr., [2009] 4 S.C.R. 118; 2009-INSC-327, *pg130-131*, March 06, 2009, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [22]. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim *audi alteram partem*. The word "may" in clause (a) of sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance for it. But if the court fails to put the needed question under clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him.

64. In Sanatan Naskar & Anr. v. State of West Bengal, [2010] 7 S.C.R.1023;2010-INSC-376*; pg.1040*, July 08, 2010, the Hon'ble Supreme Court holds,

> [10]. The answers by an accused under Section 313 of the Cr.PC 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 Cr.PC is wide and is not a mere formality. Let us examine 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 Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC 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 commission of crime. This is the statement which the accused makes without fear or right of 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 Cr.PC 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 Cr.PC as it cannot be regarded as a substantive piece of evidence.

65. In Dharampal Singh v. State of Punjab, [2010] 10 S.C.R. 1160; 2010-INSC-593; *pg 1174-1175*; Sep 09, 2010, the Hon'ble Supreme Court holds,

> [12] [G-H]. As part of fair trial, Section 313 of the Code of Criminal Procedure requires giving opportunity to the accused to give his explanation regarding the circumstance appearing against him in the evidence adduced by the prosecution. The purpose behind it is to enable the accused to explain those circumstances. It is not necessary to put entire prosecution evidence and elicit answer but only those circumstances which are adverse to the accused and his explanation would help the court in evaluating the evidence properly. The circumstances are to be put and not the conclusion. It is not an idle formality and questioning must be fair and couched in a form intelligible to the accused. But it does not follow that omission will necessarily vitiate the trial. The trial would be vitiated on this score only when on fact it is found that it had occasioned a failure of justice.

66. In Paramjeet Singh @ Pamma v. State of Uttarakhand, [2010] 11 S.C.R. 1064;2010-INSC-647, Sep 27, 2010, the Hon'ble Supreme Court holds,

> *[Pg1083-1084]* [25]. If any appellate Court or revisional court comes across the fact that the trial Court had not put any question to an accused, even if it is of a vital nature, such an omission alone should not result in the setting aside of the conviction and sentence as an inevitable consequence. An inadequate examination cannot be presumed to have caused prejudice. Every error or omission in compliance of the provisions of Section 313 Cr.P.C., does not necessarily vitiate trial. Such errors fall within category of curable irregularities and the question as to whether the trial is vitiated, in each case depends upon the degree of error and upon whether prejudice has been or is likely to have been caused to accused. Efforts should be made to undo or correct the lapse. (Vide: *Wasim Khan v. State of Uttar Pradesh*, AIR 1956 SC 400; *Bhoor Singh & Anr. v. State of Punjab*, AIR 1974 SC 1256*; Labhchand Dhanpat Singh Jain v. State of Maharashtra*, AIR 1975

SC 182; *State of Punjab v. Naib Din*, AIR 2001 SC 3955; and *Parsuram Pandey & Ors. v. State of Bihar*, (2004) 13 SCC 189).

[pg1086] [31]. Thus, it is evident from the above that the provisions of Section 313 Cr.P.C make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the court to question the accused on any incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court.

67. In Sujit Biswas v. State of Assam, [2013] 3 S.C.R. 830; 2013-INSC-359, May 28, 2013, the Hon'ble Supreme Court holds,

[pg844-845] [12]. It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice, i.e. *audi alterum partem*. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and must be excluded from consideration. The said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, as the accused cannot be cross-examined with reference to such statement.

[pg847-848] [17]. An adverse inference can be drawn against the accused only and only if the incriminating material stands fully established, and the accused is not able to furnish any explanation for the same. However, the accused has the right to remain silent, as he cannot be forced to become a witness against himself.

