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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
J.K. MAHESHWARI; J., ATUL S. CHANDURKAR; J.
CRIMINAL APPEAL NO.3105 OF 2025; FEBRUARY 25, 2026
GHANSHYAM MANDAL AND ORS. *versus* **THE STATE OF BIHAR (NOW JHARKHAND)**

Criminal Law – Indian Penal Code, 1860 – Section 302 r/w Section 34 – Conviction for Murder – Non-recovery of weapons of assault – Effect of – Held, recovery of the weapons of assault is not a sine qua non for convicting an accused if the evidence on record, particularly reliable ocular testimony, establishes the guilt beyond reasonable doubt - Even if the Investigating Officer fails to bring on record the weapons described by eye-witnesses, this omission cannot benefit the accused when the version of eye-witnesses is found to be consistent, reliable, and corroborated by medical evidence. *[Para 7, 8]*

Criminal Procedure – Code of Criminal Procedure, 1973 – Section 313 – Examination of the Accused – Failure to put specific material circumstances – Prejudice to the Accused – The underlying object of Section 313 is based on the principle of *audi alteram partem* to enable the accused to explain incriminating circumstances - a generalized presumption of prejudice cannot be made merely because of inadequate or general questions - To vitiate a trial, the accused must demonstrate that the non-examination on a particular circumstance actually and materially prejudiced them, resulting in a failure of justice - In the present case, while questions were general, the incriminating circumstances were put to the appellants, and no specific prejudice was shown - Held, the testimony of eye-witnesses cannot be discarded merely because they are related to the deceased. If their presence at the site is natural and their testimony remains consistent under cross-examination, minor inconsistencies do not weaken the prosecution's. *[Relied on Rakesh and Anr. Vs. State of U.P. and Anr. (2021 INSC 321; Suresh Chandra Bahri vs. State of Bihar (1995 Suppl (1) SCC 80); Om Pal and Ors. Vs. State of U.P. (now State of Uttarakhand) (2025 INSC 1262); Para 5-9]*

For Appellant(s): Ms. Anjana Prakash, Sr. Adv. Mr. Abhay Kumar, AOR Mr. Anuj Prakash, Adv. Mr. Shagun Ruhil, Adv. Mr. Pradum Kumar, Adv. Mr. Shreenivash, Adv. Mr. Karan Chopra, Adv.

For Respondent(s): Mr. Vishnu Sharma, Standing Counsel, Adv. Ms. Madhusmita Bora, AOR

J U D G M E N T

ATUL S. CHANDURKAR, J.

1. The appellants are aggrieved by the judgment dated 09.05.2019 passed by the Division Bench of the Jharkhand High Court in Criminal Appeal No.533 of 1996. By that judgment, the conviction of the appellants by the Sessions Court in Sessions Case No.342 of 1986 under Section 302 read with Section 34 of the Indian Penal Code[1] has been upheld.

2. The case of the prosecution in brief is that as per the informant-Chetan Mandal on 15.08.1985 at about 03.30 P.M, while he was cutting grass at his courtyard, he heard shouts raised by his brother Bulaki Mandal. On coming out of his house and approaching the passage outside, he saw Shiv Prasad Mandal and Dindayal Mandal having garasas in their hands, Anirudh Mandal having a sword in his hand, who were all entering the courtyard of his brother's house. After raising slogans, they started assaulting him. The

[1] For short, the Penal Code

informant further saw that his brother Bulaki and nephew Hriday were being dragged out of the house and taken near the house of Jahazi in the passage by the aforesaid persons. He also saw Ghanshyam Mandal who was having a pistol and Gupti in his hand; Bijay Mandal having a farsa alongwith Sanjay Mandal having a bhala and Manoj Mandal having an axe in his hand. With these weapons, the aforesaid persons assaulted the informant's brother and nephew, due to which both of them fell on the ground. The assault continued till the victims died on the spot. According to the informant, the occurrence was witnessed by various villagers. After the assault, the assailants fled away. He further stated that on the same day at about 06.00 A.M, two goats of Shiv Parsad Mandal had grazed the crops of Bulaki Mandal, due to which an altercation had taken place between them. At that time, Shiv Prasad Mandal had given threats of dire consequences to Bulaki Mandal. On the basis of such information, the case was registered on 15.08.1985. On completion of the investigation, the charge sheet was filed and the case was committed for trial.

