2023 SCeJ 0037, (2023-1)209 PLR 430, 2023 PLRonline 441654

SUPREME COURT OF INDIA

Ravindra Bhat,J. Dipankar Datta, J.

S. Premchand v. State of Maharashtra

Criminal Appeal No. 211 of 2023

03.03.2023

CrPC, S. 313(1)(b) – Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.

Held, Is a valuable safeguard in the trial process for the accused to establish his innocence; which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him; when questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court; the accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences; an accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him; the explanations that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s); statements of the accused in course of examination under section 313, since not on oath, do not constitute evidence under section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case; statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission; if the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements; any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.

CrPC, S. 313 (1) (b), S. 313(5) – In criminal court proceedings, it is the responsibility of the court to carefully review the evidence presented by the prosecution and prepare relevant questions to allow the accused to explain any incriminating circumstances – Prior to the amendment of section 313 in 2009,

courts alone were responsible for this task, but the amendment now allows the court to take the assistance of the Public Prosecutor and Defence Counsel in preparing the questions – However, judicial experience has shown that the accused often provide evasive or unhelpful answers, which can harm their case, like with stereotypes like 'false', 'I don't know', 'incorrect', etc. – Nonetheless, if the accused provides a satisfactory explanation or a different version of events, it can provide the court with a different perspective and have an effect on the final outcome. [Para 16]

Held, Court has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstance in the evidence that could be used against him. Prior to the amendment of section 313 in 2009, the courts alone had to perform this task. Instances of interference with convictions by courts of appeal on the ground of failure of the trial court to frame relevant questions and to put the same to the accused were not rare. For toning up the criminal justice system and ensuring a fair and speedy trial, with emphasis on cutting down delays, the Parliament amended section 313 in 2009 and inserted sub-section (5), thereby enabling the court to take the assistance of the Public Prosecutor and Defence Counsel in preparing such questions [the first part of sub-section (5)]. Ideally, with such assistance (which has to be real and not sham to make the effort effective and meaningful), one would tend to believe that the courts probably are now better equipped to diligently prepare the relevant questions, lest there be any infirmity. However, judicial experience has shown that more often than not, the time and effort behind such an exercise put in by the trial court does not achieve the desired result. This is because either the accused elects to come forward with evasive denials or answers questions with stereotypes like 'false', 'I don't know', 'incorrect', etc. Many a time, this does more harm than good to the cause of the accused. For instance, if facts within the special knowledge of the accused are not satisfactorily explained, that could be a factor against the accused. Though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances. A proper explanation of one's conduct or a version different from the prosecution version, without being obliged to face cross-examination, could provide the necessary hint or clue for the court to have a different perspective and solve the problem before it. The exercise under section 313 instead of being ritualistic ought to be realistic in the sense that it should be the means for securing the ends of justice; instead of an aimless effort, the means towards the end should be purposeful. Indeed, it is optional for the accused to explain the circumstances put to him under section 313, but the safeguard provided by it and the valuable right that it envisions, if availed of or exercised, could prove decisive and have an effect on the final outcome, which would in effect promote utility of the exercise rather than its futility.

CrPC, S. 313 – A proper explanation of one's conduct or a version different from the prosecution version, without being obliged to face cross-examination, could provide the necessary hint or clue for the court to have a different perspective and solve the problem before it – The exercise under section 313 instead of being ritualistic ought to be realistic in the sense that it should be the means for

securing the ends of justice; instead of an aimless effort, the means towards the end should be purposeful – Indeed, it is optional for the accused to explain the circumstances put to him under section 313, but the safeguard provided by it and the valuable right that it envisions, if availed of or exercised, could prove decisive and have an effect on the final outcome, which would in effect promote utility of the exercise rather than its futility. [Para 16]

CrPC, S. 313 – Once the accused files a written statement under sub-section (5) of section 313, it must be treated as part of their statement under sub-section (1) read with sub-section (4) thereof . and considered in the light of the evidence presented by the prosecution – The contents of the statement should be weighed with the probabilities of the case in favor of or against the accused. [Para 17]

***CrPC,* S. 313(5) – Non-explanation of facts within special knowledge of the accused – Effect of. I**f facts within the special knowledge of the accused are not satisfactorily explained, that could be a factor against the accused. Though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances.