68. In Nar Singh v. State of Haryana, [2014] 12 S.C.R. 218; 2014-INSC-770; Nov 11, 2014, the Hon'ble Supreme Court holds,

[pg236] [27]. The point then arising for our consideration is, if all relevant questions were not put to accused by the trial court as mandated under Section 313 Cr.P.C. and where the accused has also shown that prejudice has been caused to him or where prejudice is implicit, whether the appellate court is having the power to remand the case for re-decision from the stage of recording of statement under Section 313 Cr.P.C. Section 386 Cr.P.C. deals with power of the appellate court. As per sub clause (b) (i) of Section

386 Cr.P.C., the appellate court is having power to order retrial of the case by a court of competent jurisdiction subordinate to such appellate court. Hence, if all the relevant questions were not put to accused by the trial court and when the accused has shown that prejudice was caused to him, the appellate court is having power to remand the case to examine the accused again under Section 313 Cr.P.C. and may direct remanding the case again for retrial of the case from that stage of recording of statement under Section 313 Cr.P.C. and the same cannot be said to be amounting to filling up lacuna in the prosecution case.

[pg237-238] [30]. Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under:-

(i) Whenever a plea of non-compliance of Section 313 Cr.P.C. is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer;

(ii) In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

(iii) If the appellate court is of the opinion that noncompliance with the provisions of Section 313 Cr.P.C. has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 Cr.P.C. and the trial Judge may be directed to examine the accused afresh and defence witness if any and dispose of the matter afresh;

(iv) The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.

[pg239-240] [32]. While we are of the view that the matter has to be remitted to the trial court for proceeding afresh from the stage of Section 313 Cr.P.C. questioning, we are not oblivious of the right of the accused to speedy trial and· that the courts are to ensure speedy justice to the accused. While it is incumbent upon the Court to see that persons accused of crime must be given a fair trial and get speedy justice, in our view, every reasonable latitude must be given to those who are entrusted with administration of

justice. In the facts and circumstances of each case, court should examine whether remand of the matter to the trial court would amount to indefinite harassment of the accused. When there is omission to put material evidence to the accused in the course of examination under Section 313 Cr.P.C., prosecution is not guilty of not adducing or suppressing such evidence; it is only the failure on the part of the learned trial court. The victim of the offence or the accused should not suffer for laches or omission of the court. Criminal justice is not one-sided. It has many facets and we have to draw a balance between conflicting rights and duties.

69. In Ajay Kumar Ghoshal Etc. v. State of Bihar & Anr, [2017] 1 S.C.R.469;2017-INSC-90*, pg 474-475*, Jan 31, 2017, the Hon'ble Supreme Court holds,

[9]. The High Court copiously extracted the judgment in case of *Nar Singh vs. State of Haryana* (2015) 1 SCC 496 to remit the matter to the trial court for proceeding afresh. In *Nar Singh's case*, some of the important questions like Ballistic Report and certain other incriminating evidence were not put to the accused and the same was not raised in the trial court or in the High Court. It was felt that the accused should have been questioned on those incriminating evidence and circumstances; or otherwise prejudice would be caused to the accused. In such peculiar facts and circumstances, *Nar Singh's case* was remitted to the trial court for proceeding afresh from the stage of Section 313 Cr.P.C. Be it noted that in *Nar Singh's case*, this Court has referred to a catena of other judgments holding that omission to put certain questions to the accused under Section 313 Cr.P.C. would not cause prejudice to the accused. It depends upon facts and circumstances of each case and the nature of prejudice caused to the accused. In our view, the High Court has not properly appreciated *Nar Singh's case* where this Court laid down that the appellate court can order for fresh trial from the stage of examination under Section 313 Cr.P.C., only in cases where failure to question the accused on certain incriminating evidence has resulted in serious prejudice to the accused. The High Court, in our view, has not properly appreciated the ratio laid down in *Nar Singh's case* and erred in applying the same to the present case.

[10]. Section 386 Cr.P.C. deals with the powers of the appellate court. As per Section 386 (b) Cr.P.C, in an appeal from a conviction, the appellate court may:- (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (ii) alter the finding, maintaining the sentence, or (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same.

