

MRC-3-2022
CRA-D-173-2022 and CRA-D-469-2022

CNR No: PHHC010318582022
2026:PHHC:104692-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

MRC-3-2022
CRA-D-173-2022 and
CRA-D-469-2022

State of Haryana ...Appellant

Versus

Pardeep and another ...Respondents

JUDGMENT RESERVED ON	JUDGMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
21.07.2026	04.08. 2026	FULL PRONOUNCED	04.08.2026

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MR. JUSTICE RAMESH CHANDER DIMRI

Present: Mr. Yuvraj Shandilya, A.A.G., Haryana.
Mr. Rahul Mohan, Addl. A.G., Haryana.
Mr. Karan Sharma, D.A.G., Haryana.
Mr. Shiva Khurmi, D.A.G., Haryana.

Mr. Rahul Rathore, Advocate for the appellant in CRA-D-173-2022.

Ms. Meena Bansal, Advocate for the appellant in CRA-D-469-2022.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
009	14.01.2018	Matlauda, Panipat	302 IPC (Challan filed u/s 302, 201, 366-A ¹ , 34 IPC and 6 of POCSO Act)

Criminal Case number before the Sessions Court	CIS No. 122 of 2018
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Charges framed against both the accused for the following offences.	
Date	20.03.2018
IPC	302 ² r/w 34 ³ , 376A ⁴ , 363 ⁵ r/w 34, 366 ⁶ r/w 34, 376D ⁷ , 201 r/w 34 IPC

¹ §366A. Procurement of minor girl.
² §302. Punishment for murder.
³ §34. Acts done by several persons in furtherance of common intention.
⁴ §376A. Punishment for causing death or resulting in persistent vegetative state of victim.
⁵ §363. Punishment for kidnapping.
⁶ §366. Kidnapping, abducting or inducing woman to compel her marriage, etc.
⁷ §376D. Gang rape.

MRC-3-2022
CRA-D-173-2022 and CRA-D-469-2022

POCSO Act	6 ⁸ of POCSO Act
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Date of Decision	10.02.2022
Date of order on the quantum of sentence	18.02.2022

Name of the accused/convict	Pardeep
Conviction under Sections	302 r/w 34, 376A, 363 r/w 34, 366 r/w 34, 376D, 201 r/w 34 IPC and 6 of POCSO Act

Sentence imposed upon the convict – Pardeep			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
302 r/w 34 IPC	DEATH SENTENCE He be hanged by the neck till he is dead	20000/-	SI for 06 months
376A IPC	DEATH SENTENCE He be hanged by the neck till he is dead	20000/-	SI for 06 months
6 of POCSO Act	DEATH SENTENCE He be hanged by the neck till he is dead	20000/-	SI for 06 months
363 r/w 34 IPC	RI for 07 years	5000/-	SI for 01 month
366 r/w 34 IPC	RI for 10 years	5000/-	SI for 01 month
376D IPC	RI for life which shall mean imprisonment for the remainder of their natural life	25000/-	SI for 06 months
201 r/w 34 IPC	RI for 07 years	5000/-	SI for 01 month

Name of the accused/convict	Sagar alias Kallu
Conviction under Sections	302 r/w 34, 376A, 363 r/w 34, 366 r/w 34, 376D, 201 r/w 34 IPC and 6 of POCSO Act

Sentence imposed upon the convict – Sagar alias Kallu			
Section	Sentence of imprisonment	Fine in INR	Sentence in default of payment of fine
302 r/w 34 IPC	DEATH SENTENCE He be hanged by the neck till he is dead	20000/-	SI for 06 months
376A IPC	DEATH SENTENCE He be hanged by the neck till he is dead	20000/-	SI for 06 months
6 of POCSO Act	DEATH SENTENCE He be hanged by the neck till he is dead	20000/-	SI for 06 months
363 r/w 34 IPC	RI for 07 years	5000/-	SI for 01 month
366 r/w 34 IPC	RI for 10 years	5000/-	SI for 01 month
376D IPC	RI for life which shall mean imprisonment for the remainder of their natural life	25000/-	SI for 06 months
201 r/w 34 IPC	RI for 07 years	5000/-	SI for 01 month

⁸ §6. Punishment for aggravated penetrative sexual assault.

1. On the evening of Jan 13, 2018, the victim, whom this Court would affectionately refer to as '*Laadli*', was abducted, allegedly by the appellant/convict Pardeep, aged 35, and the appellant/co-convict Sagar alias Kallu, aged 25, both of them committed rape upon her in the house of Pardeep and subsequently, strangled her to death. Both the appellants, Pardeep and Sagar alias Kallu, were arrested, prosecuted, and upon conviction by the trial Court, were awarded death sentences, in addition to the other sentences as captioned above.
2. The trial Court had sent the murder reference to this Court under §366(1) CrPC, 1973, for its confirmation, whereas challenging the judgment of conviction and order of sentence, seeking their acquittal, the convicts Pardeep and Sagar alias Kallu had come up before this Court through separate appeals under §374(2) CrPC.
3. We have heard learned counsel for the parties and also gone through the record, the impugned judgment and its analysis would lead to the following outcome.
4. Laadli's Mama (Maternal Uncle) [PW-5] gave a written complaint (Ext P-8) to the In-charge, Police Post Urlana Kalan, Panipat, stating that Laadli, his elder sister's daughter, aged around 12, had been residing with him since childhood. He stated that on Jan 13, 2018, at around 6:00 PM, Laadli left her house to throw away garbage but went missing. Since then, they made frantic efforts to search for her on their own but could not locate her. The next morning, i.e. Jan 14, 2018, they found Laadli's de-clothed dead body behind the Chaupal of the village. He further told the police that he had no idea who had committed this act against her and had no suspicion on anyone; however, whoever committed this crime should face strict legal action. On this application, the police initiated an investigation, as mentioned in Ext P-40, and FIR [Ext P-11] was registered in the police station.
5. Surender [PW-1], who was posted as a home guard and happened to be a neighbor of the accused persons and a distant relative of Laadli, informed the police that both the accused persons came to him on Jan 14, 2018, confessed their crime by way of extra-judicial confession, and asked him to produce them to the police. The statement of PW-1 Surender mentioning the extra-judicial confessions [Ext P-1] was recorded by the police.
6. As per the prosecution's case, the accused were arrested and during interrogation they made separate but similar disclosure statements. In the disclosure statements made by accused Pardeep [Ext P-25] and accused Sagar [Ext P-26], they also stated that they could point out the place where the *tasla* was hidden and the place where the victim's slippers were thrown by them. As per the prosecution's case, based on the disclosure statements, the Investigator recovered *tasla* [MO-2], identified by PW-5, and a pair of the victim's slippers

[MO-3], which PW-5 also identified as belonging to Laadli, who was wearing them on the day she went missing.

