

Ramji Prasad Jaiswal @ Ramjee Prasad Jaiswal and Ors.

v.

State of Bihar

(Criminal Appeal No. 490 of 2025)

20 May 2025

[Abhay S. Oka and Ujjal Bhuyan,* JJ.]

Issue for Consideration

Whether in the facts of the case there was a breach of s.313, CrPC causing prejudice to the appellants and vitiating the trial against them.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.313 – Penal Code, 1860 – ss.420, 468, 471, 120B – Prevention of Corruption Act, 1947 – ss.5(2), 5(1)(d) – Appellants were convicted u/ss.420, 468, 471, 120B, IPC r/w ss.5(2), 5(1)(d), PC Act and sentenced accordingly – Incriminating circumstances which had come on record against them in the prosecution evidence were not put to them in their examination u/s.313 CrPC – Trial, if vitiated:

Held: Yes – Appellants were asked four identical questions in a mechanical manner without putting them to notice the specific material brought on record by the prosecution witnesses against them – These questions did not reflect the specific prosecution evidence which came on record qua the appellants – Since, all the incriminating evidence were not put to the notice of the appellants, there was a breach of s.313, CrPC as well as the principle of *audi alteram partem* causing serious prejudice to the appellants to put forth their case – Ultimately, such evidence were relied upon by the court to convict the appellants – Such omission which is a serious irregularity completely vitiated the trial – Appellants given the benefit of doubt because of such omission in the recording of their statements u/s.313, CrPC since the trial court had relied on the evidence adverse to the appellants while convicting them – Conviction and sentence of appellant Nos.1 and 2 untenable – Judgment of the trial court as affirmed by the High Court qua appellant no.3 is set aside on the ground of juvenility – Juvenile Justice (Care and Protection of Children) Act, 2000. [Paras 28, 36-39]

* Author

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Case Law Cited

Shivaji Sahabroo Bobade v. State of Maharashtra [1974] 1 SCR 489 : (1973) 2 SCC 793; Dharnidhar v. State of Uttar Pradesh [2010] 8 SCR 173 : (2010) 7 SCC 759; Raj Kumar Singh alias Raju alias Batya v. State of Rajasthan [2013] 8 SCR 599 : (2013) 5 SCC 722; Raj Kumar alias Suman v. State (NCT of Delhi) [2023] 5 SCR 754 : (2023) 17 SCC 95; Ashok v. State of Uttar Pradesh [2024] 12 SCR 335 : (2025) 2 SCC 381 – referred to.

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860; Prevention of Corruption Act, 1947; Juvenile Justice (Care and Protection of Children) Act, 2000.

List of Keywords

Section 313, Code of Criminal Procedure, 1973; Breach of Section 313, Code of Criminal Procedure, 1973; Incriminating circumstances; Incriminating evidence not put to notice; Identical questions asked; Mechanical manner; Omission; Omission in the recording of statements under Section 313, Code of Criminal Procedure, 1973; Irregularity; Trial vitiated; Principle of *audi alteram partem*; Benefit of doubt; Juvenility; Plea of juvenility; Juvenile on the date of commission of the offence; Curable material defect.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 490 of 2025

From the Judgment and Order dated 24.11.2011 of the High Court of Judicature at Patna in Criminal Appeal (SJ) No. 418 of 2006

Appearances for Parties

Advs. for the Appellants:

Ms. Mukta Gupta, Sr. Adv., Mudit Jain, Ms. Samprikta Ghoshal, Nitya Gupta, Ms. Mahima Malhotra, Aayush Goswami, Saiful Haque, Aditya Samaddar.

Advs. for the Respondent:

Vikramjit Banerjee, A.S.G., Santosh Kumar, Ms. Bharti Tyagi, Praneet Pranav, Mrigank Pathak, Prashant Rawat, Nring Chamwibo Zeliang, Abhishek Singh, Mukesh Kumar Maroria.

Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****Ujjal Bhuyan, J.**

This appeal by special leave arises out of the judgment and order dated 24.11.2011 in Criminal Appeal (SJ) No. 418/2006 passed by the High Court of Judicature at Patna. By the aforesaid judgment and order dated 24.11.2011, a learned Single Judge of the High Court of Judicature at Patna (High Court) dismissed Criminal Appeal (SJ) No. 430 of 2006 (*Shiv Narayan Bansal and another Vs. State of Bihar*) and Criminal Appeal (SJ) No. 418 of 2006 (*Ramji Prasad Jaiswal alias Ramjee Prasad Jaiswal and two others Vs. State of Bihar*).

2. In this appeal, we are concerned with the decision of the High Court dated 24.11.2011 in respect of Criminal Appeal (SJ) No. 418 of 2006. The three appellants in this case are:
 1. Ramji Prasad Jaiswal alias Ramjee Prasad Jaiswal,
 2. Ashok Kumar Jaiswal, and
 3. Bal Mukund Jaiswal.
3. It may be mentioned that appellants along with the appellants of Criminal Appeal (SJ) No.430 of 2006 were tried by the Court of learned Special Judge, Central Bureau of Investigation (CBI), South Bihar, Patna ('CBI Court' hereinafter) in Special Case No. 52/1983 for allegedly committing offences under Sections 420, 440, 468, 471 and 120B of the Indian Penal Code, 1860 (IPC) read with Section 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947.
 - 3.1. By the judgment and order dated 29.05.2006, appellants in both the criminal appeals were held guilty of committing offences under Sections 420, 468, 471 and 120B IPC read with Section 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947 (briefly 'the PC Act' hereinafter). Accordingly, appellants in both the appeals were directed to suffer rigorous imprisonment (RI) for three years under Section 420 IPC and also to pay fine of rupees forty thousand. They were further directed to suffer RI for three years under Section 468 IPC besides paying fine of rupees five thousand. That apart, each of the appellants were

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directed to suffer RI for two years and one year respectively under Section 471 read with Sections 468, 420 and 120B IPC. The substantive sentence of imprisonment of one year was inclusive of the sentence awarded to each of the appellants for the offence under Section 5(2) read with Section 5(1)(d) of the PC Act. It was directed that the sentences imposed were to run concurrently.

4. Aggrieved by their conviction and sentence, all the convicts filed two criminal appeals before the High Court, being Criminal Appeal (SJ) Nos. 418 and 430 of 2006. It may be mentioned that after filing of appeal in the High Court, the second appellant Chetharu Singh in Criminal Appeal (SJ) No.430 of 2006 passed away. Therefore, the appeal *qua* him stood abated. The said appeal proceeded against the remaining sole appellant Shiv Narayan Bansal.
 - 4.1. High Court *vide* the common judgment and order dated 24.11.2011 came to the conclusion that the appellants were appropriately convicted and correctly sentenced. Accordingly, both the appeals were dismissed.
5. As noted above, appellants in Criminal Appeal (SJ) No.418 of 2006: (1) Ramji Prasad Jaiswal alias Ramjee Prasad Jaiswal (2) Ashok Kumar Jaiswal and (3) Bal Mukund Jaiswal preferred the related SLP (Criminal) No. 2629 of 2012.
6. By order dated 26.03.2012, this Court after condoning the delay issued notice *qua* appellant Nos.1 and 2 on the question of sentence only. In respect of appellant No.3, notice was issued on the question of sentence as also on the question of his being a juvenile on the date of commission of offence.
7. On 21.09.2012, this Court considered the plea of juvenility raised by appellant No.3. As per the matriculation certificate, appellant No.3 was born on 24.12.1965 which would mean that he was around 17 years of age in December 1982 when the offence in question was allegedly committed by him. Learned Additional Solicitor General upon instructions submitted that according to the preliminary enquiry made by CBI, the certificate relied upon by appellant was found to be genuine. Therefore, this Court directed the Special Judge to conduct an enquiry in terms of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 to record a finding on

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the question *qua* juvenility of appellant No.3 and thereafter to submit a report to this Court. By the said order, this Court enlarged all the three appellants on bail and also suspended the remainder of the sentences imposed on the appellants. Order dated 21.09.2012 reads as under:

