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SUKHJIT SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No. 263 of 2013)

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SEPTEMBER 11, 2014.

[DIPAK MISRA AND A.K. SIKRI, JJ.]

*PENAL CODE, 1860:*

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*s.364 – Conviction and sentence of 10 years RI to accused husband – Affirmed by High Court – The evidence shows that the victim-wife remained in jail – None of the witnesses have stated anything about abduction – Judgment of courts below set aside – Code of Criminal Procedure, 1973 – s.313.*

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*CODE OF CRIMINAL PROCEDURE, 1973:*

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*s.313 – Statement of accused – When requisite questions have not been put to accused it has caused immense prejudice to him, more so, when there is no evidence to establish his complicity in the alleged abduction.*

**Allowing the appeal, the Court**

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**HELD: 1.1. The evidence of the mother of victim demonstrates that the victim had remained in Central Jail and she was not aware of the year when she remained in jail. The factum of her being in jail also gets support from the documents Exts. DA and DB. That apart, none of the witnesses have stated anything about the abduction. [para 9] [612-F-G]**

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**1.2. No incriminating material has been brought to the notice of the accused while putting questions u/s 313 CrPC. There can be no scintilla of doubt that the when**

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the requisite questions have not been put to the accused it has caused immense prejudice to him, more so, when there is no evidence to establish his complicity in the alleged abduction. The judgment of conviction and order of sentence recorded by the trial court and affirmed by the High Court is set aside. [para 10, 14 and 15] [613-A; 615-G-H; 616-A]

*Ranvir Yadav v. State of Bihar* 2009 (7) SCR 653 = 2009(6) SCC 595; *Tara Singh v. The State* 1951 SCR 729 = 1951 AIR 441; *Hate Singh Bhagat Singh v. State of Madhya Bharat* AIR 1953 SC 468, *Ajay Singh v. State of Maharashtra* 2007 (7) SCR 983 = 2007 (12) SCC 341 - relied on

**Case Law Reference:**

2009 (7) SCR 653	relied on	para 10	A
1951 SCR 729	relied on	para 11	B
AIR 1953 SC 468	relied on	para 12	C
2007 (7) SCR 983	relied on	para 13	E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 263 of 2013.

From the Judgment and Order dated 27.02.2012 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 978-SB of 2003.

R. K. Talwar, Harikesh, Chander Shekhar Ashri for the Appellant.

V. Madhukar, AAG., Anvita Gowshish, Kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. The present appeal, by special leave,

A is preferred by the appellant assailing the judgment and order  
 passed by the High Court of Punjab and Haryana at Chandigarh  
 in Criminal Appeal No. 978-SB of 2003 whereby the learned  
 Single Judge has affirmed the conviction recorded by the  
 learned trial Judge under Section 364 IPC and maintained the  
 B sentence of rigorous imprisonment for 10 years and a fine of  
 Rs.5000/-, with the default clause.

2. Filtering the unnecessary details the prosecution case  
 as unfurled is that Swaran Kaur, lodged an FIR No. 173 at P.S.  
 Kotwali, District Kapurthala on 15.10.1998 alleging that the  
 C marriage between her daughter, Kuljit Kaur, was solemnized  
 with the accused-appellant as per religious rites on 7.1.1991  
 and in the wedlock a son, namely, Manpreet Singh, was born.  
 There was incompatibility between the husband and wife as a  
 consequence of which the accused was ill treating Kuljit Kaur.  
 D Initially both of them were staying in a rented house at  
 Kapurthala but in March 1998 they shifted to another rented  
 house situate in Mohalla Preet Nagar, Near Jhanda Mal School,  
 Kapurthala, and started residing there. The informant used to  
 go to her daughter's house and sometime in May 1998 when  
 E she went to meet her daughter she was informed by the landlord  
 that the tenants had vacated the house on 27/28.04.1998 and  
 had left for Ludhiana. The further case of the prosecution is that  
 when the accused had taken Kuljit Kaur with the intention to put  
 an end to her life spark.

F 3. After the criminal law was set in motion the concerned  
 investigating officer recorded the statement of witnesses. It is  
 apt to note here that on the basis of an order passed in a writ  
 petition the investigation was entrusted to the crime branch,  
 Punjab Police and the said investigating agency on completion  
 G of the investigation placed the chargesheet before the learned  
 Chief Judicial Magistrate, Kapurthala for the offence  
 punishable under Section 364 IPC and the said court in turn  
 committed the case to the court of Session vide order dated  
 25.08.2000.

