
(2011) 04 SHI CK 0284
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 464 of 2001

State of H.P.

APPELLANT

Vs

Khiyali Ram and Others

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2011) 04 SHI CK 0284

Hon'ble Judges : Surjit Singh, J;Rajiv Sharma, J

Bench : Division Bench

Judgement

Surjit Singh, J.—Having spent more than two hours, on reading the judgment and the evidence, we find that while examining the accused-Respondents, u/s 313 of the Code of Criminal Procedure, the trial Court has not put any question to them, as to how various documents exhibited by the prosecution link them with the offences they are alleged to have committed. For example, prosecution relies upon the record, in the nature of entries in the ledger and the cash books, maintained by a firm of Delhi, by the name of Kapoor Timber. Documents, seized during investigation from the said firm, viz. Ex. PW-43/A-15 to Ex. PW-43/A-22, are relied upon to show that payments of timber exported against Railway Receipts Ex. PW-1/E and Ex. PW-1/G, in excess of quantity permitted to be exported, were made to Respondent Surinder Singh. Trial Court put a question to Surinder Singh that the aforesaid documents had been seized during investigation of the case, by Investigating Officer of the case, namely PW-43 Roshan Singh. However, no question was put as to how these documents connect the said accused-Respondent, with the alleged crime or how are they relevant for proving the prosecution case. So is the case with regard to various other documents, like the record produced by PW-29 Om Parkash, an employee of another firm, and PW-25 Baldev Singh.

2. Now, when the accused-Respondents had not been apprised, in the course of their statements, u/s 313 of the Code of Criminal Procedure, of the relevance of

the aforesaid documents and the manner, in which they were intended to be used against them and even of the substance of contents of those documents were not put to them, it cannot be said that the accused had been afforded effective and sufficient opportunity to explain the circumstances, appearing against them, in the prosecution evidence.

3. Purpose of examination, u/s 313 of the Code of Criminal Procedure, is to enable an accused to explain his position, with regard to the evidence intended to be used against him, for convicting him. This is an enabling provision and gives the accused a valuable right to prove his innocence, by offering explanation, in respect of incriminating material proved as evidence against him.

4. In the present case, effective and sufficient opportunity having not been granted to the accused, they cannot be convicted, by using the evidence, particularly the aforesaid documents, against them. The aforesaid evidence is very vital, according to the submissions made on behalf of the Appellant, i.e. State.

5. In view of the above stated position, impugned judgment of acquittal is set aside and the case is remanded to the trial Court, with a direction to decide the same afresh, after re-examining the accused-Respondents, u/s 313 of the Code of Criminal Procedure, in a legal and proper manner and also after affording opportunity to the accused-Respondents to lead defence evidence.

Parties are directed to appear before the trial Court on 2nd May, 2011. Record of the case shall be sent to the trial Court, with a copy of this judgment, immediately, and in any case atleast two days ahead of the aforesaid date, fixed for the appearance of the parties in the trial Court.