



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 5162 of 2007

A.F.R.

Judgment Reserved on 02.12.2025

Judgment Delivered on 19.12.2025

Azad Khan

.....Appellant

Versus

State of U.P.

.....Respondent

Counsel for Appellant(s)	: Meraj Ahmad Khan, Yanendra Pandey
Counsel for Respondent(s)	: Govt. Advocate

Court No. - 44

**HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.**

(Delivered by Hon'ble Sanjiv Kumar, J.)

1. This criminal appeal has been preferred by appellant, Azad Khan, son of Turab Khan, resident of Vyoti Katra, Police Station Allau, District Mainpuri, against the judgment and order dated 05.02.2002 passed by Special Judge (D.A.A.)/Additional Sessions Judge, Mainpuri, in Special Trial No. 11-A of 2001, under Sections 395 and 397 of the Indian Penal Code (in short, 'I.P.C.'), Police Station Allau, District Mainpuri.

2. By the impugned judgment and order, the appellant, Azad Khan has been convicted and sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 395 I.P.C., alongwith a fine

of Rs.10,000/-. He has further been sentenced to undergo seven years' rigorous imprisonment for the offence punishable under Section 397 I.P.C., alongwith a fine of Rs.10,000/-. In default of payment of fine, he has been ordered to suffer further rigorous imprisonment for a period of two years. Both the sentences have been directed to run concurrently.

3. The brief facts of the case are that informant, Om Prakash, son of Sri Ram Pandey, resident of village Katra, Police Station Allau District Mainpuri lodged a written information (*tehrir*) dated 29.10.2000 with the In-charge, Police Station Allau, alleging therein that on the said day he was sleeping inside a room in his house whereas his wife, Kamla Devi and children were sleeping in the *verandah*. His brother, Ram Murti and his wife, Chandra Kanti were sleeping in another *verandah*. His nephew and his wife, Anju, were asleep in another room. At about 12:20 a.m., 10-15 miscreants entered his house after climbing down the roof and battered beating his children. A lantern was lit in the *verandah*. Some miscreants kicked at the door to his room, asking him to open it saying they were policemen. When he opened the door, the miscreants caught hold of him and assaulted him with a *lathi*, *danda*, a country-made pistol, and a gun. He somehow managed to escape from their clutches and ran towards the house. The miscreants assaulted his wife, children, and his brother's wife. Hearing the hue and cry, Ramesh Prajapati, Rajendra and other villagers arrived at the spot and identified the miscreants by torch light. They identified Baksa son of Manphool, resident of Jatpura; another unknown person from Jatpura; Lalman, Mahesh, and Surendra, sons of Nathu Ram, residents of village Panchampur, Police Station Kishni; Vinod son of Ram Charan, resident of Hadua, Police Station Bewar; Azad son of Turab Khan, resident of village Katra and Raj Kumar, son of Sri Pal, resident of Niharpur. The miscreants looted cash, jewellery, besides bank and insurance papers. Parshuram, son of Sita Ram, resident of the same village, was involved in the said dacoity. During the incident, the miscreants opened fire, injuring injured Ramesh, Umesh, and Rajendra, all residents of the same village, who were taken to the Police Station.

4. Upon this information, an FIR, bearing Case Crime No. 170 of 2000, under Sections 395 and 397 IPC, was lodged at Police Station Allau, District Mainpuri, on 29.10.2000 at about 2:25 a.m. against nominated accused. Thereafter, the investigation commenced. The Investigating Officer recorded statements of the informant and other witnesses, inspected the place of occurrence and prepared a site-plan. He also inspected the torch and lantern and prepared their recovery memos.

5. After investigation, the Investigating Officer filed charge-sheet under Sections 395 and 397 I.P.C. against the seven accused. The concerned Magistrate took cognizance of the offence and summoned the accused. They appeared before the Court, whereupon the learned Magistrate furnished them copies of the relevant prosecution papers under Section 207 Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial.

6. The appellant, being under trial, appeared before the Court of Sessions alongwith the other co-accused. He moved a confession application before the Trial Court, in consequence his case was separated from the Special Sessions Trial No. 11 of 2001 and renumbered as Special Sessions Trial No. 11-A of 2001.

7. The Trial Court framed charges under Sections 395 and 397 IPC against the appellant, wherein he admitted his guilt. The Trial Court observed that the confession was conditional and, therefore, directed the trial to proceed.