[11]. Though the word "retrial" is used under Section 386(b)(i) Cr.P.C., the powers conferred by this clause is to be exercised only in exceptional cases, where the appellate court is satisfied that the omission or irregularity has occasioned in failure of justice. The circumstances that should exist for

> warranting a retrial must be such that where the trial was undertaken by the Court having no jurisdiction, or trial was vitiated by serious illegality or irregularity on account of the misconception of nature of proceedings. An order for retrial may be passed in cases where the original trial has not been satisfactory for some particular reasons such as wrong admission or wrong rejection of evidences or the Court refused to hear certain witnesses who were supposed to be heard.

70. In Samsul Haque v. The State of Assam, [2019] 11 S.C.R. 229; 2019-INSC-953, *pg239*, Aug 26, 2019, the Hon'ble Supreme Court holds,

> [22]. It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put to the accused so that the accused gets a fair chance to defend himself. This is in recognition of the principles of *audi alteram partem*…

71. In Raj Kumar @ Suman v. State (NCT of Delhi), [2023] 5 S.C.R. 754; *pg 767-768*, May 11, 2023, the Hon'ble Supreme Court holds,

> [16]. The law consistently laid down by this Court can be summarized as under:
>
> (i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;
>
> (ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;
>
> (iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;
>
> (iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;
>
> (v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;
>
> (vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.

72. In Indrakunwar v. The State of Chhattisgarh; [2023] 14 S.C.R. 959; 2023-INSC-934, *pg 972-973*, Oct 19, 2023, the Hon'ble Supreme Court holds,

[34]. A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements.

[34.1]. The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

[34.2]. The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

[34.3]. The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., *audi alterum partem*.

[34.4]. The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

[34.5]. In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

[34.6]. The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

[34.7]. This statement cannot form the sole basis of conviction and is neither a substantive nora substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

[34.8]. This statement is to be read as a whole. One part cannot be read in isolation.

[34.9]. Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

> [34.10].The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.
>
> [34.11]. The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.
>
> [34.12]. Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.

73. In Nababuddin @ Mallu @ Abhimanyu v. State of Haryana, Crl.A. No.2333 of 2010; 2023-INSC-1020, *pg9*, Nov 24, 2023, the Hon'ble Supreme Court holds,

> [13]. The appellant has undergone incarceration of five and a half years. If, after the lapse of more than twenty-two years, he is again subjected to examination under Section 313 of CrPC, it will cause prejudice to him. Therefore, the failure to put two relevant circumstances to the appellant in his examination under Section 313 CrPC will be fatal to the prosecution case. Hence, on this ground, we hold that the appellant's conviction cannot be sustained.

74. In Naresh Kumar v. State of Delhi, [2024] 7 S.C.R. 178; 2024-INSC-464, *pg193*, July 08, 2024, the Hon'ble Supreme Court holds,

> [21]. We have already held that whether non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial *qua* the accused concerned and to hold the trial *qua* him is vitiated it is to be established further that it resulted in material prejudice to the accused. True that the onus to establish the prejudice or miscarriage on account of non-questioning or inadequate questioning on any incriminating circumstance(s), during the examination under Section 313, Cr.PC, is on the convict concerned. We say so, because if an accused is ultimately acquitted, he could not have a case that he was prejudiced or miscarriage of justice had occurred owing to such non-questioning or inadequate questioning.

75. In Ashok v. State of Utar Pradesh, [2024] 12 S.C.R. 335; 2024-INSC-919, *pg344*, Dec. 02, 2024, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [14]. Now, we come to the appellant's statement, recorded per Section 313 of the CrPC. Only three questions were put to the appellant. In the first question, the names of ten prosecution witnesses were incorporated, and the only question asked to the appellant was what he had to say about the testimony of ten prosecution witnesses. In the second question, all the documents produced by the prosecution were referred, and a question was asked, what the appellant has to say about the documents. In the third question, it was put to the appellant that knowing the fact that the victim

> belongs to a scheduled caste, he caused her death after raping her and concealed her dead body, and he was asked for his reaction to the same. What PW-1 and PW-2 deposed against the appellant was not put to the appellant. The contents of the incriminating documents were not put to the appellant.