Petitioner No. 3 has filed Crl. M.P. No. 11269 of 2012 *inter alia* pointing out that he was a juvenile within the meaning of The Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of the commission of the offence. He has, in support of that assertion placed reliance upon two documents one of which happens to be the matriculation certificate issued by the Bihar School Examination Board. According to that certificate, petitioner No. 3 was born on 24.12.1965 meaning thereby that he was around 17 years of age in December, 1982 when the offence in question was allegedly committed by him. On 17.08.2012, when this special leave petition came up for orders before us we had directed Mr. H.P. Raval, Additional Solicitor General to take instructions as to the genuineness of the certificate relied upon by the petitioner. Mr. Rajiv Nanda, learned counsel for the respondent CBI today submits on instructions that according to the preliminary inquiry made by the CBI, Patna the certificate relied upon by the petitioner in the application has been found to be genuine. That being so, a case for holding an inquiry under Section 7A of the Act in regard to juvenility of petitioner No.3 has been made out. We accordingly direct the Special Judge to conduct an inquiry in terms of Section 7A of The Juvenile Justice (Care and Protection of Children) Rules, 2007, summon the requisite documents from the Board of Secondary Education, record other evidence if any produced in regard to the question of juvenility of petitioner No.3, record a finding on the question and submit a report to this Court expeditiously but not later than three months from the date a copy of this order is received by the said court.

Mr. Nagendra Rai, learned counsel for petitioner No.3 submits that petitioner No. 3 shall appear before the trial court if enlarged on bail and also produce the original

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certificates relied upon by him in support of his claim. Mr. Rai further contends that petitioner No. 1, Ramji Prasad is nearly 72 years old with multiple ailments and has already undergone seven years of imprisonment. So also petitioner No.2, Ashok Kumar Jaiswal has undergone seven months imprisonment out of a total of three years awarded to them. He further states that out of total amount of Rs.13,29,266/- allegedly swindled by the petitioners, not a penny has been received or misappropriated by the petitioners in this appeal even according to the prosecution. Appellant Shiv Narain Banshal in the connected appeal is said to have received Rs.12,57,000/- while the remaining amount was taken away by one other accused person who has since died. He urged that keeping in view the totality of the circumstances the petitioners deserve to be enlarged on bail. *Prima facie* we find merit in that contention. We accordingly direct that Ramji Jaiswal, Ashok Kumar and Bal Mukund shall stand released on bail on their furnishing bail bonds in a sum of Rs.20,000/- with two sureties each in the like amount to the satisfaction of the trial court. The remainder of the sentence awarded to the said petitioners shall on that condition remain suspended.

The petition shall be listed for final hearing on a non-miscellaneous day after the report is received from the trial court. A copy of this order shall be forwarded to the CBI, Patna for appropriate action.

8. Order dated 05.01.2015 indicates that report from the trial court was received.
9. Finally, the matter was heard on 29.01.2005 on which date leave was granted.
10. Relevant facts may be briefly noted.
11. The case relates to a period between September, 1982 to December, 1982. At that point of time deceased accused Ajay Kumar Srivastava was the Branch Manager of State Bank of India, Agriculture Market Yard Branch, Mohania (briefly 'SBI' hereinafter). The allegation was that Ajay Kumar Srivastava misused his official position and conspired with deceased appellant Chetharu Singh (proprietor of M/s Bishnujee

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Bhandar) and appellant Shiv Narayan Bansal (proprietor of M/s Bansal Stores, Mohania) along with the three present appellants i.e. Ramji Prasad Jaiswal @ Ramjee Prasad Jaiswal and his two sons Bal Mukund Jaiswal and Ashok Kumar Jaiswal thereby fraudulently and dishonestly obtained payment of Rs. 71,456.00 to Chetharu Singh and Rs. 12,57,810.00 to Shiv Narayan Bansal against certain bills which were accompanied by fake transport receipts issued by the present three appellants, purportedly on behalf of M/s Rohtas Carriers, showing consignment of grains of different consignees. In the process, SBI suffered loss to the tune of Rs.13,29,266.00 as the principal amount.