8. The prosecution examined P.W.1, Constable, Iqbal Singh, who proved the copy of FIR (Ext. Ka-1) and the charge-sheet (Ext. K-2) as secondary witness.

9. The statement of appellant, Azad Khan, under Section 313 Cr.P.C. was recorded. In his statement, under Section 313 Cr.P.C., the appellant said that he had voluntarily submitted the confession application and admitted his involvement in the said offence.

10. The learned Trial Court, after hearing, observed that the accused, Azad Khan, was one of the members of the gang of *dacoits* who committed *dacoity* in the night of 29.10.2000 at about 12:20 a.m., at the house of the informant. He was identified by the informant and other witnesses by the light of a torch and a lantern. The Court further observed that the accused has admitted his guilt and acknowledged that he was one of the members of the gang who committed the *dacoity*. Upon this admission, the Court found him guilty of offence punishable under Sections 395 and 397 I.P.C. and convicted and sentenced him to the term as indicated above.

11. We have heard Mr. Yanendra Pandey, learned Panel Advocate of the High Court Legal Services Committee for the appellant and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate for the State and perused the record.

12. It is submitted on behalf of the appellant that he has been wrongly convicted and sentenced by the learned Trial Court. There was no evidence adduced by the prosecution in support of its case. The only witness examined by the prosecution was a formal witness, who is not witness of the occurrence. He has proved the FIR and the charge-sheet. No witness of fact was examined by the prosecution in support of the case. The Trial Court convicted the appellant solely on the basis of his admission in his statement recorded under Section 313 of the Cr.P.C.

13. It is further submitted on behalf of the appellant that statement of the appellant under Section 313 Cr.P.C. does not fall within the purview of evidence under Section 3 Indian Evidence Act. In absence of any corroborative/incriminating evidence produced by the prosecution, the appellant could not have been convicted solely on the basis of his admission in his statement under Section 313 Cr.P.C. Therefore, the impugned judgment and order is illegal, and the conviction and sentence awarded to the appellant is liable to be set aside.

14. In this regard, learned counsel for the appellant has produced before the Court the following case laws in support of his contention: (i) *Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan, 2013 (4) SCC (Cri) 812*; (ii) *Pramod @ Bhoko vs. State of Chhattisgarh, 2024 (1) C.G.L.J. 233*; (iii) *Premchand vs. The State of Maharashtra, AIR 2023 SC 1487*; and (iv) *Ashok Kumar vs. State of Haryana, AIR 2010 SC 2839*, which will be discussed in later part of this judgment.

15. Per contra, the learned A.G.A. has submitted that the appellant had voluntarily confessed the crime in his statement under Section 313 Cr.P.C., and, thus the learned Trial Court has rightly convicted the appellant based on admission in his statement under Section 313 Cr.P.C. Therefore, there is no illegality or irregularity vitiating the impugned judgment and order, and this appeal has no merit. It is liable to be dismissed.

16. It is settled law that the burden of proof lies upon the prosecution to prove their case beyond reasonable doubt. In the instant case, the prosecution has examined P.W.1 alone, Constable Iqbal Singh in evidence, who is a formal witness. He has proved the copy of the FIR and the charge-sheet as secondary evidence. The prosecution has not produced the informant or any other witness to prove the facts of the case, in support of the charge. Thus, technically there is no evidence produced by the prosecution to prove their case. The appellant, in his statement recorded under Section 313 Cr.P.C., has admitted his guilt and in view of the above, the learned Trial Court, convicted him for the offences punishable under Sections 395 and 397 I.P.C.

17. Now the question is whether the appellant could have been convicted solely on the basis of his admission in the statement recorded under Section 313 Cr.P.C. Further, whether such admission would fall within the category of evidence. In this regard, learned Counsel for the appellant has called attention to certain authorities.

18. In **Raj Kumar Singh @ Raju @ Batya** (*supra*), the Supreme Court, after discussing various authorities in point, has held that the law on the issue can be summarized to the effect that a statement under Section 313 Cr.P.C. is recorded to meet the requirements of natural justice as it requires that an accused may be given an opportunity to furnish an explanation about the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction.