3. The appellants denied the charges and were accordingly tried. The prosecution examined eight witnesses in support of the charges while the accused examined three witnesses in their defence. At the conclusion of the trial, the learned Judge of the Sessions Court came to the conclusion that it was the accused who were guilty of having committed the murder of Bulaki Mandal and Hriday Mandal. On being found guilty, they were convicted and sentenced to undergo imprisonment for life for the offence punishable under Section 302 read with 34 of the Penal Code. The appellants preferred an appeal challenging their conviction. The High Court on a re-consideration of the entire evidence held that the occurrence had been duly proved by the four eye-witnesses examined by the prosecution. The motive behind the attack had been established. The High Court, therefore, upheld the conviction of the appellants and dismissed the appeal. Being aggrieved, the appellants have filed the present appeal.

4. Ms. Anjana Parkash, learned Senior Advocate for the appellants while assailing the judgment of the High Court submitted that both the Courts erred in believing the case of the prosecution on the basis of evidence led by the prosecution. All the witnesses examined were related to the deceased and hence were interested in the conviction of the appellants. Though independent witnesses were available, as was claimed by the prosecution, they had not been examined. The evidence of PW-1 to PW-4 was full of material contradictions and was, thus, inconsistent with the case of the prosecution. Such evidence was not liable to be accepted. It was further submitted that the weapons of assault had not been recovered and this created a doubt about the case of the prosecution. In absence of recovery of the weapons of assault, the guilt of the appellants could not be established. Moreover, the copy of the post-mortem report was sought to be relied upon without producing the original certificate. It was further submitted that the plea of alibi raised by the appellants had been duly established by examining defence witnesses. The same was however brushed away by the Courts without assigning any reason. It was then submitted that while examining the appellants under Section 313 of the Code of Criminal Procedure, 1972[2], similar questions of general nature were put to all the accused without specifically indicating any material circumstances appearing in the evidence against them. Placing reliance upon the decisions in **Raj Kumar @ Suman Vs. State (NCT of Delhi)[3], Shambhu Choudhary Vs. State of Bihar[4], Asraf Ali Vs. State of**

[2] For short, the Code
[3] 2023 INSC 520
[4] SLP (CRL) NO.8688/2023 Order 23.04.2025

Assam[5] and **Raj Kumar Singh Vs. State of Rajasthan**[6], it was submitted that this had caused prejudice to the appellants and they were liable to be acquitted on this sole count. It was, thus, submitted that the incident having occurred more than four decades ago and the appellants being senior citizens were liable to be acquitted as the prosecution had failed to prove its case beyond reasonable doubt. The appeal was, thus, liable to be allowed.

5. On the other hand, Mr. Vishnu Sharma, learned counsel for the respondent supported the impugned judgment. According to him, the testimony of all the four eye-witnesses was consistent and reliable. Their presence at the site of the occurrence was natural and merely on the ground that they were related to the deceased, could not be made the reason to discard their evidence. Said witnesses had been duly cross-examined and nothing adverse had been found therein. The prosecution had established the motive for the crime and in furtherance of their common intention, the appellants had caused the death of the two victims. The postmortem report revealed various injuries caused by sharp weapons and the cause of death had been established to be homicidal. As regards the examination of the appellants under Section 313 of the Code, it was submitted that the incriminating circumstances relating to the role of the appellants had been put to them. There was an opportunity for the appellants to deny their joint participation but they failed to do so. No prejudice was caused to the appellants in that regard and, hence, they could not seek any benefit in that regard. Reliance was placed on the decision in **Suresh Sahu and anr. Vs. The State of Bihar (now Jharkhand)**[7]. It was, thus, submitted that the Sessions Court and thereafter the High Court had considered the entire evidence on record and had found the involvement of the appellants to be proved beyond reasonable doubt. There was no reason, whatsoever, to interfere with the said adjudication. The appeal was, therefore, liable to be dismissed.

6. We have heard the learned counsel for the parties at length and with their assistance, we have also gone through the records of the case. We have also perused the evidence on record. On giving due consideration to the material on record, we find the version of the four eye-witnesses to be consistent and also acknowledging the presence of each other at the spot of the incident. The manner in which the appellants assaulted Bulaki Mandal and Hriday Mandal has been clearly indicated. These witnesses were cross-examined but nothing contrary to the prosecution case has been elicited from them. Minor inconsistencies therein does not weaken the prosecution case. The Sessions Court and thereafter the High Court have appreciated this ocular evidence and we find no reason to take a different view of the matter.

