

A SHAIKH MAQSOOD

V.

STATE OF MAHARASHTRA

Criminal Appeal No. 898 of 2009

B MAY 04, 2009

(DR. ARIJIT PASAYAT AND ASOK KUAMR
GANGULY, JJ)

Code of Criminal Procedure, 1973:

C s. 313 – *Examination of accused – Purpose of – Explained – HELD: No question having been put to accused to establish his role in the crime, conviction cannot be maintained and is set aside – Penal Code, 1860, ss. 302, 304-B and 498-A.*

D The appellant faced trial for offences punishable u/ ss 498-A, 304-B and 302 IPC on the allegations that he ill-treated his wife for non-fulfilment of his dowry demand. The prosecution case was that on the stated date and time, the accused-appellant poured kerosene on his wife and set her on fire. The trial court found the circumstantial evidence sufficient to hold him guilty and convicted and sentenced him u/s 302 IPC. The High Court affirmed the conviction.

E In the instant appeal filed by the accused it was contended for the appellant that in his examination u/s 313 CrPC no question was asked regarding existence of any material to hold him guilty.

F Allowing the appeal, the Court

G HELD : 1.1 The purpose of s.313 of the Code of Criminal Procedure, 1973 is set out in its opening words 'for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.' The object is to give the accused an opportunity to explain

the case made against him. His attention should be drawn to the specific points in the charge and the evidence in that regard. 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. The 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. [para 6-9] [432-A, D-E; 433-A-C]

Hate Singh, Bhagat Singh v. State of Madhya Pradesh
AIR 1953 SC 468 – relied on.

1.2 A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. In the instant case, no question was put to the accused which could establish that he was the author of the crime. That being so, the conviction cannot be maintained and is set aside. [para 8 and 10] [432-H; 433-A, E]

Case Law Reference

AIR 1953 SC 468 relied on para 6

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 898 of 2009

From the Judgement and Order dated 13.12.2007 passed by the Division Bench of the High Court of Judicature at Bombay Bench at Aurangabad in Criminal Appeal No. 51 of 2006.

Shivaji M. Jadhav, for the Appellant.

Chinmay Khaladkar, Ravindra Keshavrao Adsure, for the Respondent.

A The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

B 2. Challenge in this appeal is to the judgment of a Division
Bench of the Bombay High Court at Aurangabad Bench
upholding the conviction of the appellant for offences punishable
under Section 302 of the Indian Penal Code, 1860 (in short the
'IPC') as recorded by learned Ad hoc Additional Sessions
C Judge, Biloli, Maharashtra. Appellant faced trial for alleged
commission of offence punishable under Sections 498A, 304(B)
and 302 IPC for committing murder of his wife Shaheen Begum
(hereinafter referred to as the 'deceased'). Trial court acquitted
the appellant of the charges relatable to Sections 498A and
304B while recording conviction under Section 302 IPC.

D 3. Prosecution version in a nutshell is as follows:

The appellant was married Shaheeb Begum (hereinafter
referred to as the 'deceased') in the year 1994. She was resident
of Degloor. After marriage she started residing with her husband
E at village Hanegon for some period. But they shifted to Degloor
and started residing in Line Galli Degloor, District Nanded. The
appellant used to ill-treat her on account of non-fulfilment of
demand of dowry. He was threatening her that he would undergo
a second marriage. The financial position of the parents of
F Shaheen was weak and they could not satisfy the demands of
the appellant and she was subjected to ill-treatment by the
appellant.

On 22-10-2000 at 03.00 hours the appellant informed his
father-in-law that Shaheen died due to burns. Thereafter the
G father-in-law and other family members went to the house of the
appellant. There they noticed that Shaheen Begum was lying
on the ground and was dead. Appellant had poured kerosene
on the person of the deceased and set her on fire. Habib Umar
(PW1) father of the deceased, lodged a report (Exhibit 16) with
H police of Police Station Degloor on 22-10-2000 at 8.30 a.m.

The complaint was registered at Crime No.120/2000 under Sections 498-A, 304-B and 302 IPC. PW 5 Assistant Police Inspector Anandrao Badare proceeded to the spot. Spot panchanama (Exhibit 20) and Inquest panchanama of the dead body (Exhibit 21) were prepared. Five articles were seized from the place of occurrence and the dead body was sent for post mortem examination. The investigating officer recorded statements of five persons on 22-10-2000 and arrested the appellant. He recorded statements of 16 persons on 23-10-2000 and of 6 persons on 8th November 2000. The seized articles were sent for chemical analysis examination. After completion of the investigation charge sheet was filed on 28.2.2001.

After committal of the case to the Sessions Court charge was framed at Exh.8 on 18th March, 2004 under Sections 498A, 304B and 302 IPC. Appellant pleaded not guilty and claimed to be tried. In order to further prosecution version, six witnesses were examined. The appellant examined himself and also examined three witnesses to prove his innocence. Trial court found that the circumstantial evidence was sufficient to hold him guilty.

In appeal the stand that the circumstances do not present a complete chain to warrant his conviction was rejected.

4. In support of the appeal learned counsel for the appellant submitted that the case is based on circumstantial evidence. Sections 304B and 302 are conceptually different. In any event in the examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') no question was asked even remotely regarding existence of any material to hold the appellant guilty.

5: Learned counsel for the respondent State on the other hand submitted that the circumstances show that the deceased died due to 80% burn and the death was homicidal has been established as also role of accused and, therefore, the conviction as recorded by the trial court and upheld by the High Court does not suffer from any infirmity.

A 6. The purpose of Section 313 of the Code is set out in its
opening words- 'for the purpose of enabling the accused to
explain any circumstances appearing in the evidence against
him.' In *Hate Singh, Bhagat Singh v. State of Madhya Pradesh*
(AIR 1953 SC 468) it has been laid down by Bose, J that the
B statements of accused persons recorded under Section 313 of
the Code 'are among the most important matters to be
considered at the trial'. It was pointed out that the statements of
the accused recorded by the committing magistrate and the
Sessions Judge are intended in India to take the place of what
C in England and in America he would be free to state in his own
way in the witness box and that they have to be received in
evidence and treated as evidence and be duly considered at
the trial. This position remains unaltered even after the insertion
of Section 315 in the Code and any statement under Section
D 313 has to be considered in the same way as if Section 315 is
not there.

7. 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
E 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.

8. The word 'generally' in sub-section (1)(b) does not limit
the nature of the questioning to one or more questions of a
F 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
G 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
H 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.

9. 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.

10. We find substance in the plea of learned counsel for the appellant that no question was put to the accused which established that he was the author of the crime. That being so the conviction cannot be maintained and is set aside.

11. The appeal is allowed. The appellant be set at liberty forthwith unless required to be in custody in connection with any other case.

R.P.

Appeal allowed.