19. In **Premchand** (*supra*), the Supreme Court has held that the explanation furnished by the accused cannot be considered in isolation but in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s) and statements of the accused in the course of examination under Section 313, do not constitute evidence under Section 3 of the Evidence Act. The Supreme Court observed in paragraph Nos.14 and 15 as under:

“ 14. A bench of three Hon’ble Judges of this Court in **State of U.P. vs. Lakhmi**; (1998) 4 SCC 336 has extensively dealt with the aspect of value or utility of a statement under Section 313, Cr. P.C. The object of Section 313, Cr. P.C. was explained by this Court in **Sanatan Naskar vs. State of West Bengal**; (2010)8 SCC 249. The rationale behind the requirement to comply with Section 313, Cr.P.C. was adverted to by this Court in **Reena Hazarika vs. State of Assam**; (2019) 13 SCC 289. Close on the heels thereof, in **Parminder Kaur vs. State of Punjab**; (2020) 8 SCC 811, this Court restated the importance of Section 313, Cr.P.C. upon noticing the view taken in **Reena Hazarika** (*supra*) and **M. Abbas vs. State of Kerala**; (2001) 10 SCC 103.

15. What follows from these authorities may briefly be summarized thus:

a. section 313, Cr. P.C. [clause (b) of sub-section 1] is a valuable safeguard in the trial process for the accused to establish his innocence;

b. section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him;

c. when questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court;

d. the accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences;

e. an accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him;

f. the explanations that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s);

g. statements of the accused in course of examination under section 313, since not on oath, do not constitute evidence under section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case;

h. statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission; and

i. if the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements;

j. any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction. ”

20. In **Ashok Kumar** (*supra*), the Supreme Court, after examining the essential features of Section 313 Cr.P.C. and the principles of law enunciated, held that the object of recording the accused's statement under Section 313 Cr.P.C. is to put all incriminating evidence, appearing against him, so as to provide him an opportunity to explain him. Section 313(4) of the Criminal Procedure Code 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 or trial for any other offence, in cases where such answers may tend to show that he has committed the offence. In other words, the use of a statement under Section 313 Cr.P.C. as evidence is permissible according to the provisions of the Code of Criminal Procedure, but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty upon a consideration of the other evidence against him led by the prosecution. However, 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 laid down is that conviction of the accused cannot be based merely on a statement made under Section 313 of the Cr.P.C. as it cannot be regarded as a substantive piece of evidence.

21. Lastly, in **Pramod @ Bhoka** (*supra*), a similar question arose before Chhattisgarh High Court as the one here. In **Pramod @ Bhoka** also, the appellant had admitted his guilt at the stage of framing of charge and again at the stage of recording of his statement under Section 313 Cr.P.C. The question before the Court was whether the admission of guilt by the appellant in his examination under Section 313 Cr.P.C. constitutes substantive evidence within the meaning of Section 3 of the Evidence Act and what would be the effect of his admission of guilt in statement under Section 313 Cr.P.C. The Court considered various authorities on the point. The Division Bench of the Chhattisgarh High Court in **Pramod @ Bhoka** observed:

29. “*The Supreme Court in the matter of **Raj Kumar Singh alias Raju alias Batya v. State of Rajasthan**; AIR 2013 SC 3150 has clearly held that the statement made under Section 313 of the Cr.P.C. cannot be made basis for conviction as it is not subjected to oath and it cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, and observed as under in paragraph 36: -*

“36. In view of the above, the law on the issue can be summarised to the effect that statement under Section 313 Cr.P.C. is recorded to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction.

His answers to the questions put to him under Section 313 Cr.P.C. cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. Thus, the statement of the accused is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution. In case the prosecution's evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of his statement cannot be made the sole basis of his conviction. The statement under Section 313 Cr.P.C. is not recorded after administering oath to the accused. Therefore, it cannot be treated as an evidence within the meaning of Section 3 of the Evidence Act, though the accused has a right if he chooses to be a witness, and once he makes that option, he can be administered oath

and examined as a witness in defence as required under Section 315 Cr.P.C.

An adverse inference can be taken against the accused only and only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. However, the accused has a right to remain silent as he cannot be forced to become witness against himself.”

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31. In the matter of **Ashok Debbarma alias Achak Debbarma v. State of Tripura**; (2014) 4 SCC 747, relying upon the matter of **Mohan Singh v. Prem Singh**; (2002) 10 SCC 236, it has been held that the statement made in defence by the accused under Section 313 of the Cr.P.C. can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Cr.P.C. cannot be made the sole basis of his conviction, and observed in paragraphs 24 and 25 as under:

“24. We are of the view that, under Section 313 statement, if the accused admits that from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in **State of Maharashtra v. Sukhdev Singh** (1992) 3 SCC 700 held that since no oath is administered to the accused, the statement made by the accused under Section 313 Cr.P.C. will not be evidence *stricto sensu* and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 Cr.P.C. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 Cr.P.C. can be taken into consideration in such an inquiry or trial. This Court in **Hate Singh Bhagat Singh v. State of Madhya Bharat**, AIR 1953 SC 468 held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In **Narain Singh v. State of Punjab** (1964) 1 CriLJ 730 this Court held that when the accused confesses to the commission of the offence with which he is charged, the Court may rely upon the confession and proceed to convict him.