7. It was urged on behalf of the appellants that in the absence of recovery of any weapons of assault, the prosecution had failed to establish the guilt of the appellants. It is true that the Investigating Officer failed to bring on record any material indicating recovery of the weapons of assault that were described by the eye-witnesses. However, this aspect cannot enable the appellants to seek any benefit in the light of the fact that the version of the eye-witnesses as regards the assault has been found to be reliable. It may be observed that recovery of the weapons of assault is not the *sine qua non* for convicting an accused as the entire evidence on record is required to be taken into consideration. In this

[5] 2008 INSC 840
[6] 2013 INSC 313
[7] 2025 INSC 1382

regard, we may refer to the decision in **Rakesh and anr. Vs. State of U.P. and anr.**[8]. In paragraph 11, it has been observed as under:

"11. Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the fire arm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. PW1 & PW2, as observed hereinabove, are reliable and trustworthy eyewitnesses to the incident and they have specifically stated that A1-Rakesh fired from the gun and the deceased sustained injury. The injury by the gun has been established and proved from the medical evidence and the deposition of Dr. Santosh Kumar, PW5. Injury no.1 is by gun shot. Therefore, it is not possible to reject the credible ocular evidence of PW1 & PW2 – eye witnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW1 & PW2 that A1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW2 & PW5. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW1 & PW2."

8. We may also refer to a recent decision in **Om Pal and Ors. Vs. State of U.P. (now State of Uttarakhand)**[9]. In paragraphs 49 and 50 thereof, it has been observed as under:

"49. Another contention raised by the appellants was that the weapons used during the incident were never recovered from the site. However, this Court has many a times reiterated that nonrecovery of the weapons cannot be considered fatal to the case of the prosecution if there is consistent medical and ocular evidence. This Court in the case State of Rajasthan vs. Arjun Singh & Ors.16 held as under:

"18. As rightly pointed out by the learned Additional Advocate General appearing for the State that mere nonrecovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, bloodstained clothes, etc. cannot be taken or construed as no such occurrence had taken place. As a matter of fact, we have already pointed out that the gunshot injuries tallied with medical evidence. It is also seen that Raghuraj Singh and Himmat Raj Singh, who had died, received 8 and 7 gunshot wounds respectively while Raj Singh (PW 2) also received 8 gunshots scattered in front of left thigh. All these injuries have been noted by the doctor (PW 1) in his reports, Exts. P-1 to P-4."

(Emphasis supplied)

50. Also in Nankaunoo vs. State of Uttar Pradesh17, this Court held that where in light of unimpeachable oral evidence is corroborated by the medical evidence, non-recovery of murder weapon does not materially affect the case of the prosecution. Any omission on the part of the investigating officer cannot go against the prosecution's case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

From the aforesaid, it is clear that the absence of recovery of the weapons of assault would not weaken the case of the prosecution in the presence of other evidence on record that is found reliable.

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[8] 2021 INSC 321
[9] 2025 INSC 1262

9. Much emphasis was sought to be placed by the learned Senior Advocate for the appellants as regards the examination of the appellants under Section 313 of the Code. It was submitted that all the appellants were asked similar questions without specifically putting the material adverse to them. In that regard, we have perused the examination of the appellants under Section 313 of the Code. We find that the incriminating circumstances appearing against the appellants were put to them, though in general terms. There is some similarity in the questions put to the appellants. However, such examination by itself cannot be the basis for upholding the contention of the appellants in that regard unless it is shown that prejudice was caused to them on account of such examination. In the facts of the present case, when the entire material brought by the prosecution is considered, we find that the evidence led by the eye-witnesses inspires confidence and clearly establishes the guilt of the appellants. The nature of prejudice caused to the appellants has not been indicated. In this regard, we may refer to the decision in **Fainul Khan Vs. State of Jharkhand and anr**.[10]. While dealing with a similar contention raised therein, it was held as under:

"11. Section 313, Cr.P.C. incorporates the principle of *audi alteram partem.* It provides an opportunity to the accused for his defence by making him aware fully of the prosecution allegations against him and to answer the same in support of his innocence. The importance of the provision for a fair trial brooks no debate.

12. But equally there cannot be a generalised presumption of prejudice to an accused merely by reason of any omission or inadequate questions put to an accused thereunder. Ultimately it will be a question to be considered in the facts and circumstances of each case including the nature of other evidence available, the kind of questions put to an accused, considered with anything further that the accused may state in his defence. In other words, there will have to be a cumulative balancing of several factors. While the rights of an accused to a fair trial are undoubtedly important, the rights of the victim and the society at large for correction of deviant behaviour cannot be made subservient to the rights of an accused by placing the latter at a pedestal higher than necessary for a fair trial.