7. On Jan 14, 2018, Dr. Neelam Arya, Senior Scientific Officer, [PW-10], Forensic Science Laboratory, Madhuban, Karnal, Haryana, reached the spot upon receipt of a telephonic message from the SHO of Police Station Matloda, Panipat. As per Crime Scene Report [Ext P-24], the team visited the spot of occurrence in Village Urlana Kalan, Panipat, inspected the scene of crime, and observed stagnant water forming a small pond located behind Balmiki Chaupal, where they noticed the victim's dead body lying in a naked condition. The dead body was lying on the *katcha*, uneven, wet edge of the pond, and some portions of her body were smudged with soil and mud. They also noticed some scratches and bruises, as well as multiple abrasion marks on the abdomen, near the neck, and on the left eye.

8. The crime scene team also noticed one shawl (stole) in a vacant plot, which was approximately 40-50 feet (20 Steps) from the dead body. They observed dragging marks on the ground from the place where the shawl was lying up to the spot where the dead body was lying. Apart from this, they did not find any other physical evidence at this crime scene.

9. As per observations in Sr. No. 7 to 11 of the Crime Scene Report [Ext P-24], the crime scene team also inspected the house of suspect Pardeep. They observed a multicolored printed mattress on a bed, which was wet and stained in the middle. They also observed one empty condom wrapper placed in a shallow pan. In the open yard, they observed some red-colored fabric in a semi-burnt condition along with *Parali* [Stubble]. The victim's family members identified those semi-burnt clothes as belonging to the victim. They also found one matchbox near the burnt parali.

10. According to the Crime Scene Report [Ext P-24], based on the observations, the scientific expert opined that the possibility of murder and sexual assault with the deceased Laadli could not be ruled out; however, this would be ascertained after receipt of the postmortem examination report.

11. After that, Laadli's dead body was sent for postmortem examination. As per the postmortem report [Ext PW11/B], the postmortem examination was conducted on Jan 14, 2018, at 1:00 PM. The Board of Doctors, including Dr Priti Bhatia [PW-11], noted that the body was soiled with mud. They also observed a reddish abrasion below the left eye, a reddish contusion over the left breast, and two oblique reddish abrasions over the left side of the neck. Another oblique reddish abrasion, 17 cm long, was noted between the breasts,

and an abrasion was present around the neck; hemorrhage was present in the neck at the level of the hyoid cartilage. According to column no. 11 of the postmortem report, the doctors noted no fresh external injury or bleeding, but healed epithelial tags were present, and the hymen tear was old.

12. The doctors took swabs from the deep vagina, post fornix, and anal regions, prepared slides, and sent them to FSL, Madhuban, for examination. According to the remarks by the Medical Officer, in their opinion, the cause of death was asphyxia due to strangulation, which was ante-mortem in nature. They also observed that any other associated cause and an opinion about sexual assault would be given after the reports of the Chemical Examiner and FSL Madhuban were received.

13. According to the report received from the Forensic Science Laboratory, Haryana, Madhuban, Karnal, [Ext P-3], human semen was found on vaginal slides, vaginal swabs, a piece of *Gadda* (Mattress) [Ext 4] and two pieces of underwear [Ext 6 & 7]. However, no semen was detected on any other items. Blood was also detected on vaginal slides (Ext 1a), vaginal swabs (Ext 1b), and one piece of underwear (Ext 6). Traces of blood were detected on nail clippings and pubic hair (Ext 3).

14. The said wing of the FSL then forwarded the samples to the DNA Division for further examination. According to the FSL report from the DNA Division, Ext P-2, no DNA could be obtained because amplification was not possible; accordingly, there is no DNA evidence in the present case.

15. To recapitulate, in the postmortem report [Ext PW11/B], the doctors had noted that the final opinion on any other associated cause of death and an opinion about sexual assault would be given after the receipt of reports from the Chemical Examiner and FSL. Since one report of the Chemical Examiner, [Ext P-3], found the presence of human semen on vaginal swabs and vaginal slides, on scrutiny of the entire record to find out whether these reports were sent to the doctors to confirm their opinions, no documents seeking any supplementary opinion from the team of doctors were found in the record.

16. Dr. Priti Bhatia [PW11], who was a member of the team that had conducted the victim's post-mortem examination, tendered in evidence her affidavit Ext PW11/A. She stated that on Jan 14, 2018, she, along with Dr. Sanjeev Gupta and Dr. Suman, had conducted the post-mortem examination of the deceased, prepared the post-mortem report [Ext PW11/B], and identified her own and the other doctors' signatures. She also tendered in evidence the vaginal swabs and vaginal slides as Ext MO/1/A and Ext MO/2, which were described in the FSL report.

17. A perusal of the affidavit reflects that it is a reproduction of the postmortem report. What is surprising is that even in the affidavit, it is explicitly again mentioned that “*in my opinion, the cause of death in this case is asphyxia due to strangulation ante mortem in nature. Any other associated cause and opinion about sexual assault will be given after the report of chemical examination and FSL Madhuban are received.*” Despite that, the trial Court did not exercise its statutory powers under §165 of the Indian Evidence Act, 1872, to call the doctors, obtain the report, and take their opinion.

18. In the post-mortem report [Ext PW11/B], the doctors had mentioned a remark that the opinion on the possibility of sexual assault would be given after the FSL report is shown to them. The doctors made it clear that they could offer a final opinion only after receiving the report, which had to be forwarded to them by the concerned police officials. Despite receiving the FSL report [Ext P-3], which detected human semen on the victim’s vaginal swabs and slides, we find no indication that the report was sent to the doctors to obtain their final opinion regarding sexual assault.

19. It was grossly negligent on the part of the Investigating Officer and the Supervisory Officers not to seek the opinion of the Doctor(s) by forwarding the FSL Report to the doctor(s). We cannot blame the doctors for this negligence; it lies squarely at the hands of the Investigator, SHO, and Supervisory Officers, including the then head of the district police, all of whom were irresponsible. This lapse has resulted in irregularity, and not any illegality, and this irregularity is curable. This negligence was exacerbated as during the trial, neither the Public Prosecutor nor the trial Judge cared to notice the omission, and they concluded the trial hurriedly.

20. This Court has ample power not to be a humble spectator in such a heinous, brutal crime, and is neither powerless by remaining silent nor can it ignore this lapse. Furthermore, this defect can be cured if the matter is sent back to the trial Court for recording additional evidence in terms of §432 BNSS, 2023 [§391 CrPC, 1973]⁹ by summoning the doctors as court witnesses and seeking their opinion on the possibility of

⁹ §432. Appellate Court may take further evidence or direct it to be taken: (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his advocate shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.