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4. The prosecution to substantiate its case examined Sadhu Singh, PW1, Harjit Singh, PW2, Gurmit Singh, PW3, Sadhu Singh son of Baai Singh, PW 4, Grandthi, PW5, the Inspector, Swaran Kaur, the informant, and Sukhdev Singh, PW7, ASI of Police. After the evidence of the prosecution was closed statement of the accused was recorded whose plea in defence was that Kuljit Kaur was wife married to one Labh Singh and she was involved in a case under Section 302 IPC and was in custody. To substantiate the plea, the defence examined four witnesses and brought Exhibit DA and DB on record.

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5. The learned trial Judge accepted the testimony of the mother and the other witnesses and further placing reliance on the video recording of the marriage came to hold that the appellant and the Kuljit Kaur were husband and wife, hence the plea that Labh Singh was the husband of Kuljit Kaur was not acceptable; and that Kuljit Kaur and the accused-appellant were last seen together and, therefore, it was obligatory on the part of the accused to explain about her disappearance. On the aforesaid base, the learned trial Judge found the appellant guilty of the offence punishable under Section 364 IPC and sentenced him as has been stated hereinabove.

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6. On an appeal being preferred, the High Court declined to interfere with the judgment of conviction and order of sentence and followed the same reasoning which has been ascribed by the learned trial Judge.

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7. Mr. R.K. Talwar, learned counsel appearing for the appellant has raised four contentions, namely, (i) there is no evidence on record even remotely to show that the appellant had abducted Kuljit Kaur, for the entire evidence brought on record by the prosecution are centered around the fact of proving the existence of marital status between the appellant and the Kuljit Kaur; (ii) that the learned trial Judge has not complied with the basic requirements of Section 313 CrPC inasmuch as not even a singular question was put to the

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A accused as relating to abduction as stipulated under Section  
 364 IPC and such an omission fundamentally affects the  
 concept of trial; (iii) that in the obtaining factual matrix the  
 learned trial Judge as well as the High Court has fallen into  
 grave error by not taking note of the fact that PW-6, the mother  
 B of the Kuljit Kaur had categorically admitted that her daughter  
 was in custody and further the accused had brought on record  
 the documents from jail to prove that she was arrayed as an  
 accused under Section 302 IPC; and (iv) that in the obtaining  
 factual score the prosecution has failed to establish the charges  
 C leveled against the accused-appellant and, therefore, the  
 judgment of conviction and order of sentence are liable to be  
 annulled.

8. Mr. V. Madukar, learned Additional Advocate General  
 for the State of Punjab has supported the decision of the trial  
 D Judge that has been concurred with by the High Court  
 contending, inter alia, that the appellant had failed to explain  
 about the missing of his wife and there is an evidence on  
 record that she was last seen with him.

E 9. To appreciate the submissions raised at the Bar, we  
 have, apart from perusing the judgment of the trial Court as well  
 as that of the High Court, also critically scrutinized the evidence  
 on record. On a scanning of the evidence of the mother, Swaran  
 Kaur, it is demonstrable that she had admitted in no uncertain  
 F terms that Kujit Kaur had remained in Central Jail Amritsar and  
 she was not aware of the year when she remained in jail. The  
 factum for her being in jail also gets support from the documents  
 exhibits DA and DB. That apart, it is interesting to note that  
 none of the witnesses have stated anything about the abduction.  
 G All the witnesses have deposed about the factum of marriage  
 as if that was the singular fact needed to be established to  
 bring home the charge. In addition, we find that the learned trial  
 Judge had also put all the questions to the accused-appellant  
 pertaining to the marriage and visit of residence and office of  
 the appellant by the mother.  
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10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr. Talwar, has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav v. State of Bihar*<sup>1</sup>. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts serious lapse on the part of the trial Court making the conviction vitiated in law.

11. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. The State*<sup>2</sup> wherein, Bose, J. explaining the significance of the faithful and fair compliance of Section 342 of the Code as it stood then, opined thus:

“30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, 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 circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form

1. (2009) 6 SCC 595.

2. AIR 1951 SC 441.

A which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. 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. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

E 12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat*<sup>3</sup>, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the code expressed thus:-

F “8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal P.C. 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

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 3. AIR 1953 SC 468.

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.”

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13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra*<sup>4</sup> in following terms:

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“14. The word “generally” in sub-section (1)(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.”

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14. In view of the aforesaid enunciation of law, there can be no scintilla of doubt that the when the requisite questions have not been put to the accused it has caused immense prejudice to him, more so, when there is no evidence to establish his complicity in the alleged abduction.

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15. Resultantly, the appeal is allowed. The judgment of

4. (2007) 12 SCC 341.

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A conviction and order of sentence recorded by the trial Court and affirmed by the High Court are set aside. As the accused is in custody, he shall be released forthwith unless his detention is required in connection with any other case.

B Rajendra Prasad

Appeal allowed.