76. In Aejaz Ahmad Sheikh v. State of Uttar Pradesh & Anr., [2025] 4 S.C.R. 1507; 2025-INSC-529, *pg1520*, Apr 22, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [28]. Before we part with this judgment, we have a suggestion to make. There are several criminal appeals which come to this Court where we find that vital prosecution evidence is not put to the accused in statement under Section 313 of the CrPC. The Court becomes helpless, as due to the long lapse of time, the defect cannot be cured by passing an order of remand….

77. In Ramji Prasad Jaiswal @ Ramjee Prasad Jaiswal and Ors. v. State of Bihar, [2025] 6 S.C.R. 582, 2025-INSC-738, *pg599*, May 20, 2025, the Hon'ble Supreme Court holds,

> [36]. Four questions generally were put to the appellants, that too, in a most mechanical manner. These questions did not reflect the specific prosecution evidence which came on record *qua* the appellants. As all the incriminating evidence were not put to the notice of the appellants, therefore, there was a clear breach of Section 313 CrPC as well as the principle of *audi alteram partem*. Certainly, this caused serious prejudice to the appellants to put forth their case. Ultimately, such evidence were relied upon by the court to convict the appellants.
>
> [37]. Therefore, there is no doubt that such omission, which is a serious irregularity, has completely vitiated the trial. Even if we take a more sanguine approach by taking the view that such omission did not result in the failure of justice, it is still a material defect *albeit* curable…

78. In Suresh Sahu & Anr. v. The State of Bihar (now Jharkhand), CrA-305-2024; 2025-INSC-1382, Nov 27, 2025, the Hon'ble Supreme Court holds,

> *[pg19]* [18]. It is evident from the record that only three questions were put to each of the accused in their examination under Section 313 CrPC (Section 351 BNSS). These questions were framed in an extremely generic and mechanical manner, without articulating any of the specific incriminating circumstances appearing in the prosecution evidence.
>
> *[pg19-20]* [19]. The purpose of recording the statement of an accused under Section 313 CrPC (Section 351 BNSS) is to make the accused aware of the circumstances as appearing against him in the prosecution case and to seek his explanation for the same. For this purpose, the accused must be informed of each and every incriminating circumstance which the prosecution intends to rely upon for bringing home the guilt of the accused. Omission to put material circumstances to the accused in the statement

> under Section 313 CrPC (Section 351 BNSS) would cause grave prejudice and may, in a given case, even prove fatal to the case of the prosecution. Of course, the appellate Court can rectify this error by requiring that a fresh statement under Section 313 CrPC (Section 351 BNSS) be recorded for removing the lacunae, if any, in this procedure. In the present case, on going through the statements of both the accused persons recorded by the trial Court under Section 313 CrPC (Section 351 BNSS) (*supra*), we find that these statements are almost a reproduction of the language of the charge and, in no manner, convey to the accused persons the incriminating circumstances/evidence produced by the prosecution so as to indict them for the crime. This defect goes to the root of the matter.
>
> *[pg26-27]* [23]. Looking to the highly laconic and defective manner in which the statements of the accused-appellants were recorded under Section 313 CrPC (Section 351 BNSS) (*supra*), we could have remanded the matter to the trial Court for re-recording the said statements and for delivering a fresh judgment. However, considering the fact that more than 35 years have passed since the incident took place, we feel that it would be nothing short of an exercise in futility to direct such remand. We have, therefore, minutely sifted through the evidence on record and shall analyze the same to adjudicate as to whether the conviction of the accused-appellants is justified in the facts, circumstances and evidence as available on record.

79. In Chandan Pasi & Ors. v. The State of The Bihar, CrA-5137-5138 of 2025; 2025-INSC-1371*, pg3*, Dec 01, 2025, the Hon'ble Supreme Court holds,

> [6]. One of the non-negotiable requirements of a fair trial is that the accused persons should have ample opportunity to dispel the case and claims of the prosecution against them. This ample opportunity can take many forms, whether it is adequate representation through counsel or the opportunity to call witnesses to present their side of the case or to have the occasion to answer each and every allegation against them, on their own, in their own words. The last one happens under Section 313 CrPC.
>
> [7]. This Court, in many judgments, delineated the scope and object of Section 313 CrPC. The position is no longer up for debate. Even so, we may refer to certain pronouncements for the sake of completeness.