MRC-3-2022
CRA-D-173-2022 and CRA-D-469-2022

sexual assault in accordance with §348 BNSS, 2023 [§311 CrPC, 1973]¹⁰ read with §168 BSA, 2023 [§165 IEA, 1872]¹¹.

21. In Rambhau & anr. V. State of Maharashtra, CrIa no. 636-1995, Apr 26, 2001, the Hon'ble Supreme Court holds,

Incidentally, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled or affected in any way by reason of exercise of power under Section 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to sub-serve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41 Rule 27 of the C.P.Code.

22. In Zahira Habibulla H. Sheikh v. State of Gujarat, [2004] 3 SCR 1050; 2004-INSC-256, Apr 12, 2004, the Hon'ble Supreme Court holds,

[pg1080][D-F] The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such

¹⁰ §348. Power to summon material witness, or examine person present: Any Court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

¹¹ §168. Judge's power to put questions or order production: The Judge may, in order to discover or obtain proof of relevant facts, ask any question he considers necessary, in any form, at any time, of any witness, or of the parties about any fact; and may order the production of any document or thing; and neither the parties nor their representatives shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the judgment must be based upon facts declared by this Adhiniyam to be relevant, and duly proved:

Provided further that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 127 to 136, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 151 or 152; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

prosecuting agency showing indifference or adopting an attitude of total aloofness.

[pg1080-1081][G-D] The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Court to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. In *Mohan Lal v. Union of India*,¹² this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the word such as, 'any Court', 'at any stage', or 'any enquiry or trial or other proceedings' 'any person' and 'any such person' clearly spells out that the Section has expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case - 'essential', to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.

[pg1082][A-B] Ultimately, as noted above, *ad nauseam* the duty of the Court is to arrive at the truth and subserve the ends of justice. Section 311 of the Code does not confer any party any right to examine, cross-examine and re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.

[pg1082][E-G] The appellate Court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the

¹² [1991] Supp. 1 SCC 271.

Court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, specially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the prevention of guilty man's escape through some careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. Where the Court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.

The legislative intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate Court finds that certain evidence is necessary in order to enable it to give a correct and proper findings, it would be justified in taking action under Section 391.

[pg1083][A-C] There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the Section are only to be invoked when formal proof for the prosecution is necessary. If the appellate Court thinks that it is necessary in the interest of justice to take additional evidence it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of the discretion of the appellate court. As re-iterated supra the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the public prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the Court in the discharge of its judicial functions.

23. In Vijay Kumar v. State of U.P. and another, CrI A 1345-2011, August 03, 2011, the Hon'ble Supreme Court holds,

[13] This Section consists of two parts, viz., (1) giving discretion to the court to examine the witness at any stage; and (2) the mandatory portion which compels a court to examine a witness if his evidence appears to be essential to the just decision of the case. The Section enables and in certain circumstances, imposes on the Court the duty of summoning witnesses who would have been otherwise brought before the Court. This Section confers a wide discretion on the Court to act as the exigencies of justice require. The power of the Court under Section 165 of the Evidence Act is complementary to its power under this Section. These two sections between them confer jurisdiction on the Court to act in aid of justice. There is no manner of doubt that the power under Section 311 of Code of Criminal Procedure is a vast one. This power can be exercised at any stage of the trial. Such a power should be exercised provided the evidence which may be tendered by a witness is germane to the issue

involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. It hardly needs to be emphasized that power under Section 311 should be exercised for the just decision of the case. The wide discretion conferred on the court to summon a witness must be exercised judicially, as wider the power, the greater is the necessity for application of the judicial mind. Whether to exercise the power or not would largely depend upon the facts and circumstances of each case. As is provided in the Section, power to summon any person as a witness can be exercised if the court forms an opinion that the examination of such a witness is essential for just decision of the case.

[14]..... Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said Section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the Court and not arbitrarily or capriciously.

24. In Natasha Singh v. CBI, CrIa no. 709-2013, May 9, 2013, the Hon'ble Supreme Court holds,

[7]. Section 311 Cr.P.C. empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under the Cr.P.C., or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, the Cr.P.C. has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

25. In Rajaram Prasad Yadav v. State of Bihar, SLP Cr no. 2400-2011, July 4, 2013, the Hon'ble Supreme Court holds,

[23]. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?
- b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.
- d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.
- e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.
- g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.
- h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.
- i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.
- j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.
- k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.
- l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.
- m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

26. In Swapan Kumar Chatterjee v. Central Bureau of Investigation [2019] 3 SCR 713, 2019-INSC-11, Jan 04, 2019, the Hon'ble Supreme Court holds,

[11] The first part of this Section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

[12] It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

27. This omission and irregularity can only be rectified by remanding the matter to the trial Court to proceed in accordance with §165 of the Indian Evidence Act, 1872 [§168 BSA, 2023] and to consider examining the doctor(s) as the Court witnesses. In the light of the judicial precedents mentioned above, by exercising under §432 BNSS, 2023 [§391 CrPC, 1973]; §348 BNSS, 2023 [§311 CrPC, 1973]; §168 BSA, 2023 [§165 IEA, 1872], and by invoking the inherent jurisdiction under §528 of BNSS, 2023, read with the principles of natural justice and the obligation to give justice to the victim and her family, the matter has to be remitted on this ground alone. Needless to say, if any incriminating circumstances appear against the accused, they have to be put separately to both the accused under §351 BNSS, 2023 [§313 CrPC], with a proper opportunity to lead their defense evidence, if any.

28. We are not analyzing or appreciating the evidence or commenting on the judgment; however, we have noticed various flaws in the statements recorded under §313 CrPC. If we do not rectify this defect of not properly complying with the provisions of §313 CrPC, 1973

[§351 BNSS, 2023], it will again result in a delayed and faulty trial. The defect lies in failing to put the relevant incriminating circumstances to both the accused.

29. We are able to point out the following incriminating evidence, which was not put to the accused Pardeep and Sagar alias Kallu [without expressing any opinion on its proof or analysis].

30. The similar types of questions were put to both the accused, and the statement recorded under §313 of the CrPC, of the accused Pardeep, reads as follows:

“Q1. That it came into evidence on 13.01.2018 at about 6 PM in the area of village Urlana Kalan District Panipat you along-with your co-accused abducted/kidnapped the minor victim girl aged about 12 years and committed gang rape upon her and thereafter, you both committed murder of victim girl and thrown her dead body behind the Balmiki Chopal. Upon recovery of dead body of the victim, the complainant moved an application in police post Urlana and FIR Ex. P11 has been registered. What you have to say about it?