12. M/s Bishnujee Bhandar and M/s Bansal Stores had current accounts in SBI. M/s Rohtas Carriers was shown as transport agency which was being run by the present three appellants. Allegation was that all the bills were fake. By entering into criminal conspiracy by and between the accused, they had obtained the above payment illegally and fraudulently.
13. As regards M/s Rohtas Carriers and the present three appellants are concerned, the allegation was that M/s Rohtas Carriers neither had a vehicle of its own nor had any godown or business premises or branch or office at Mohania. In fact, it had no business in the said area. Consignment notes issued by the present appellants were fake. Therefore, they were also part of the criminal conspiracy whereby and whereunder wrongful loss was caused to the SBI to the tune of Rs.13,29,266.00.
14. During the trial, prosecution examined as many as twenty seven witnesses and exhibited a large number of documents. Upon consideration of the evidence tendered, the trial court convicted and sentenced the appellants as above. As already noted, the two criminal appeals filed came to be dismissed by the High Court *vide* the impugned judgment and order dated 24.11.2011.
15. Before we proceed to record the submissions of learned counsel for the parties, it would be appropriate to highlight the relevant dates:
 1. Two FIRs were registered by CBI on 23.06.1983 wherein the appellants and others were named as accused.
 2. CBI filed chargesheet on 31.12.1984.

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3. Charges were framed by the learned Special Judge, CBI Court on 02.09.1986.
4. Thereafter, the trial commenced.
5. At the conclusion of recording of evidence of the prosecution witnesses, statements of the appellants were recorded on 04.01.2006 under Section 313 of the Code of Criminal Procedure, 1973 (CrPC).
6. Trial Court convicted and sentenced the appellants as above on 29.05.2006.
7. High Court dismissed both the criminal appeals *vide* the judgment and order dated 24.11.2011.
16. Learned senior counsel for the appellant submits that since leave is being granted, all legal contentions are now open to the appellants.
 - 16.1. Referring to the statements of the appellants under Section 313 Cr.P.C., he submits that those were recorded in a most mechanical manner. The incriminating circumstances which had come on record against the appellants in the prosecution evidence were not put to them when they were examined under Section 313 CrPC. Only four general questions were put. She submits that because of such irregularity, grave prejudice was caused to the appellants.
 - 16.2. Because of failure of the courts below to address this issue, grave prejudice was caused to the appellants. In any case, since a considerable period of about two decades has lapsed, it is not practically feasible to revert back to the trial court to restart the trial proceedings from the stage of recording of statements of the appellants under Section 313 CrPC. Therefore, on this ground alone the order of the trial court as well as that of the High Court are liable to be appropriately interfered with.
 - 16.3. Another submission of learned senior counsel for the appellants is that appellant No. 3 Bal Mukund Jaiswal was below 18 years of age during the period September, 1982 to December, 1982 i.e. the period to which the offence and the chargesheet relates. Therefore, on the date of commission of offence he was a juvenile. Though this ground was not taken before the courts below, she submits that it is settled law that a plea of juvenility of an accused/convict can be taken at any stage.