[Para 16]

***IPC,* Section 300, Exception 4 – Sudden fight – Murder of victim – Victim and appellant had no quarrel –** In the normal run of events, the victim as well as P.W.2 and the appellant were not supposed to interact with each other on 26th September, 2013. If P.W.2 had not opened the shop, the appellant would probably not have met him. It is in the evidence of P.W.2 that he was reading a newspaper sitting in front of the shop of the victim and that the appellant was sitting in the saloon of BS (not examined), which was opposite to the shop of the victim. P.W.2's further version was that the appellant went to his house, fetched a knife and then stabbed P.W.2 on his left shoulder, neck and left-hand finger resulting in serious bleeding injuries. The reason why the appellant suddenly on seeing the septuagenarian P.W.2 would go to his house and return with a knife is not there in the evidence. Then again, the victim who, according to P.W.2, was supposed to be in the field but appeared in the scene from some other place all on a sudden, was the third in the series to be stabbed by the appellant and, thus, was not his target. Though there is no specific admission by the appellant that he had stabbed the victim or the other injured witnesses, reading of the evidence does evince an act of retaliation spurred by sudden provocation resulting in a quarrel as well as a scuffle which ultimately, most unfortunately, cost the victim his life and left some others injured. It was in a sudden quarrel, which could have been provoked by the victim and P.W.2, that blows followed from each side.he appellant too sustained injuries in the scuffle and there is evidence on record that one of the injuries was grievous, yet, the criminal law was surprisingly not set in motion to bring to book those responsible for inflicting such injury. It was in a sudden quarrel, which could have been provoked by the victim and P.W.2, that blows followed from each side. Most importantly, the circumstances in which the incident occurred does clearly negate any suggestion of premeditation in mind. That apart, it cannot be overlooked that while the

victim was middle-aged, the appellant was in his late fifties. At the time of the alleged incident, apart from P.W.s 2 and 3, Shankarrao Fartode, Umrao Charde, Ramesh Korde (all three not examined) were present at the spot, as per the version of P.W.2. It is indeed improbable that in the presence of such persons, the appellant wielding a weapon like a knife would come to the spot with an intention to commit the offence of murder overpowering all of them without any sufficient reason or provocation. In our opinion, the trial court lacked in objectivity by not examining the facts and circumstances as to whether the situation was such as is likely to reasonably cause an apprehension in the mind of the appellant that there was imminent danger to his body, of either death or grievous hurt being caused to him, if he did not act in private defence. To impute intention to cause death or the intention to cause that particular injury, which proved fatal, in these circumstances seems to be unreasonable. Exception 4 to section 300, IPC ordains that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. The explanation thereto clarifies that it is immaterial in such cases which party offers the provocation or commits the first assault. Four requirements must be satisfied to invoke this exception, viz. (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel or unusual manner. Taking an overall view of the matter, we are inclined to the opinion that the appellant was entitled to the benefit of Exception 4 to section 300, IPC. This is not a case where the appellant could be convicted for murder of the victim. His conviction for murder and sentence of life imprisonment are liable to be set aside. It is ordered accordingly. Convict the appellant under section 304, Part II, IPC. Since the appellant has suffered imprisonment for more than nine years and he is presently in his late sixties, we consider incarceration for such period as adequate punishment. The appellant shall be released from custody forthwith, unless required in connection with any other case. [Para 23-27]

IPC , Section 300 Exception 4 – Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner – The explanation thereto clarifies that it is immaterial in such cases which party offers the provocation or commits the first assault. Four requirements must be satisfied to invoke this exception, viz. (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel or unusual manner. [Para 24]

2023-SCEJ-0037Download