Ans. It is incorrect.

Q2. That on 14.01.2018 rough sketch of the place of occurrence Ex. P41 was prepared proceedings under section 174 CrPC Ex. P42 carried out. Statements Ex. P45 and Ex. P46 were recorded. Postmortem was got conducted vide PMR report Ex. PW11/B in G.H. Panipat and after postmortem Visra, blood sample two swabs and slides were taken into police possession in the sealed parcel vide recovery memo Ex. P6 in the presence of witnesses. On the same day, a shawl (stall) of victim was recovered nearby the place of occurrence and same was identified by complainant vide memo Ex. P7. On the same day, the photographs of the place of occurrence and recovery of dead body of victim and other recovered articles are clicked and prepared as Ex. P15 to Ex. P23. On the same day, crime scene report Ex. P24 got prepared. What you have to say about it?

Ans. It is incorrect.

Q3. That on 14.01.2018 you confessed your offence by way of extra judicial confession before the prosecution witness Suresh Kumar and the same was got written by PW Surender Kumar as Ex. P1 and during interrogation you suffered your disclosure statement Ex. P25 and in pursuance thereto you got recovered ash of clothes of victim and a match

box vide recovery memo Ex. P27. Thereafter, you got recovered a blood stained mattress/ Gadda from which some portion of blood stains were taken into possession vide memo Ex. P28 and thereafter, you got recovered the Tasla (big iron pan) vide recovery memo Ex. P29 and a empty rapper of Force condom vide memo Ex. P30 in the presence of witnesses. Rough site plan of alleged recovery Ex. P30/A was prepared in pursuance to your disclosure statement demarcated the place of occurrence where you had committed rape, vide memo Ex. P31 and also demarcated the place of occurrence where you had thrown the dead body vide memo Ex. P32. What you have to say about it?

Ans. It is incorrect.

Q4. On dated 15.01.2018, you again suffered your disclosure statement Ex. P33 about the occurrence. On the same day, your MLR Ex. P38 was got conducted vide application Ex. P36 and your blood sample was taken into police possession for sending the same to FSL. What you have to say about it?

Ans. It is incorrect.

Q5. That on 16.01.2018, you got recovered a chappal/footwear sleeper in pursuance to your disclosure statement, vide recovery memo Ex. P9. During investigation the birth certificate of victim Ex. P14 was taken into police possession vide recovery memo Ex. 44 on 14.01.2018. On 23.01.2018, scaled site plan Ex. P5 got prepared regarding the place of occurrence. What you have to say about it?

Ans. It is incorrect.

Q6. That why the report under section 173 CrPC is against you and the witnesses have deposed against you before the Court?

Ans. This is a false case. I have been falsely implicated in the present case. The witnesses have deposed falsely. However, I do not know why witnesses falsely deposed against me. The report under section 173 CrPC is based on false and concocted story and statements.

Q7. Do you want to say anything else?

Ans. I am innocent. I have nothing to do with the present occurrence. I have been falsely implicated in the present case by the police.

Q8. Do you want to lead any evidence in your defence?

Ans. Yes.”

31. Question no. 3 was wrongly put to both the accused because, as per the evidence, the Extra Judicial Confession was allegedly made before PW-1 Surender Kumar and not before Suresh Kumar.

32. The following incriminating evidence that appears against both the accused was apparently not brought to the attention of any of the accused:

- (i) The circumstance of the recovery of *Tasla* MO-2 by the Investigating Officer PW-12 SI Rakam Singh in the presence of PW-15 ESI Satish and Constable Amit Kumar, and identified by PW-5, victim’s Mama, in Court, is not put to the accused in a manner that affords both the accused an opportunity to explain. Instead, only the disclosure statement and recovery of *Tasla* were put to them. What was required to be put was that the said *Tasla* MO-2 was identified by PW5 to be the same *Tasla* in which Laadli had taken the garbage in the evening to throw outside the house, and it was the same *Tasla* which was recovered pursuant to the Disclosure statement Ext P-25 made by accused Pardeep and the disclosure statement Ext P-26 made by accused Sagar, and was recovered by the police from the house of Pardeep at the instance of accused Pardeep and Sagar, and was identified in Court by PW-5
- (ii) The slippers MO-3, which were also recovered pursuant to disclosure statement Ext P-25 made by accused Pardeep and the disclosure statement Ext P-26 made by accused Sagar before the Investigating Officer PW-12 SI Rakam Singh in the presence of PW-15 ESI Satish and Constable Amit Kumar, and was identified by PW-5, victim’s Mama, vide Ext P-9, from bushes near the pond to be of the victim, were not put in the same terms.

33. Unless both the accused are given an opportunity to explain these circumstances, the evidence brought on the record through these circumstances cannot be used against them, but since it is not an illegality but an irregularity, this irregularity has to be rectified. All these deficiencies, which amount to irregularities, are curable, and once cured, shall neither cause any prejudice to the accused nor failure of Justice to anyone because, after putting all incriminating circumstances under §351 BNSS, 2023, both the accused were given an opportunity to lead defence evidence again if they so desire. We cannot comment further on any other evidence or appreciate the same because it might prejudice or create bias.

34. Section 351 BNSS, 2023, which corresponds to §342 CrPC, 1898, and §313 CrPC, 1973, reads as follows:

§351. (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 the 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 giving 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 Prosecutor 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 this section.

35. The interpretation and the extent of §351 BNSS, 2023 which is a new avatar of §313 CrPC, 1973, which was earlier numbered as §342 CrPC, 1898, has evolved over time, and the following milestones of the judicial precedents laid down by the Supreme Court would be relevant.

36. In Tara Singh v. The State, [1951] S.C.R. 729;1952-INSC-40, June 1, 1951, a four-Judge Bench of the Hon'ble Supreme Court holds,

[pg735-736]. The next point taken regarding the committal stage of the case is that the Committing Magistrate did not examine the appellant properly under sections 209 and 342 of the Criminal Procedure Code. Section 342 (1) states that "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may etc ... " And sub-section (3) states that "the answers given by the accused may be taken into consideration in such inquiry or trial." Further, section 287 requires that "the examination of the accused duly recorded by or before the Committing Magistrate shall be tendered by the prosecutor and read as evidence." (This refers to the sessions trial). It is important therefore that an accused should be properly examined under section 342 and, as their Lordships of the Privy Council indicated in *Dwarkanath v. Emperor* [A.I.R. 1933 PC 124 at 130], if a point in the evidence is considered important against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be

questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and I cannot permit it to be slurred over. I regret to find that in many cases scant attention is paid to it, particularly in Sessions Courts. But whether the matter arises in the Sessions Court or in that of the Committing Magistrate, it is important that the provisions of section 342 should be fairly and faithfully observed.