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- 16.4. Learned senior counsel thereafter has referred to the matriculation certificate of appellant No. 3 which shows his date of birth as 24.12.1965 which would mean that he was aged about 17 years of age in December, 1982. Thereafter, she has referred to the order of this Court dated 21.09.2012 as well as to the finding of the Special Judge on the question of juvenility.
- 16.5. It is, therefore, submitted that all the appellants are liable to be acquitted. Firstly, for failure of the court to comply with the requirements of Section 313 Cr.P.C. causing great prejudice to the appellants. Secondly, in so far appellant No. 3 is concerned, he being a juvenile on the date of commission of the offence, therefore, the impugned conviction and sentence *qua* him cannot be sustained. Consequently, the appeal should be allowed.
17. *Per contra*, learned Additional Solicitor General submits that in so far appellant Nos. 1 and 2 are concerned, their involvement in the commission of the offence has been fully established. Learned Special judge on the basis of the materials on record had rightly convicted them which has been affirmed by the High Court in the impugned judgment.
 - 17.1. He further submits that in so far alleged infraction of Section 313 Cr.P.C. is concerned, learned Special Judge had brought to the notice of the appellant the gist of the evidence *qua* the said appellants which had come on record. Therefore, there was substantial compliance to the requirements of Section 313 Cr.P.C.
 - 17.2. He submits that even if we proceed on the assumption that there has been violation of Section 313 Cr.P.C., appellant Nos. 1 and 2 should not be let off on a technicality which is to be weighed against the totality of the evidence on record. In other words, he submits that on a plea of technicality, appellants should not be let off in as much as prosecution was able to establish their guilt.
 - 17.3. Further, in so far appellant No. 3 is concerned, learned Additional Solicitor General submits that now that the trial court has found him to be a juvenile on the date of commission of the offence, this Court may pass appropriate order.

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18. Submissions made by learned counsel for the parties have received the due consideration of the Court.
19. Let us first deal with the question of juvenility *qua* appellant No. 3. It has come on record that appellant No. 3 relied upon the matriculation certificate issued by the Bihar School Examination Board as per which his date of birth is 24.12.1965. This would mean that he was around 17 years of age during the period September, 1982 to December, 1982 when the offence in question was allegedly committed by him. In Court herein, learned counsel representing CBI submitted on instructions that according to preliminary enquiry made by CBI, the certificate relied upon by appellant No. 3 was found to be genuine. Thereafter, this Court *vide* the order dated 21.09.2012 already alluded to hereinabove directed the learned Special Judge to hold enquiry under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (briefly, 'the JJ Act'). Section 7A of the JJ Act laid down the procedure to be followed when claim of juvenility was raised before any court. Section 7A read thus:

7A. Procedure to be followed when claim of juvenility is raised before any court.—(1)

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.

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20. Therefore, what Section 7A contemplated was that when a claim of juvenility was raised or if the court was of the opinion that a person was a juvenile on the date of commission of the offence, the court was mandated to make an inquiry and after taking such evidence as might be necessary, was mandatorily required to record a finding whether the person was a juvenile or a child or not, stating his age as nearly as possible. As per the proviso, a claim of juvenility could be raised before any court and at any stage. If upon such inquiry, court found the person to be a juvenile on the date of commission of the offence, it had to forward the juvenile to the Juvenile Justice Board for passing appropriate orders and the sentence if any, passed by a court, would be deemed to have no effect.
21. Where a juvenile charged with an offence was produced before a Juvenile Justice Board then in terms of Section 14(1) of the JJ Act, the Juvenile Justice Board was required to hold an inquiry in accordance with the provisions of the JJ Act and make such order in relation to the juvenile as it deemed fit. If the Juvenile Justice Board found that the juvenile had committed an offence then Section 15 of the JJ Act kicked in. Under Section 15 of the JJ Act, the Juvenile Justice Board could take various steps as contemplated thereunder and under sub-section (1)(g) had the discretion to make an order directing the juvenile to be sent to a special home for a period of 3 years, which period could be reduced in an appropriate case in terms of the proviso.
22. Pursuant to the order of this Court dated 21.09.2012, learned Special Judge conducted the inquiry and thereafter passed an order on 28.11.2013. Learned Special Judge noted that appellant No. 3 had passed matriculation examination from Seva Niketan High School, Barhuli, (Kaimur) in the year 1981 and in the matriculation certificate his date of birth has been mentioned as 24.12.1965. Secretary of Bihar School Examination Board also stated that appellant No. 3 had appeared in the matriculation examination in the year 1981. According to the school register, the date of birth of appellant No. 3 is 24.12.1965. CBI also confirmed that the date of birth of appellant No. 3 is 24.12.1965. In that view of the matter, learned Special Judge declared appellant No. 3 to be a juvenile on the date of the offence. Relevant portion of the order dated 28.11.2013 of the learned Special Judge reads as under:

