



2026:DHC:7764



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 02nd September, 2026***

CNR No. DLHC010059922023

+ **CRL.A. 177/2023**

RAVINDER @ KALU

.....Appellant

Through: Mr. Madhav Khurana, Sr. Adv.
with Mr. Amit Badesra, Ms.
Deeparghya Datta, Mr. Arvind
Kumar & Mr. Abhinav Garg,
Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Sumer Singh Boparai,
Mr. Surya Pratap Singh, Mr.
Sirhaan Seth & Mr. Tushar
Tyagi, Advs. (DHCLSC) for
victim
SI Udit, PS- Ranhola

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CNR No. DLHC010214672023

+ **CRL.A. 441/2023**

RAGHUNATH @ CHHOTU

.....Appellant

Through: Mr. Harsh Prabhakar
(DHCLSC), Mr. Shubham
Sourav & Mr. Vijit Singh, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Sumer Singh Boparai,
Mr. Surya Pratap Singh, Mr.

Sirhaan Seth & Mr. Tushar
Tyagi, Advs. (DHCLSC) for
victim
SI Udit, PS- Ranhola

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. This Court *vide* judgment dated 14.08.2025, while considering the challenge to the conviction, noted that the learned ASJ had proceeded on the premise that the prosecutrix was a minor and had, therefore, treated the question of consent as immaterial and also relied upon the statutory presumptions under Sections 29 and 30 of the POCSO Act. This Court further noted that the defence taken by appellant Raghunath, namely, that the prosecutrix was voluntarily residing with him as his wife, had not been duly considered, notwithstanding the acquittal of the appellants of the offences under Sections 363/365/366 of the Indian Penal Code, 1860.

2. This Court examined the question of the age of the prosecutrix and, upon considering the evidence on record, found considerable ambiguity in the prosecution's case regarding her age. The Court observed that the school records relied upon by the prosecution did not satisfy the requirements of Section 94(2)(i) of the JJ Act, while the documents relied upon by the defence, though raising doubt regarding her age, also did not fall within the categories contemplated under Section 94 of the JJ Act.

3. In view of the ambiguity surrounding the age of the prosecutrix and observing that the Court could not merely confer the benefit of the prosecution's failure to establish her age without getting to the root of

the matter, this Court, held that her age was required to be determined in accordance with Section 94(2)(iii) of the JJ Act. Accordingly, by invoking Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023, read with Section 168 of the Bharatiya Sakshya Adhiniyam, 2023, this Court directed the learned Special Court to record additional evidence on the limited aspect of the age of the prosecutrix during the relevant period, including by resorting to Rule 12 of the JJ Rules, if necessary. The prosecution as well as the defence were permitted to lead additional evidence on the said aspect and transmit the additional evidence to this Court.

4. Pursuant to the judgment dated 14.08.2025, additional evidence was led before the learned Trial Court and has since been placed on record before this Court. The additional evidence included an ossification test, which assessed the age of the prosecutrix to be between 25 and 40 years as on 20.01.2026. Further, Mrs. Vijay Kumari, PRT, Nigam Pratibha Vidyalaya, Shalimar Bagh, Delhi, was examined as PW-10. She produced the original admission and withdrawal register and deposed that, as per the school record, the prosecutrix had been admitted to Class I on 04.04.2005 and her date of birth was recorded as 09.02.2000. She further produced the admission form, the Pravesh Patra submitted by the mother of the prosecutrix, and the certificate dated 16.01.2026 issued by the Principal confirming the said date of birth. She also deposed that the prosecutrix had studied in the school from Class I to V and that, upon leaving the school on 26.03.2011, a School Leaving Certificate had been issued to her.

5. Learned counsel for the appellants submitted that, after the additional evidence was led, the appellants were not re-examined under Section 313 of the Code of Criminal Procedure, 1973 ('CrPC') to

explain the circumstances emerging from such evidence. It was contended that the omission deprived the appellants of a fair opportunity to meet and controvert the additional evidence.

