

**(2015) 08 JH CK 0007**

**In the Jharkhand High Court**

**Case No : Criminal Revision No. 560 of 2015**

Achhay Kharwar and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

**Date of Decision : 25-08-2015**

**Acts Referred:**

Arms Act, 1959 — Section 27  
Constitution of India, 1950 — Article 21  
Criminal Procedure Code, 1973 (CrPC) — Section 311, 313, 313(1), 313(1)(b)  
Explosive Substances Act, 1908 — Section 3, 4  
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302  
Unlawful Activities (Prevention) Act, 1967 — Section 16, 18, 20

**Citation : (2015) 3 JLJR 594**

**Hon'ble Judges : Ravi Nath Verma, J.**

**Bench : Single Bench**

**Advocate : Jitendra Shankar, for the Appellant; Rajneesh Vardhan, for the Respondent**

## **Judgement**

Ravi Nath Verma, J.—Challenged in this revision application is to the order dated 29.4.2015 passed by learned Additional Sessions Judge-I, Lohardaga in Sessions Trial No. 14 of 2012 whereby and whereunder the petition filed by the prosecution under Section 311 of the Code of Criminal Procedure (in short "the Code"), for recording the restatement of the accused persons on the point of identification under Section 313 of the Code, has been allowed. At the instance of Officer-in-Charge of Senha Police Station, the aforesaid case bearing Senha P.S. Case No. 50 of 2011 was instituted with the allegation that while the informant had gone on patrolling with Police Officers there was a series of blast and firing upon police team and in the said incidence several policemen sustained injuries and also died. The informant and other Police personnel could identify the accused persons who were involved in the alleged occurrence.

2. It appears from the record that after investigation the police submitted the charge-sheet against two petitioners and other accused persons under Sections

147/148/149/302/307/326/324/353/427/120B of the Indian Penal Code, under Section 27 of the Arms Act and Sections 3 and 4 of the Explosive Substances Act and also under Section 17 of the Criminal Law Amendment Act and Sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act. After conclusion of evidence by the prosecution, the statement of the accused persons were recorded under Section 313 of the Code on 29.1.2015. Thereafter, the defence concluded his argument and taken a plea that since the prosecution has not put any question from the accused persons on the point of identification, circumstances cannot be used against the accused persons and prejudice or miscarriage of justice had occasioned for not putting question to the accused. After the above statement, a petition under Section 311 of the Code was filed by the prosecution with prayer to allow the prosecution to re-record the statement of the co-accused persons under Section 313 of the Code on the ground that the question relating to identification was inadvertently not placed before the accused persons during his statement though it was the duty of the court to put specific question. The court below after hearing both the parties allowed the petition and directed that in the interest of justice it is desirable to put question to the accused and re-record the statement of accused persons under Section 313 of the Code on the point of identification. Hence, this revision, by the petitioners, who are accused in the court below.

3. Mr. Jitendra Shankar, learned counsel appearing for the petitioners submitted that once an accused is examined under Section 313(1)(b) of the Code, he cannot be re-examined time and again on the pretext that certain questions have not been put to them. It was also submitted that the petition filed by the prosecution in the court below was a step to fill up the lacuna in the prosecution case and there is no justification to record their restatement. It was also submitted that it is old case of 2011, so a serious prejudice has been caused to the petitioners and in any event or even under equity there should not be any re-examination of the accused. It was also submitted that allowing the petition by the court below is a denial of fundamental right of fair trial as guaranteed under Article 21 of the Constitution of India.

4. Contrary to the aforesaid submissions, learned counsel representing the State seriously contended that the provision of Section 313 of the Code empowers the court to re-examine the accused after evidence for the prosecution is concluded and the object behind the examination is to afford the accused an opportunity of explaining circumstances which may tend to incriminate him.

5. The very object behind recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstance 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 crime. It is necessary that every material piece of evidence which the prosecution proposes to use against the accused should be

put to him in clear terms. Undoubtedly, it is a mandatory obligation upon the court. Under the provisions of the Code of Criminal Procedure, the court has been empowered to examine the accused to seek explanation from him with reference to any particular circumstance as being sufficient to sustain the conviction. In this context the questions, which are not put to the accused cannot be used against him.

6. For better appreciation of issue involved in this revision application, a reference of Section 313 of the Code, is necessary which reads as follows:--

"Section 313(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 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 given 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 Prosecution 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 his section."

7. From mere perusal of the above provision, it appears that Section 313 of the Code consist of two parts. In the first part there is discretionary power to the court (may) to question the accused at any stage of enquiry or trial but in the second part which is Section 313(1)(b) is mandatory in nature and imposes upon the court a duty to examine the accused at the close of the prosecution evidence to come with an opportunity to explain any incriminating circumstances appearing against him in the evidence of the prosecution. It further appears that the Section speaks of recording of statement of the accused only once after the closure of prosecution witnesses but there is no implied prohibition in calling upon the accused to answer his question or record his statement again. Since the provision is silent on question of recall of accused more than once, the court

dealing with the matter must be very conscious and should not use the power to recall the accused to answer the question or record his statement in routine or mechanical manner.

8. In the instant case, I have gone through the entire evidences adduced on behalf of the prosecution and I find that almost all the prosecution witnesses in their depositions, have identified the petitioners in court room. Hence, in my opinion, no prejudice shall be caused to the petitioners upon their recall to answer the question on identification only.

9. In view of the above discussions, I find no infirmity in the order impugned. Learned counsel for the petitioners has not taken any plausible ground to interfere in the order impugned. The revision application, thus, being devoid of any merit, is, hereby, dismissed with direction to the court concerned not to put any other question except on the point of identification under Section 313 of the Code.