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18. Thus from the evidence both oral and documentary it is evident that the convict Balmukund Jaiswal was juvenile on the date of offence relating to the instant case.
19. In the result the convict Balmukund Jaiswal is declared juvenile under the provisions of section 7 and 49 of the Act.
23. Therefore, it is established now that appellant No. 3 was a juvenile on the date of commission of the offence i.e. the period from September, 1982 to December, 1982. He was convicted by the trial court *vide* the judgment and order dated 29.05.2006. Ordinarily once an accused person was found to be a juvenile on the date of commission of the offence, he was required to be dealt with by the Juvenile Justice Board for carrying out necessary inquiry in terms of Section 14 of the JJ Act and thereafter to pass order under Section 15 including an order directing the juvenile to be sent to a special home for a period of 3 years. In the instant case, more than four decades have passed by since commission of the offence. In the circumstances, it is neither possible nor feasible to remand the case of appellant No. 3 to the concerned Juvenile Justice Board to carry out the exercise under Sections 14 and 15 of the JJ Act. Therefore, the judgment and order of the trial court dated 29.05.2006 as affirmed by the High Court *vide* the judgment and order dated 24.11.2011 *qua* appellant no. 3 are hereby set aside on the ground of juvenility.
24. Let us now deal with the case of the other two appellants.
25. Insofar the said appellants are concerned, prosecution sought to establish their guilt through the evidence of PW-3 Rameshwar Lal Sharma and PW-25 Ved Kumar. PW-3 stated that he had started M/s. Rohtas Carriers in which Ramji Prasad Jaiswal was one of the partners. On 28.11.1979, Ramji Prasad Jaiswal left the partnership. Since then, M/s. Rohtas Carriers became the proprietorship firm of PW-3 alone. This witness stated that after 1979, his firm shifted to Patna. There was no office or business at Mohania of M/s. Rohtas Carriers thereafter.
26. PW-25 in his evidence stated that he had served M/s. Rohtas Carriers as a business executive in the year 1978. Proprietor of M/s. Rohtas Carriers was Rameshwar Lal Sharma. This firm was established in 1975-1976. He deposed that Ramji Prasad Jaiswal was earlier one of the partners of M/s. Rohtas Carriers but he had left it in the

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year 1979. Since then, the partnership firm was converted into a proprietorship concern which shifted its office and business to Patna. Thereafter there was no Rohtas Carriers in existence at Mohania.

27. In addition to this, prosecution also exhibited a letter (Exhibit 5) written by Ramji Prasad Jaiswal to the Branch Manager of Central Bank of India, Fraser Road, Patna. As per this letter, Ramji Prasad Jaiswal had taken out his entire shares of partnership from Rohtas Carriers and thereafter he had no connection with Rohtas Carriers at all. This letter signed by Ramji Prasad Jaiswal disclosed that Ramji Prasad Jaiswal had left Rohtas Carriers on 28.11.1979.
28. After conclusion of the prosecution evidence, statements of the accused persons including the appellants were recorded under Section 313 CrPC. Insofar the present appeal is concerned, all the three appellants were asked four identical questions without putting them to notice the specific material brought on record by the prosecution witnesses against them. The four identical questions put to appellant No. 1 were as under:
 1. Have you heard the statements given by the witnesses?
 2. It has come in the evidence that 14 consignment notes/ transport receipts Nos. 616, 617, 140 to 148, 1101, 1102, 625, 635 and 1104 were prepared in the names of M/s Bansal Stores, Mohania and Vishnuji Bhandar, Mohania during the period August to December, 1982?
 3. It has also come in the evidence that you in collusion with accused Ajay Kumar Srivastava, Shiv Narain Bansal, Chaithakh Singh, Bal Mukund Jaiswal and Ashok Kumar Jaiswal in furtherance of a particular conspiracy transacted with the State Bank of India on the basis of forged and fabricated documents and after depositing Rs. 71,456.00, you cheated the bank of Rs. 12,57,810.00?
 4. Do you have to say anything in your defence?
29. Section 313 CrPC deals with the power of the court to examine the accused. Section 313 CrPC is as follows:

313. Power to examine the accused.—(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—

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- (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.