6. Relying upon *Nar Singh v. State of Haryana*, (2015) 1 SCC 496, learned counsel submitted that Section 313 of the CrPC requires the incriminating circumstances appearing in the evidence to be put to the accused for their explanation. It was contended that, particularly where additional evidence is introduced after remand, failure to comply with this requirement constitutes a serious procedural irregularity affecting the accused's right to a fair trial.

7. *Per contra*, learned counsel for the respondent submitted that no prejudice had been caused to the appellants by the additional evidence not having been separately put to them under Section 313 of the CrPC.

8. He submits that the purpose of the examination is to enable the accused to explain the circumstances against him in the evidence in order to enable him to have an opportunity to defend.

9. He submits that in the present case, additional evidence was led pursuant to the case being remanded while hearing the appeal and, therefore, the circumstances and the evidence which was sought to be produced was always in the knowledge of the accused.

10. He submits that the accused, at this stage, cannot take advantage of the said fact without explaining that he was prejudiced because of the evidence not being put to him in a manner as prescribed under Section 313 of the CrPC.

11. He submits that without prejudice to the above, if this Court feels that the evidence should have been put to the accused, the said exercise can be done by the High Court while exercising appellate jurisdiction.

12. At this stage, it is relevant to take note of Section 313 of the

CrPC, which reads as under :

“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--

(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.”

13. The purpose of Section 313 of the CrPC is well-established: it serves as a procedural safeguard to ensure that the accused have a fair opportunity to explain any incriminating evidence against them. The language of the section underscores that this examination is not a mere formality; it is a crucial aspect of fair trial standards enshrined within the Indian criminal jurisprudence. The Hon'ble Apex Court in ***Basavaraj R. Patil v. State of Karnataka : (2000) 8 SCC 740***, elucidated the scope of Section 313 of the CrPC and observed as under:

“18. 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”. In Jai Dev v. State of Punjab [AIR 1963 SC 612 : (1963) 1 Cri LJ 495] Gajendragadkar, J. (as he then was) speaking for a three-Judge Bench has focussed on the ultimate test in

determining whether the provision has been fairly complied with. He observed thus:

“The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to inquire whether, having regard to all the questions 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.”

19. 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.

20. 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 subsection (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.”

14. The Hon’ble Supreme Court in ***Kuldip Singh v. State of Delhi***, (2003) 12 SCC 528, has held that where an important incriminating circumstance appearing in the evidence is not put to the accused during examination under Section 313 of the CrPC, the prosecution cannot place reliance upon such circumstance against the accused. The underlying principle is that an accused cannot be confronted with a circumstance for the first time in the judgment when no opportunity was afforded to him to explain the same.

15. It is, however, equally well settled that every infraction of Section 313 of the CrPC does not automatically vitiate a trial or result in the accused being entitled to an acquittal. The Court must examine whether the omission has caused actual or likely prejudice to the

accused. Where such prejudice is established, the appellate court is empowered to adopt an appropriate course to cure the defect.

16. In the present case, after this Court directed the learned Trial Court to record additional evidence on the limited aspect of the age of the prosecutrix, fresh evidence was led before the learned Trial Court, including the evidence of PW-10, Mrs. Vijay Kumari, PRT, and the school records produced by her, as well as the ossification test report. The said evidence was admittedly not available on record at the time when the appellants were originally examined under Section 313 of the CrPC.

17. Admittedly, however, the appellants were not re-examined under Section 313 of the CrPC after the additional evidence had been brought on record. Consequently, the circumstances emerging from the said evidence were never put to the appellants for their explanation.

18. The aforesaid evidence was not merely repetitive of the evidence already led during the trial. It constituted fresh evidence brought on record pursuant to the specific directions of this Court and was material to the determination of the age of the prosecutrix, which, in turn, had a direct bearing on the applicability of the provisions of the POCSO Act and the ultimate determination of the guilt of the appellants.