80. The Murder Reference has been pending before this Court since the year 2023, and this defect went unnoticed at the initial stage. Considering the average time a criminal trial takes to complete in the Trial Courts of Punjab and Haryana, five years should be closer to the average. Further, we need extensive data and studies to demarcate the boundary of time beyond which the delay can be considered to have prejudiced an accused, and, in the process, we cannot forget the Justice to the victim of the crime. It is not a case where the Trial Court had put all the incriminating circumstances to the accused. On overall analysis

of the facts and circumstances of this case, no prejudice shall be caused to the accused if these questions are put to them after a lapse of three/four years.

81. A plain and simple reading of the statute refers to "*circumstances appearing in evidence*" and not the entire statement. Thus, the question which contained the most material facts, could not have been read against them. But if that alone were the position, then it would cause more serious prejudice to the victim without her being at any fault at all. Although, it is legally permissible for any Appellate Court to put the leftover incriminating evidence to an accused, or to direct the trial Court to do so, but that decision has not to be taken in a mechanical manner but has to be taken after analyzing the remaining incriminating evidence which was put to the accused, the prejudice caused to the accused, the defence setup, and the objections taken during the arguments. Since the accused has a right to examine defence witnesses, and the evidence that comes in defence, if any, would also need to be analyzed and appreciated in appeal. Thus, the only option available with this Court to do justice to the accused and the victim and her family is to remand the case back to the Trial Court to begin the trial from the stage of recording the statement of the accused under §313 CrPC.

82. Given the above and in the light of the judicial precedents mentioned above, especially in Asraf Ali v. State of Assam, [2008] 10 S.C.R. 1115 *supra*, Inspector of Customs, Akhnoor J & K v. Yash Pal [2009] 4 SCR 118 *supra*, Nar Singh v. State of Haryana [2014] 12 SCR 218 *supra*, and Ajay Kumar Ghoshal v. State of Bihar [2017] 1 SCR 469 *supra*, Raj Kumar v. State (NCT of Delhi), 2023 SCC OnLine SC 609 *supra*, the present matters are disposed of in the following terms.

83. Resultantly, both the criminal appeals filed by the convicts, i.e., the CRA-D-659 of 2023 filed by Vinod Shah and the CRA-D-716 of 2023 filed by Rohit Kumar Sharma are disposed of to the extent that the judgment of conviction and the order of sentence are quashed and set aside, and the matter is remanded back to the Sessions Court to resume the trial afresh from the stage of §313 CrPC, 1973 [§351 BNSS, 2023].

84. The trial Court shall put all the incriminating evidence separately to both the accused by making small questions as per the facts and evidence under §351 BNSS [§313 CrPC, 1973], and after that, afford them an opportunity to lead defence evidence, if they want to do so, provided the same is done within a reasonable time. Thereafter, on hearing the parties pass a fresh judgment in accordance with the law.

85. Murder Reference No. 3 of 2023 is disposed of because, as of the date, it has rendered infructuous.

86. To comply with Section 412 BNSS, 2023 [371 CrPC, 1973], the proper officer of the High Court shall, without delay, send either physically or through electronic means, a copy of the order, under the seal of the High Court and attested with their official signature, to the Court of Session.

87. All the matters stand closed on the terms set out in this verdict. All pending miscellaneous applications, if any, stand disposed of.

88. Registry is directed to send back the entire record of the Trial Court, along with a certified copy of this Judgment, to the concerned Sessions Judge.

89. Considering the time for which the matters were pending before this Court since the year 2023, and the FIR is of the year 2019, we request the trial Court to resume the trial expeditiously.

Murder Reference No. 3 of 2023, CRA-D-659 of 2023, and CRA-D-716 of 2023 stand closed, and the trial is to commence afresh from the stage of 351 BNSS [313 CrPC].

(SUKHVINDER KAUR)	**(ANOOP CHITKARA)**
JUDGE	**JUDGE**

Apr 06, 2026
Anju Rani

Whether speaking/reasoned	YES
Whether reportable	**YES**