25. This Court in **Mohan Singh v. Prem Singh**, held that:

“27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction.”

In this connection, reference may also be made to the judgments of this Court in **Devender Kumar Singla v. Baldev Krishan Singla** (2005) 9 SCC 15 and **Bishnu Prasad Sinha v. State of Assam** (2007) 11 SCC 467. The above-mentioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of

his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.”

22. In view of the above legal position, the Division Bench of Chhattisgarh High Court held that no conviction can solely be based on the admission of guilt by the appellant in his statement under Section 313 Cr.P.C., in absence of any corroborative/incriminating evidence being led by the prosecution. Accordingly, the conviction and sentence of the appellant was set aside.

23. In view of the above discussion, the explanation furnished by the accused cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of statement under Section 313 Cr.P.C.. Statements of the accused in the course of examination under Section 313, do not constitute evidence under Section 3 of the Evidence Act. Therefore, it is clear that the admission of guilt in statement under Section 313 Cr.P.C., alone, cannot be made the basis of conviction of the appellant in the present case, in absence of any other incriminating evidence.

24. Further, it is to be noted that a perusal of the record of the Trial Court shows that the appellant moved as many as seven confession applications between 24.10.2001 (the date of framing of charge) to 05.02.2002 (date of the judgment) before the Court, and a glance at these applications shows that the appellant expressed fear of being killed by the informant, in collusion with the Police, as and when he is released from jail. He prayed that he be permitted to remain in jail to save his life. It is noticed that question no.1, in the statement of the appellant framed under Section 313 Cr.P.C. by the Trial Court, was a composite question, to which the appellant answered in the affirmative.

25. The above question and its answer is as follows:

“ प्रश्न सं० 1- क्या यह आवेदन पत्र जुर्म इकबाल आपने अपनी स्वैच्छा बिना किसी दबाव, भय अथवा प्रलोभन के दिया है। और आप को जानकारी है। कि इस ब्यान से आपकी सजा हो सकती है?

उत्तर- 1- जी हाँ ।

26. In view of the above, the admission of the appellant under Section 313 Cr.P.C., though voluntary, cannot be said to be free from any fear or pressure. This aspect about the appellant moving different confession applications out of fear to save his life, before the Trial Court, has gone unnoticed by the Trial Judge while reaching his conclusions. It is also relevant to note that the record does not show that the appellant had the assistance of an Advocate to defend. Also, there is nothing to disclose that he was offered and provided any legal aid, which was a violation of his right to fair trial guaranteed under Article 21 of the Constitution, besides being a violation of Section 304 Cr.P.C. Thus, the appellant was also deprived of a fair trial in this case.

27. Thus, the sad part of the matter is that the appellant is incarcerated in jail for almost 24 years, in a case in which there was no evidence against him and his admission of guilt in his statement under section 313 Cr.P.C. was not only under fear to save his life from the informant, which went unnoticed by the Trial Court, but also, if treated as one made without fear, not sufficient to found a conviction and sentence, in absence of any incriminating evidence adduced by the prosecution.

28. In view of the above discussion, we come to the conclusion that the learned Trial Court has erred in convicting the appellant, as the prosecution has miserably failed to connect the appellant with the offence in question and to prove the offence beyond reasonable doubt. Thus, the conviction of the appellant solely on the admission of guilt in his statement under Section 313 Cr.P.C. is not sustainable.

29. In view of the above, the instant criminal appeal is **allowed**. We set aside the impugned judgment and order dated 05.02.2002 passed by

the Trial Court and acquit the appellant, **Azad Khan** of the charge under Sections 395 and 397 IPC.

30. The appellant, **Azad Khan** is in jail. He is directed to be released forthwith, if not wanted in any other case.

31. Before being released, the appellant shall execute a personal bond in the sum of Rs.20,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

32. Let a copy of this Judgment and order be sent to the Trial Court concerned, forthwith, alongwith the Trial Court record, for information and necessary compliance.

(Sanjiv Kumar,J.) (J.J. Munir,J.)

December 19 , 2025

Amit/-