19. Thus, in the present case, the prejudice which could be caused to the appellants is apparent. In *Nar Singh v. State of Haryana* (supra), the Hon'ble Apex Court while considering the question whether the Appellate Court can direct a retrial if all the relevant questions are not put to the accused by the trial court as required under Section 313 of the CrPC, answered the question in the affirmative, holding that the Appellate Court may direct a retrial in such circumstances from the stage of questioning under Section 313 of the CrPC the accused because

non-compliance of Section 313 of the CrPC had caused prejudice to the accused:

“30.3. If the appellate court is of the opinion that noncompliance with the provisions of Section 313 CrPC 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 CrPC and the trial Judge may be directed to examine the accused afresh and defence witness, if any, and dispose of the matter afresh.”

20. More recently, in **Aejaz Ahmad Sheikh v. State of U.P : 2025 SCC OnLine SC 913**, the Hon’ble Apex Court observed that where any defect is found in the statement of the accused under Section 313 of the CrPC at the stage of hearing an appeal against conviction, the same may be cured either by the High Court itself recording a further statement of the accused or by directing the Trial Court to record such statement. The relevant extract of the same is reproduced hereinbelow:

“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. In the case of Raj Kumar v. State (NCT of Delhi)⁵, this Court dealt with this issue. In paragraphs 29 and 30, this Court held thus:

“29. In many criminal trials, a large number of witnesses are examined, and evidence is voluminous. It is true that the Judicial Officers have to understand the importance of Section 313. But now the court is empowered to take the help of the prosecutor and the defence counsel in preparing relevant questions. Therefore, when the trial Judge prepares questions to be put to the accused under Section 313, before putting the questions to the accused, the Judge can always provide copies of the said questions to the learned Public Prosecutor as well as the learned defence counsel and seek their assistance for ensuring that every relevant material circumstance appearing against the accused is put to him. When the Judge seeks the assistance of the prosecutor and the defence lawyer, the lawyers must act as the officers of the court and not as mouthpieces of their respective clients. While recording the statement under Section 313CrPC in cases

involving a large number of prosecution witnesses, the Judicial Officers will be well advised to take benefit of sub-section (5) of Section 313CrPC, which will ensure that the chances of committing errors and omissions are minimised.

30. In 1951, while delivering the verdict in Tara Singh [Tara Singh v. State, 1951 SCC 903], this Court lamented that in many cases, scant attention is paid to the salutary provision of Section 342 of the CrPC, 1898. We are sorry to note that the situation continues to be the same after 72 years as we see such defaults in large number of cases. The National and the State Judicial Academies must take a note of this situation. The Registry shall forward a copy of this decision to the National and all the State Judicial Academies.”

We want to supplement what is reproduced above. When an appeal against conviction is preferred before the High Court, at the earliest stage, the High Court must examine whether there is a proper statement of the accused recorded under Section 313 of CrPC (Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023). If any defect is found, at that stage, the same can be cured either by High Court recording further statement or by directing the Trial Court to record. If this approach is adopted, the argument of delay and prejudice will not be available to the accused.”

(emphasis supplied)

21. In view of the foregoing analysis, and having regard to the nature of the additional evidence brought on record and its material bearing on the determination of the guilt of the appellants, this Court is of the considered view that the defect arising from the failure to examine the appellants under Section 313 of the CrPC after the recording of the additional evidence warrants being cured by remanding the matter to the learned Trial Court from the stage of recording their supplementary statements under Section 313 of the CrPC.

22. Accordingly, the impugned judgment passed by the learned ASJ is set aside. The case is remanded back to the trial court for proceeding with the matter afresh from the stage of recording statement of the under Section 313 of the CrPC in accordance with law.

23. Since the incident pertains to the year 2016, I deem it apposite to

request the special court to expedite the matter and make efforts to dispose of the same in accordance with law preferably within a period of six months from the date of this order.

24. A copy of this order be placed in the connected matter.

AMIT MAHAJAN, J

SEPTEMBER 2, 2026

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