[pg737-738]. Section 342 requires the accused to be examined for the purpose of enabling him "to explain any circumstances appearing in the evidence against him." Now it is evident that when the Sessions Court is required to make the examination under this section, the evidence referred to is the evidence in the Sessions Court and the circumstances which appear against the accused in that Court. It is not therefore enough to read over the questions and answers put in the Committing Magistrate's Court and ask the accused whether he has anything to say about them. In the present case, there was not even that. The appellant was not asked to explain the circumstances appearing in the evidence against him but was asked whether the statements made before the Committing Magistrate and his answers given there were correctly recorded. That does not comply with the requirements of the section.

37. In Hate Singh Bhagat Singh v. State of Madhya Bharat, (1951) SCC 1060, Nov 02, 1951, a three-Judge Bench of the Hon'ble Supreme Court holds,

[10]. Now the statements of an accused person recorded under sections 208, 209 and 342, Criminal Procedure Code, 1898 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 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. They have to be received in evidence and treated as evidence and be duly considered at the trial (Sections 287 and 342). This means that they must be treated like any other piece of evidence coming from the mouth of a witness and matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him. Nay more. Because of the presumption of innocence in his favour even when he is not in a position to prove the truth of his story, his version should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false. We feel that this fundamental approach has been ignored in this case.

[34]. ...We have stressed before the importance of putting to the accused each material fact which is intended to be used against him and of affording him a chance of explaining it if he can....

38. In Ajmer Singh v. The State of Punjab, [1953] 1 S.C.R 418;1952-INSC-73, pg427, Dec 10, 1952, a three-Judge Bench of the Hon'ble Supreme Court holds,

... We are of the opinion that when the Sessions Judge is required by that section to make the examination of the accused, his duty is not discharged by merely reading over the questions and answers to the accused put in the committing magistrate's court and by asking him whether he has to say anything about them. It is not sufficient compliance with the section to generally ask the accused that having heard the prosecution evidence what he has to say about it. The accused must be questioned separately about each material circumstance which is intended to be used against him.

39. In Ram Shankar Singh v. State of West Bengal, [1962] Supp (1) S.C.R. 49;1961-INSC-291, Oct 10, 1961, a three-Judge Bench of the Hon'ble Supreme Court holds,

[pg62]. In our view, the learned Sessions judge in rolling up several distinct matters of evidence in a single question acted irregularly. Section 342 of the Code of Criminal Procedure by the first sub-section provides, insofar as it is material: "For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court ... shall ... question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence". Duty is thereby imposed upon the Court to question the accused generally in a case after the witnesses for the prosecution have been examined to enable the accused to explain any circumstance appearing against him. This is a necessary corollary of the presumption of innocence on which our criminal jurisprudence is founded...

[pg64].In the present case, we are of the view, having regard to the circumstances, that the appellants have not been prejudiced, because of failure to examine them strictly in compliance of the terms of s.342 of the Code and that view is strengthened by the fact that the plea was not raised in the High Court by their counsel who had otherwise raised numerous questions in support of the case of the appellants.

40. In State of Maharashtra v. Laxman Jairam, [1962] Supp. 3 S.C.R. 230;1962-INSC-60, pg234-235, Feb 16, 1962, a three-Judge Bench of the Hon'ble Supreme Court holds,

...The object of examination under s. 342 therefore is to give the accused an opportunity to explain the case made against him and that statement can be taken into consideration in judging the innocence or guilt of the person so accused.....

41. In Jai Dev v. The State of Punjab, [1963] 3 S.C.R 489;1962-INSC-221; pg509-511, July 30, 1962, a three-Judge Bench of the Hon'ble Supreme Court holds,

In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr. Anthony has relied on a decision of this Court in *Hate Singh Bhagat Singh v. State of Madhya Bharat* [A.I.R 1953 S.C. 468]. In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the point used against

the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under s.342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under s.342, the Court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the Court should put to the accused person detailed questions which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under s. 342 would be to enquire whether, having regard to all the question put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under s. 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material.

42. In Bakhshish Singh Dhaliwal v. The State of Punjab, 1967(1) S.C.R. 211;1966-INSC-150, pg225, Aug 31, 1966, a three-Judge Bench of the Hon'ble Supreme Court holds,

[C-E]. It was also submitted that these War Diaries were not put to the accused when he was examined under s. 342 of the Code of Criminal Procedure and consequently, their use to the prejudice of the appellant to record findings against him was not justified. This submission is clearly based on a misapprehension of the scope of s. 342, Cr.P.C. Under that provisions, question are put to an accused to enable him to explain any circumstances appearing in the evidence against him, and for that purpose, the accused is also to be questioned generally on the case, after the witnesses for the prosecution have been examined and before he is called on for his defence. These War Diaries were not circumstances appearing in evidence against the appellant. They were, in fact, evidence of circumstances which were put to the accused when he was examined under s. 342, Cr.P.C. It was not at all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section; and consequently, the High Court committed no irregularity at all in treating these War Diaries as part of the evidence against the appellant.

43. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra, [1974] 1 S.C.R. 489,1973-INSC-151, pg501, Aug 27,1973, a three-Judge Bench of the Hon'ble Supreme Court holds,

[B-D]. It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this

area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not *ipso facto* vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction.

44. In Sharad Birdhi Chand Sarda v. State of Maharashtra, [1985] 1 S.C.R 88, 1984-INSC-121, *pg160*, July 17, 1984, a three-Judge Bench of the Hon'ble Supreme Court holds,

...In this view of the matter, the circumstances which were not put to the appellant in his examination under s.313 [351 BNSS, 2023] of the Criminal Procedure Code have to be completely excluded from consideration.

45. In Ajay Singh v. State of Maharashtra, [2007] 7 S.C.R. 983; 2007-INSC-690, *pg990-991*, June 06, 2007, the Hon'ble Supreme Court holds,

[11]. 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 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.

[12]. 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.

[13]. 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.

46. In Asraf Ali v. State of Assam, [2008] 10 S.C.R. 1115;2008-INSC-840, *pg1124 - 1127*; July 17, 2008, the Hon'ble Supreme Court holds,

[13]. Section 313 of the Code casts a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed similar view in S. Harnam Singh v. The State (AIR 1976 SC 2140), while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.

[16]. Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion.

[17]. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim *audi alteram partem*. The word "may" in clause (a) of sub-section(1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance for it. But if the court fails to put the needed question under clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him.

[18]. In certain cases when there is perfunctory examination under Section 313 of the Code, the matter is remanded to the trial Court, with a direction to re-try from the stage at which the prosecution was closed.