13. In the facts of the present case, considering the nature of ocular evidence available of the injured witnesses P.Ws. 7 and 8 who have also been cross-examined by the appellants, and the evidence of P.W. 11, we are of the considered opinion that no prejudice has been caused to the appellants. A specific question was put to the appellants that they participated in an unlawful assembly with the common object of murdering the deceased. Further, it was also put to them that they had caused injuries to P.W. 7 and 8. Merely because no questions were put to the appellants with regard to the individual assault made by each of them, it cannot be said in the facts of the case that any prejudice has been caused to them. The questions asked being similar we consider it proper to extract it with regard to one of the appellants. The appellants did not offer any explanation or desire to lead evidence except for stating that they had been falsely implicated. Questions asked to Fainul Khan are extracted hereunder:

"Question: As has been stated by the prosecution witnesses, on 1st November, 1983 you along with other accused participated in an unlawful assembly and took part in fighting. It that true?
Answer: No. It is wrong.
Question: It has also been said that you participated in the common object of the unlawful assembly of murdering Rabbani Khan.
Is that true?
Answer: It is wrong.
Question: It has also been said the during the said incident, you had also caused injuries upon Nabiul hasan Khan, Eshanul Khan, Mir Tarabul and Mir Sanif. Is this true?
Answer: No. It is wrong.

[10] 2019 INSC 1127

Question: Do you want to say anything in your defence?
Answer: We have been falsely implicated."

14. In ***Suresh Chandra Bahri vs. State of Bihar***, 1995 Suppl (1) SCC 80, it was observed as follows:

"26…..It is no doubt true that the underlying object behind Section 313 CrPC is to enable the accused to explain any circumstance appearing against him in the evidence and this object is based on the maxim *audi alteram partem* which is one of the principles of natural justice. It has always been regarded unfair to rely upon any incriminating circumstance without affording the accused an opportunity of explaining the said incriminating circumstance. The provisions in Section 313, therefore, make it obligatory on the court to question the accused on the evidence and circumstance appearing against him so as to apprise him the exact case which he is required to meet. But it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance but he must also show that such non-examination has actually and materially prejudiced him and has resulted in failure of justice. In other words in the event of any inadvertent omission on the part of the court to question the accused on any incriminating circumstance appearing against him the same cannot ipso facto vitiate the trial unless it is shown that some prejudice was caused to him. In *Bejoy Chand Patra* v. *State of W.B.*, AIR 1952 SC 105, this Court took the view that it is not sufficient for the accused merely to show that he has not been fully examined as required by Section 342 of the Criminal Procedure Code (now Section 313 in the new Code) but he must also show that such examination has materially prejudiced him. The same view was again reiterated by this Court in *Rama Shankar Singh* v. *State of W.B.*,1962 Suppl(1)SCR 49….."

15. In ***Shobhit Chamar (supra)***, considering the nature of ocular evidence notwithstanding the infirmities at the stage of Section 313, Cr.P.C., it was observed as follows:

"18. ….In the case before us, the prosecution case mainly rested upon the ocular evidence of eyewitnesses. On conclusion of the prosecution evidence, the trial court did put the necessary questions relating to the evidence of eyewitnesses to both the appellants and thereafter recorded the answers given by them.

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24. We have perused all these reported decisions relied upon by the learned advocates for the parties and we see no hesitation in concluding that the challenge to the conviction based on non-compliance of Section 313 CrPC first time in this appeal cannot be entertained unless the appellants demonstrate that the prejudice has been caused to them. In the present case as indicated earlier, the prosecution strongly relied upon the ocular evidence of the eyewitnesses and relevant questions with reference to this evidence were put to the appellants. If the evidence of these witnesses is found acceptable, the conviction can be sustained unless it is shown by the appellants that a prejudice has been caused to them. No such prejudice was demonstrated before us and, therefore, we are unable to accept the contention raised on behalf of the appellants."

In the facts of the present case, we find that the ratio of the decisions relied upon by the learned Senior Advocate for the appellants cannot be applied to the case in hand.

10. We, therefore, do not find any reason whatsoever to hold that the appellants have been wrongly convicted. The material on record clearly establishes their guilt and the prosecution has proved its case beyond reasonable doubt. We are, therefore, not inclined to interfere with the order of their conviction as passed by the Sessions Court and maintained by the High Court. The Criminal Appeal, thus, fails and is accordingly dismissed.