



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2154 OF 2025
(Arising out of S.L.P.(Criminal) No.8688 of 2023)

SHAMBHU CHOUDHARY

... APPELLANT(S)

VS.

THE STATE OF BIHAR

... RESPONDENT(S)

O R D E R

Leave granted.

2. Heard the learned counsel appearing for the parties.

3. The appellant is the original accused No.3. The appellant was tried with other seven accused for the charges under Section 302 read with Section 149 and Section 120-B of the Indian Penal Code, 1860 (for short, "the IPC"). They were also charged with Section 27 of the Arms Act, 1959.

4. The case of the prosecution, in short, was that on 8th May, 2011 at about 7.15 p.m. the accused formed an unlawful assembly and murdered the deceased Ramashrey Choudhary by firing gun shots. The Trial Court convicted the accused for the offences punishable under Sections 302 read with 149 of the IPC and Section 120-B thereof.

The conviction was also under Section 27 of the Arms Act, 1959. The appeals were preferred by the accused before the High Court. The appeals by all co-accused were allowed. However, while deciding the appeal preferred by the present appellant, his conviction for the offences punishable under section 302 read with 149 and Section 120-B of the IPC was set aside and was substituted by the conviction for the offence punishable simplicitor under Section 302 of the IPC. Being aggrieved by the impugned judgment of the High Court, the present appeal has been preferred.

5. It is contended by the learned counsel appearing for the appellant that there was an unexplained delay in forwarding a copy of the First Information Report to the Court of the learned Magistrate and there was no explanation for the delay of 8 days. The second submission was that PW1 to PW4 who were allegedly the eye witnesses were all interested witnesses. The third submission was based on depositions of the Investigating Officer. Fourthly, it was submitted that the evidence of the eye witnesses cannot be believed. Lastly, it was submitted that material appearing in evidence against the appellant was not put to the appellant in his examination under Section 313(1) of the Code of Criminal Procedure,

1973 (for short, "the CrPC") and therefore there is inherent prejudice to the appellant.

6. The submission of the learned counsel appearing for the respondent-State is that the High Court has dealt with the issue of examination of the appellant under Section 313(1) of the CrPC and has held that the appellant has not shown the prejudice. Her submission is that the evidence of PW1 to PW4 is consistent and reliable and therefore, the same cannot be discarded only on the ground that they are interested witnesses. Her submission is that the alleged delay of 8 days in sending a copy of the First Information Report to the Court of the Judicial Magistrate has been explained and, in any case, after trial, it ceases to be of any significance

7. Firstly, we deal with the submission regarding the manner in which statement of the appellant under Section 313 (1) of the CrPC has been recorded.

8. The relevant part of the statement of the appellant reads thus"

"Question : Have you heard the statement of witness?

Answer : Yes Sir

Question : It is stated by the

witnessed that on 8.5.11 at about 7.15 O'Clock at Vill.Akbarpur Nayatola, PS Shamho, Distt. Begusarai along with other accused, in the courtyard, by forming an unlawful assembly by taking rifle and billed, by hiding, murdered Ramashray Choudhary by firing in the right waist?

Answer : No Sir.

Question : It is stated by the witnesses that you along with other co-accused ran away by making indiscriminate firing?

Answer : No Sir.

Question : What do you have to say in defence?

Answer : I am innocent."

9. The High Court has held that the appellant has not shown prejudice. This Court in the case of *Raj Kumar alias Suman v. State (NCT of Delhi)*¹ in paragraph 22 has summarised the legal position as regards the statement under Section 313(1) of the CrPC. Paragraph 22 reads thus:

"22. The law consistently laid down by this Court can be summarised as under:

1. (2023) 17 SCC 95

22.1. 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.

22.2. 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.

22.3 The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. 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.

22.5. 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.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313 CrPC.

22.8. 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."

10. We have perused the finding recorded by the High Court on this aspect. We are not in a position to accept the finding which holds that the learned counsel for the appellant has not shown the prejudice. In fact, the prejudice in this case is such that no argument is required to come to a conclusion that there is a prejudice. Under Section 313 of the CrPC, it is a duty of the Court to explain to the accused the circumstances appearing against him in the evidence. There is a difference between "circumstances appearing in the evidence against the accused" and "case of the prosecution in brief". In this case, what is put to the appellant-accused is the case of the prosecution in brief. It was a duty of the Court to point out to the accused what each prosecution witness and especially, eye witness has deposed against him. Instead of doing that

what is put to the accused is only the case of the prosecution.

11. Under sub-Section (4) of Section 313 of the CrPC, the answers given by the accused can be taken into consideration in the trial. The object of examination under Section 313 of the CrPC is that the accused must get full notice of each and every incriminating circumstance brought on record in the trial so that he can effectively explain the same, if he so desires.

12. There are many cases where the trial is conducted in the language which may not be known to the accused. Even otherwise, the accused while sitting in the dock, may not be in a position to understand exactly what material is brought on record against him during the prosecution evidence. Therefore, the accused must be specifically put all the material brought on record in the prosecution evidence on the basis of which the prosecution is seeking his conviction. Apart from the fact that the accused will be in a position to explain, based on the material brought on record, he can also consider of adducing defence evidence.

13. Therefore, we are of the view that the purported examination of the appellant under Section 313 (1) of the CrPC is no examination as required under Section 313(1)

of the CrPC and therefore, there is no hesitation in holding that prejudice has been caused to the appellant.

14. It is true that this defect is curable. However, after a gap of 14 years from the incident, now we cannot pass an order of remand and expect the accused to answer the questions posed to him about what happened in the year 2011. Moreover, the appellant has undergone sentence for more than 14 years.

15. Hence, the appeal must succeed. We set aside the impugned judgment dated 23rd December, 2022 of the High Court of Judicature at Patna in Criminal Appeal (DB)No.494 of 2014 and acquit the appellant of the charge against him.

16. The appeal is accordingly allowed.

17. The appellant shall be forthwith set at liberty unless he is required in connection with any other offence.

.....J.
(ABHAY S.OKA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
April 23, 2025

ITEM NO.3

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 8688/2023

[Arising out of impugned final judgment and order dated 23-12-2022 in CRADB No. 494/2014 passed by the High Court of Judicature at Patna]

SHAMBHU CHOUDHARY

Petitioner(s)

VERSUS

THE STATE OF BIHAR

Respondent(s)

([TOP OF THE CAUSE LIST]

IA No. 122156/2023 - EXEMPTION FROM FILING O.T.)

Date : 23-04-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) :

Mr. Abhay Kumar, AOR

Mr. Shagun Ruhil, Adv.

Mr. Karan Chopra, Adv.

For Respondent(s) :

Ms. Rebecca Mishra, Adv.

Mr. Azmat Hayat Amanullah, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

The appellant shall be forthwith set at liberty unless he is required in connection with any other offence.

Pending application also stands disposed of.

(ANITA MALHOTRA)

AR-CUM-PS

(AVGV RAMU)

COURT MASTER

(Signed order is placed on the file.)