47. In State of Punjab v. Hari Singh & Ors., [2009] 2 S.C.R. 470;2009-INSC-193, *pg*484-485, Feb 16, 2009, the Hon'ble Supreme Court holds,

[31]. What is the object of examination of an accused under Section 313 of the Code? The section itself declares the object in explicit language that it is "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him".

48. In Inspector of Customs, Akhnoor J & K v. Yash Pal and Anr., [2009] 4 S.C.R. 118; 2009-INSC-327, *pg*130-131, March 06, 2009, a three-Judge Bench of the Hon'ble Supreme Court holds,

[22]. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim *audi alteram partem*. The word "may" in clause (a) of sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance for it. But if the court fails to put the needed question under clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him.

49. In Sanatan Naskar & Anr. v. State of West Bengal, [2010] 7 S.C.R.1023;2010-INSC-376; *pg*.1040, July 08, 2010, the Hon'ble Supreme Court holds,

[10]. The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the Cr.PC is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances 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 the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a

statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313 (4) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Cr.PC as it cannot be regarded as a substantive piece of evidence.

50. In Dharampal Singh v. State of Punjab, [2010] 10 S.C.R. 1160; 2010-INSC-593; *pg* 1174-1175; Sep 09, 2010, the Hon'ble Supreme Court holds,

[12] [G-H]. As part of fair trial, Section 313 of the Code of Criminal Procedure requires giving opportunity to the accused to give his explanation regarding the circumstance appearing against him in the evidence adduced by the prosecution. The purpose behind it is to enable the accused to explain those circumstances. It is not necessary to put entire prosecution evidence and elicit answer but only those circumstances which are adverse to the accused and his explanation would help the court in evaluating the evidence properly. The circumstances are to be put and not the conclusion. It is not an idle formality and questioning must be fair and couched in a form intelligible to the accused. But it does not follow that omission will necessarily vitiate the trial. The trial would be vitiated on this score only when on fact it is found that it had occasioned a failure of justice.

51. In Paramjeet Singh @ Pamma v. State of Uttarakhand, [2010] 11 S.C.R. 1064; 2010-INSC-647, Sep 27, 2010, the Hon'ble Supreme Court holds,

[Pg1083-1084] [25]. If any appellate Court or revisional court comes across the fact that the trial Court had not put any question to an accused, even if it is of a vital nature, such an omission alone should not result in the setting aside of the conviction and sentence as an inevitable consequence. An inadequate examination cannot be presumed to have caused prejudice. Every error or omission in compliance of the provisions of Section 313 Cr.P.C., does not necessarily vitiate trial. Such errors fall within category of curable irregularities and the question as to whether the trial is vitiated, in each case depends upon the degree of error and upon whether prejudice has been or is likely to have been caused to accused. Efforts should be made to undo or correct the lapse. (Vide: *Wasim Khan v. State of Uttar Pradesh*, AIR 1956 SC 400; *Bhoor Singh*

& Anr. v. *State of Punjab*, AIR 1974 SC 1256; *Labhchand Dhanpat Singh Jain v. State of Maharashtra*, AIR 1975 SC 182; *State of Punjab v. Naib Din*, AIR 2001 SC 3955; and *Parsuram Pandey & Ors. v. State of Bihar*, (2004) 13 SCC 189).

[pg1086] [31]. Thus, it is evident from the above that the provisions of Section 313 Cr.P.C make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the court to question the accused on any incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court.

52. In Sujit Biswas v. State of Assam, [2013] 3 S.C.R. 830; 2013-INSC-359, May 28, 2013, the Hon'ble Supreme Court holds,

[pg844-845] [12]. It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice, i.e. *audi alterum partem*. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and must be excluded from consideration. The said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, as the accused cannot be cross-examined with reference to such statement.

[pg847-848] [17]. An adverse inference can be drawn against the accused only and only if the incriminating material stands fully established, and the accused is not able to furnish any explanation for the same. However, the accused has the right to remain silent, as he cannot be forced to become a witness against himself.

53. In Nar Singh v. State of Haryana, [2014] 12 S.C.R. 218; 2014-INSC-770; Nov 11, 2014, the Hon'ble Supreme Court holds,

[pg236] [27]. The point then arising for our consideration is, if all relevant questions were not put to accused by the trial court as mandated under Section 313 Cr.P.C. and where the accused has also shown that prejudice has been caused to him or where prejudice is implicit, whether the appellate court is having the power to remand the case for re-decision from the stage of recording of statement under Section 313 Cr.P.C. Section 386 Cr.P.C. deals with power of the appellate court. As per sub clause (b) (i) of Section 386 Cr.P.C., the appellate court is having power

to order retrial of the case by a court of competent jurisdiction subordinate to such appellate court. Hence, if all the relevant questions were not put to accused by the trial court and when the accused has shown that prejudice was caused to him, the appellate court is having power to remand the case to examine the accused again under Section 313 Cr.P.C. and may direct remanding the case again for retrial of the case from that stage of recording of statement under Section 313 Cr.P.C. and the same cannot be said to be amounting to filling up lacuna in the prosecution case.

[pg237-238] [30]. Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under:-

(i) Whenever a plea of non-compliance of Section 313 Cr.P.C. is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer;

(ii) In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

(iii) If the appellate court is of the opinion that noncompliance with the provisions of Section 313 Cr.P.C. has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 Cr.P.C. and the trial Judge may be directed to examine the accused afresh and defence witness if any and dispose of the matter afresh;

(iv) The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.

[pg239-240] [32]. While we are of the view that the matter has to be remitted to the trial court for proceeding afresh from the stage of Section 313 Cr.P.C. questioning, we are not oblivious of the right of the accused to speedy trial and that the courts are to ensure speedy justice to the accused. While it is incumbent upon the Court to see that persons accused of crime must be given a fair trial and get speedy justice, in our view, every reasonable latitude must be given to those who are entrusted with administration of justice. In the facts and circumstances of each case, court should examine whether remand of the matter to the trial court would amount to indefinite harassment of the accused. When there is omission to put material evidence to the accused in the course of examination under Section 313 Cr.P.C., prosecution is not guilty of not adducing or suppressing such evidence; it is only the failure on the part of the learned trial court. The victim of the offence or the accused should

not suffer for laches or omission of the court. Criminal justice is not one-sided. It has many facets and we have to draw a balance between conflicting rights and duties.

