

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

C.R.M. (DB) 2 OF 2022

Nanda Samanta @ Nanda Lal Samanta & Anr.

VS.

The State of West Bengal

with

C.R.M. (DB) 18 OF 2023

Swadesh Samanta & Anr.

VS.

The State of West Bengal

For the Appellants in

C.R.M. (DB) 2 OF 2022: Mr. Soumyajit Das Mahapatra
Ms. Madhurai Sinha

For the Appellants in

C.R.M. (DB) 18 OF 2023: Mr. Arindam Jana
Mr. Soumajit Chatterjee

Heard on : January 25, 2023

Judgment on : January 25, 2023

DEBANGSU BASAK, J.:-

1. Department placed the appeal in the list pursuant to a report dated November 7, 2022. The appeal was admitted by an order dated January 24, 2022. Thereafter, the department endeavoured to prepare the paper books to make the appeal

ready for hearing. While doing so, the department came across an examination of one of the accuseds under Section 313 of the Code of Criminal Procedure and found that the answers to the questions put were not filled up. The examination under Section 313 of such accused contained the signature of the accused also of the Judicial Officer examining such accused.

2. Faced with such materials on record, the department requested the trial court to rectify the anomalies/defects. The trial court communicated that the same was not possible. Consequently, the papers were put up before this Court by the report dated November 7, 2022 as noted above.

3. Two appeals were preferred from the impugned judgment of conviction dated December 18, 2021 and the order of sentence dated December 22, 2021 being CRA (DB) 2 of 2022 and CRA (DB) 18 of 2023.

4. The impugned judgment of conviction and the order of sentence was passed in Sessions Trial 21(November) 2007 arising out of G.R. Case No.275/04, Daspur P.S. Case No.118/04.

5. The records demonstrate that the examination of one of the appellants in CRA (DB) 2 of 2022 under Section 313 of the Code of Criminal Procedure contains no answers in respect of such appellant although, the examination under Section 313 of the Code of Criminal Procedure contains the signature of such appellant and the Judicial Officer examining the appellant.

6. Learned Advocate appearing for the appellants in CRM (DB) 2 of 2022 relies upon (2015) 1 Supreme Court Cases 496 (Nar Singh vs. State of Haryana) and in particular on paragraphs 30 and 35 and submits the Court should remand the appeal for recording of the statements under Section 313 of the Code of Criminal Procedure of the appellants. He submits that, in the event, the appeal Court is pleased to examine such appellant under Section 313 of the Code of Criminal Procedure at the appeal stage then the appellants would lose one forum. The same would be prejudicial to the appellants. He also submits that, his clients were on bail till the delivery of the impugned judgment of conviction and the order of sentence. Therefore, in fairness of things, his clients

should be enlarged on bail and the appeal be remanded for fresh examination under Section 313 of the Code of Criminal Procedure by the Trial Court.

7. Learned Advocate appearing for the appellants in CRM (DB) 18 of 2023 submits that, his clients are on bail.

8. The impugned judgment of conviction dated December 18, 2021 refers to the examination of the accused under Section 313 of the Code of Criminal Procedure. It convicts the appellants in CRM (DB) 2 of 2022 under Sections 326/304 Part-I of the Indian Penal Code, 1860. It convicts the appellants of CRM (DB) 18 of 2023 under Sections 326/34 and Section 304 Part-I/34 of the Indian Penal Code, 1860.

9. The records produced before the Court demonstrates that although, Nanda Samanta one of the appellants in CRM (DB) 2 of 2022 was examined under Section 313 of the Code of Criminal Procedure, the answers given by him were not recorded by the learned Trial Judge.

10. ***Nar Singh (supra)*** is of the following view:

“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 summarized as under:

30.1. Whenever a plea of non-compliance with Section 313 CrPC 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.

30.2. 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.

30.3. If the appellate court is of the opinion that non-compliance 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.

30.4. 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.”

11. In **Nar Singh (supra)**, the Court remitted the matter for recording the statement of the accused under Section 313 of the Code of Criminal Procedure afresh.

12. In the facts and circumstances of the present case, there is a possibility of the appellants being prejudiced in the event the appeal court examines the accused under Section 313 of the Code of Criminal Procedure. There is a possibility of the accused losing one forum of appeal.

13. In such circumstances, we adopt the procedure of **Nar Singh (supra)** and remit the appeal to the learned Trial Court for the purpose of examining Nanda Samanta @ Nanda Lal Samanta under Section 313 of the Code of Criminal Procedure afresh.

14. Consequently, the impugned judgment of conviction and order of sentence as against the all appellants are set aside. On remand, the trial court will proceed from examining Nanda Samanta under Section 313 of the Code of Criminal Procedure, other accuseds being already examined.

15. The Court is informed that the appellants in CRA (DB) 18 of 2023 are on bail. Such bail will continue for a period of four weeks from date or until further orders passed by the trial court, whichever is earlier.

16. Since we are setting aside the impugned judgment of conviction and/or the order of sentence, it would be appropriate to grant bail to the appellants of CRA (DB) 2 of 2022 also. The Court is informed that such appellants were on bail till the impugned judgment of conviction.

17. Bail was granted to the appellants in CRA (DB) 2 of 2022 will continue for a period of four weeks or until further orders of the learned Trial Judge whichever is earlier.

18. **C.R.M. (DB) 2 OF 2022 and C.R.M. (DB) 18 OF 2023** are disposed of accordingly.

(Debangsu Basak,J.)

19. I Agree.

(Md. Shabbar Rashidi, J.)