30. In *Shivaji Sahabroo Bobade Vs. State of Maharashtra*¹, this Court was examining Section 342 of the old Code of Criminal Procedure, 1898 which is *pari materia* to Section 313 Cr.P.C. and explained the rationale behind such provision in the following words:

16..... 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,

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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. In such a case, the court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, CrPC, the omission has not been shown to have caused prejudice to the accused...

31. Section 313 CrPC came up for consideration in *Dharnidhar Vs. State of Uttar Pradesh*² where this Court outlined the proper methodology to be adopted by the court while recording statement of an accused under Section 313 CrPC. This Court held thus:

29. The proper methodology to be adopted by the court while recording the statement of the accused under Section 313 CrPC is to invite the attention of the accused to the circumstances and substantial evidence in relation to the offence, for which he has been charged and invite his explanation. In other words, it provides an opportunity to an accused to state before the court as to what is the truth and what is his defence, in accordance with law. It was for the accused to avail that opportunity and if he fails to do so then it is for the court to examine the case of the prosecution on its evidence with reference to the statement made by the accused under section 313 CrPC.

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32. This Court discussed the purpose of recording the statement of an accused under Section 313 CrPC in *Raj Kumar Singh alias Raju alias Batya Vs. State of Rajasthan*³ and held as under:
30. In a criminal trial, the purpose of examining the accused person under Section 313 CrPC is to meet the requirement of the principles of natural justice i.e. *audi alteram 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 CrPC, cannot be used against him and have to be excluded from consideration.
33. Again, in *Raj Kumar alias Suman Vs. State (NCT of Delhi)*⁴, this Court summarized the law as regards Section 313 CrPC in the following manner:
22. The law consistently laid down by this Court can be summarised as under:
- 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.

3 (2013) 5 SCC 722

4 (2023) 17 SCC 95

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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.

34. In a recent decision, this Court in *Ashok Vs. State of Uttar Pradesh*⁵ held as under:

23. In the present case, there is no doubt that material circumstances appearing in evidence against the appellant have not been put to him. The version of the main prosecution witnesses PWs 1 and 2 was not put to him. The stage of the accused leading defence evidence arises only after his statement is recorded under Section 313 CrPC. Unless all material circumstances appearing against him in evidence are put to the accused, he cannot decide whether he wants to lead any defence evidence.

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24. In this case, even the date and place of the crime allegedly committed by the appellant were not put to the appellant. What was reportedly seen by PW-2 was not put to the appellant in his examination. Therefore, the appellant was prejudiced. Even assuming that failure to put material to the appellant in his examination is an irregularity, the question is whether it can be cured by remanding the case to the trial court.
35. After surveying the law on this print, let us revert back to the facts of the present case. The manner in which the trial court had recorded the statements of the appellants under Section 313 CrPC was not at all in tune with the requirements of the said provision as explained by this Court as discussed supra.
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. In *Raj Kumar* (supra), this Court highlighted that while deciding whether such defect can be cured or not, one of the considerations will be the passage of time from the date of the incident.
38. As we have already noted, the period during which the offence was allegedly committed was from September, 1982 to December, 1982. Trial was concluded on 29.05.2006. Nineteen years have gone by since then. At this distant point of time, instead of aiding the cause of justice, it will lead to miscarriage of justice if the case *qua* the two appellants are remanded to the trial court to restart the trial from the stage of recording the statements of the accused persons under Section 313 CrPC. In such circumstances, we are of the considered opinion that it is neither possible nor feasible to order such remand.

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Consequently, appellants are entitled to the benefit of doubt because of such omission in the recording of their statements under Section 313 Cr.P.C. since the trial court had relied on the evidence adverse to the appellants while convicting them.

39. Therefore, their conviction and sentence has become untenable. Resultantly, we set aside the judgment and order of the trial court dated 29.05.2006 and that of the High Court dated 24.11.2011.
40. Since the appellants are on bail, their bail bonds are hereby cancelled.
41. Criminal appeal is accordingly allowed.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Divya Pandey