54. In Ajay Kumar Ghoshal Etc. v. State of Bihar & Anr, [2017] 1 S.C.R.469;2017-INSC-90, pg 474-475, Jan 31, 2017, the Hon'ble Supreme Court holds,

[9]. The High Court copiously extracted the judgment in case of *Nar Singh vs. State of Haryana* (2015) 1 SCC 496 to remit the matter to the trial court for proceeding afresh. In *Nar Singh's case*, some of the important questions like Ballistic Report and certain other incriminating evidence were not put to the accused and the same was not raised in the trial court or in the High Court. It was felt that the accused should have been questioned on those incriminating evidence and circumstances; or otherwise prejudice would be caused to the accused. In such peculiar facts and circumstances, *Nar Singh's case* was remitted to the trial court for proceeding afresh from the stage of Section 313 Cr.P.C. Be it noted that in *Nar Singh's case*, this Court has referred to a catena of other judgments holding that omission to put certain questions to the accused under Section 313 Cr.P.C. would not cause prejudice to the accused. It depends upon facts and circumstances of each case and the nature of prejudice caused to the accused. In our view, the High Court has not properly appreciated *Nar Singh's case* where this Court laid down that the appellate court can order for fresh trial from the stage of examination under Section 313 Cr.P.C., only in cases where failure to question the accused on certain incriminating evidence has resulted in serious prejudice to the accused. The High Court, in our view, has not properly appreciated the ratio laid down in *Nar Singh's case* and erred in applying the same to the present case.

[10]. Section 386 Cr.P.C. deals with the powers of the appellate court. As per Section 386 (b) Cr.P.C, in an appeal from a conviction, the appellate court may:- (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (ii) alter the finding, maintaining the sentence, or (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same.

[11]. Though the word "retrial" is used under Section 386(b)(i) Cr.P.C., the powers conferred by this clause is to be exercised only in exceptional cases, where the appellate court is satisfied that the omission or irregularity has occasioned in failure of justice. The circumstances that should exist for warranting a retrial must be such that where the trial was undertaken by the Court having no jurisdiction, or trial was vitiated by serious illegality or irregularity on account of the misconception of nature of proceedings. An order for retrial may be passed in cases where the original trial has not been satisfactory for some particular reasons such as wrong admission or wrong rejection of evidences or the Court refused to hear certain witnesses who were supposed to be heard.

55. In Samsul Haque v. The State of Assam, [2019] 11 S.C.R. 229; 2019-INSC-953, pg239, Aug 26, 2019, the Hon'ble Supreme Court holds,

[22]. It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put

to the accused so that the accused gets a fair chance to defend himself.
This is in recognition of the principles of *audi alteram partem*...

56. In Raj Kumar @ Suman v. State (NCT of Delhi), [2023] 5 S.C.R. 754; pg 767-768, May 11, 2023, the Hon'ble Supreme Court holds,

[16]. The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.

57. In Indrakunwar v. The State of Chhattisgarh [2023] 14 S.C.R. 959; 2023-INSC-934, pg 972-973, Oct 19, 2023, the Hon'ble Supreme Court holds,

[34]. A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements.

[34.1]. The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

[34.2]. The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

[34.3]. The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., *audi alterum partem*.

[34.4]. The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

[34.5]. In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

[34.6]. The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

[34.7]. This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

[34.8]. This statement is to be read as a whole. One part cannot be read in isolation.

[34.9]. Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

[34.10]. The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

[34.11]. The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

[34.12]. Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.

58. In Nababuddin @ Mallu @ Abhimanyu v. State of Haryana, CrI.A. No.2333 of 2010; 2023-INSC-1020, pg9, Nov 24, 2023, the Hon'ble Supreme Court holds,

[13]. The appellant has undergone incarceration of five and a half years. If, after the lapse of more than twenty-two years, he is again subjected to examination under Section 313 of CrPC, it will cause prejudice to him. Therefore, the failure to put two relevant circumstances to the appellant in his examination under Section 313 CrPC will be fatal to the prosecution case. Hence, on this ground, we hold that the appellant's conviction cannot be sustained.

59. In Naresh Kumar v. State of Delhi, [2024] 7 S.C.R. 178; 2024-INSC-464, pg193, July 08, 2024, the Hon'ble Supreme Court holds,

[21]. We have already held that whether non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial *qua* the accused concerned and to hold the trial *qua* him is vitiated it is to be established further that it resulted in material prejudice to the accused. True that the onus to establish the prejudice or miscarriage on account of non-questioning or inadequate questioning on any incriminating circumstance(s), during the examination under Section 313, Cr.PC, is on the convict concerned. We say so, because if an accused is ultimately acquitted, he could not have a case that he was prejudiced or miscarriage of justice had occurred owing to such non-questioning or inadequate questioning.

60. In Ashok v. State of Uttar Pradesh, [2024] 12 S.C.R. 335; 2024-INSC-919, *pg344*, Dec. 02, 2024, a three-Judge Bench of the Hon'ble Supreme Court holds,

[14]. Now, we come to the appellant's statement, recorded per Section 313 of the CrPC. Only three questions were put to the appellant. In the first question, the names of ten prosecution witnesses were incorporated, and the only question asked to the appellant was what he had to say about the testimony of ten prosecution witnesses. In the second question, all the documents produced by the prosecution were referred, and a question was asked, what the appellant has to say about the documents. In the third question, it was put to the appellant that knowing the fact that the victim belongs to a scheduled caste, he caused her death after raping her and concealed her dead body, and he was asked for his reaction to the same. What PW-1 and PW-2 deposed against the appellant was not put to the appellant. The contents of the incriminating documents were not put to the appellant.

61. In Aejaz Ahmad Sheikh v. State of Uttar Pradesh & Anr., [2025] 4 S.C.R. 1507; 2025-INSC-529, *pg1520*, Apr 22, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

[28]. Before we part with this judgment, we have a suggestion to make. There are several criminal appeals which come to this Court where we find that vital prosecution evidence is not put to the accused in statement under Section 313 of the CrPC. The Court becomes helpless, as due to the long lapse of time, the defect cannot be cured by passing an order of remand....

62. In Ramji Prasad Jaiswal @ Ramjee Prasad Jaiswal and Ors. v. State of Bihar, [2025] 6 S.C.R. 582, 2025-INSC-738, *pg599*, May 20, 2025, the Hon'ble Supreme Court holds,

[36]. Four questions generally were put to the appellants, that too, in a most mechanical manner. These questions did not reflect the specific prosecution evidence which came on record *qua* the appellants. As all the incriminating evidence were not put to the notice of the appellants, therefore, there was a clear breach of Section 313 CrPC as well as the principle of *audi alteram partem*. Certainly, this caused serious prejudice to the appellants to put forth their case. Ultimately, such evidence were relied upon by the court to convict the appellants.

[37]. Therefore, there is no doubt that such omission, which is a serious irregularity, has completely vitiated the trial. Even if we take a more

sanguine approach by taking the view that such omission did not result in the failure of justice, it is still a material defect *albeit* curable...

63. In Suresh Sahu & Anr. v. The State of Bihar (now Jharkhand), CrA-305-2024; 2025-INSC-1382, Nov 27, 2025, the Hon'ble Supreme Court holds,

[pg19] [18]. It is evident from the record that only three questions were put to each of the accused in their examination under Section 313 CrPC (Section 351 BNSS). These questions were framed in an extremely generic and mechanical manner, without articulating any of the specific incriminating circumstances appearing in the prosecution evidence.

[pg19-20] [19]. The purpose of recording the statement of an accused under Section 313 CrPC (Section 351 BNSS) is to make the accused aware of the circumstances as appearing against him in the prosecution case and to seek his explanation for the same. For this purpose, the accused must be informed of each and every incriminating circumstance which the prosecution intends to rely upon for bringing home the guilt of the accused. Omission to put material circumstances to the accused in the statement under Section 313 CrPC (Section 351 BNSS) would cause grave prejudice and may, in a given case, even prove fatal to the case of the prosecution. Of course, the appellate Court can rectify this error by requiring that a fresh statement under Section 313 CrPC (Section 351 BNSS) be recorded for removing the lacunae, if any, in this procedure. In the present case, on going through the statements of both the accused persons recorded by the trial Court under Section 313 CrPC (Section 351 BNSS) (*supra*), we find that these statements are almost a reproduction of the language of the charge and, in no manner, convey to the accused persons the incriminating circumstances/evidence produced by the prosecution so as to indict them for the crime. This defect goes to the root of the matter.

[pg26-27] [23]. Looking to the highly laconic and defective manner in which the statements of the accused-appellants were recorded under Section 313 CrPC (Section 351 BNSS) (*supra*), we could have remanded the matter to the trial Court for re-recording the said statements and for delivering a fresh judgment. However, considering the fact that more than 35 years have passed since the incident took place, we feel that it would be nothing short of an exercise in futility to direct such remand. We have, therefore, minutely sifted through the evidence on record and shall analyze the same to adjudicate as to whether the conviction of the accused-appellants is justified in the facts, circumstances and evidence as available on record.

64. In Chandan Pasi & Ors. v. The State of The Bihar, CrA-5137-5138 of 2025; 2025-INSC-1371, pg3, Dec 01, 2025, the Hon'ble Supreme Court holds,

[6]. One of the non-negotiable requirements of a fair trial is that the accused persons should have ample opportunity to dispel the case and claims of the prosecution against them. This ample opportunity can take many forms, whether it is adequate representation through counsel or the opportunity to call witnesses to present their side of the case or to have the occasion to answer each and every allegation against them, on their own, in their own words. The last one happens under Section 313 CrPC.

[7]. This Court, in many judgments, delineated the scope and object of Section 313 CrPC. The position is no longer up for debate. Even so, we may refer to certain pronouncements for the sake of completeness.

65. It took four years for the trial to conclude. The Murder Reference has been pending before this Court since the year 2022, and this defect went unnoticed at the initial stage. Despite this, considering the average time that takes for a criminal trial involving rape and murder, a Murder Reference is still faster than most other matters. Further, we need extensive data and studies to demarcate the boundary of time beyond which the delay can be considered to have prejudiced an accused, and, in the process, we cannot forget the Justice to the victim of the crime. It is not a case where the Trial Court had put all the incriminating circumstances to the accused. On an overall analysis of the facts and circumstances of this case, no prejudice shall be caused to the accused if these questions are put to them after a lapse of 4/5 years.

66. A plain and simple reading of the statute refers to “circumstances appearing in evidence” and not the entire statement. Thus, the questions containing the most material facts could not have been read against them. However, if we give benefit of a curable irregularity to the accused by acquitting them, then it would cause more serious prejudice to the victim, without her being at any fault at all. Although it is legally permissible for any Appellate Court to put the remaining incriminating evidence to the accused, or to direct the trial Court to do so, that decision must not be taken in a mechanical manner but after analyzing the remaining incriminating evidence put to the accused and the likely prejudice which might be caused to the accused. Since the accused has a right to examine defence witnesses, and the evidence that comes in defence, if any, would also need to be analyzed and appreciated on appeal, the only option available to this Court to do justice to the accused and the victim and her family is to remit the case back to the trial Court to rectify the procedural mistakes for which neither the accused nor the victim were responsible.

67. By following the law laid down by the legislature and interpreted by the Supreme Court, this Court is left with no other option but to set aside the judgment of conviction and the order of sentence and remand the matter back to the trial Court to resume the trial from the stage of summoning the concerned Doctor(s) and after that recording the statements of both the accused under §351 BNSS, 2023 [§313 CrPC], and affording both the accused opportunity to lead defence evidence and also mitigating factors if its stage comes.

68. Given the above, the criminal appeals, i.e., CRA-D No. 173 of 2022 filed by Pardeep and CRA-D No. 469 of 2022 filed by Sagar alias Kallu are disposed of to the extent mentioned above.

MRC-3-2022
CRA-D-173-2022 and CRA-D-469-2022

69. The trial Court shall separately put all the incriminating evidence to both the accused by making small questions as per the facts and evidence under §351 BNSS [§313 CrPC, 1973], and after that, afford them an opportunity to lead defence evidence, if they want to do so, provided the same is done within a reasonable time. Thereafter, on hearing the parties, pass a judgment in accordance with the law without being influenced by the previous judgment as well as this one.

70. Murder Reference No. 3 of 2022 is disposed of because, given the above and as of date, it has rendered infructuous. All the matters stand closed on the terms set out in this verdict. All pending miscellaneous applications, if any, stand disposed of.

71. To comply with §412 BNSS, 2023 [§371 CrPC, 1973], the proper officer of the High Court shall, without delay, send either physically or through electronic means, a copy of the order, under the seal of the High Court and attested with their official signature, to the Court of Session.

72. Registry is directed to send back the entire record of the Trial Court, along with a certified copy of this Judgment, to the concerned Sessions Judge.

73. Considering the time for which the matters were pending before this Court since the year 2022, and the FIR to be of the year 2018, we request the trial Court to conclude the trial expeditiously.

Murder Reference No. 3 of 2022, CRA-D-173 of 2022, and CRA-D-469 of 2022 stand closed, and the trial is to commence from the stage and in the terms mentioned above.

(ANOOP CHITKARA)
JUDGE

(RAMESH CHANDER DIMRI)
JUDGE

Aug 04, 2026
Jyoti Sharma

Whether speaking/reasoned	YES
Whether reportable	YES