SUPREME COURT OF INDIA

Basavaraj R. Patil

Vs.

State of Karnataka

Crl.A.No.869 of 2000

(K. T. Thomas, R. P. Sethi and S.N. Variava JJ.)

11.10.2000

ORDER

K.T. THOMAS, J.

1. Leave granted.

2. When a criminal court completes prosecution evidence (other than in summons cases) is it indispensably mandatory that the accused himself should be questioned? Can not the court allow the advocate to answer such questions on behalf of the accused at least in some exigent conditions? A two Judge Bench of this Court has held in Usha K Pillai v. Raj K. Srinivas and Ors. 1993(3) SCR 467 that there is no alternative to it permissible under law. When such an issue arose in this case before this Court, a Bench of two Judges made a reference to a larger Bench for reconsideration of the legal position stated in Usha K. Pillai (supra).

2. The aforesaid question arose in this case from the following factual background: First appellant -- a software engineer (now stationed in USA) is the husband of second respondent Ms. Arundathi. Their marriage was solemnised in November 1992 and a female child was born to them. But eventually their connubial life passed through bad weather and the situation reached a stage when Arundathi moved a Judicial Magistrate of First Class for maintenance allowance from her husband. An order in her favour was passed by the said magistrate under Section 125 of the CrPC (for short "the Code").

3. On 10-3-1993, Arundathi lodged a complaint with the police alleging, inter alia, that her husband and his sister (Kumari Jaya-second appellant) and their parents had ill-treated Arundathi for not bringing more dowry; and that she was pestered with persistent demand for more amount of dowry. The police conducted investigation on the said complaint and laid a charge-sheet against both the appellants and their parents. The trial court discharged the mother of the appellants at the initial stage itself and framed a charge against the appellants and their father for offences under Section 3 and 4 of the Dowry Prohibition Act and also under Section 498-A of the Indian Penal Code.

4. Prosecution examined five witnesses and closed the evidence. When the next stage for examination of the accused under Section 313 of the Code reached the trial court passed the following proceedings:

Evidence closed and statement under Section 313 Cr.P.C. was kept ready to give opportunity to the accused as prescribed under Section 313 Cr.P.C. Statement of A-2 father recorded who denied every circumstance, but did not add any further statement. The counsel for the accused filed application for dispensing with the questioning of A-1 & A-4. As A-1 is in America and A-4 is a student studying in Gadag, the counsel has endorsed on their statement that A-1 and A-4 have nothing to say by way of their statements. Considering the reality, A-1 has to come from America the case will unnecessarily be delayed. Hence, on the said endorsement the counsel for the accused was given the opportunity to make statement for A-1 and A-4 and their physical presence is dispensed with. The case is posted for argument.

5. The trial magistrate thereafter proceeded to hear the arguments and finally passed a judgment acquitting all the accused of the offence charged. Arundathi then filed a revision before the High Court challenging the aforesaid order of the acquittal. A Single Judge of the High Court heard the revision and learned Judge found that as per the decision of this Court in Usha K. Pillai: 1993CriLJ2669 , trial court has no other alternative and has no discretion to dispense with the examination of the accused personally under Section 313 of the Code. Hence the learned Single Judge set aside the order of acquittal passed by the trial court and remitted the case to the trial court with a direction to dispose it of afresh after examining the three accused under Section 313 of the Code.

6. The father of the appellants passed away in the meanwhile. Hence this appeal was filed by the remaining accused who are the husband and sister-in-law of Arundathi. One of the contentions raised by the appellants is that if the court did not put questions under Section 313 of the Code there is no reason for the complainant to be aggrieved thereof because the prejudice can be caused only to the accused due to non-compliance with the said provision. Next contention is more important and that was pressed into service here, that no criminal court can be rendered absolutely powerless to deal with a situation like this, i.e. if the accused is in such a far away country and when he has to incur a whopping expenditure and undertake a tedious long distance journey solely for the purpose of answering the court questions he himself pleaded that his counsel may be allowed to answer such questions on his behalf.

7. We are not inclined to deal with the first contention in this case because the High Court interfered with the order in exercise of its revisional jurisdiction. Such jurisdiction can be invoked even suo motu and therefore it is immaterial whether the power of the High Court was exercised on a motion made by the complainant. Now, for dealing with the second contention we may extract Section 313 of the Code:

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 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 question, 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, to trial for, any other offence which such answers may tend to show he has committed.

8. The forerunner of the said provision in the CrPC 1898 (for short "the old Code") was Section 342 therein. It was worded thus:

342. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

(3) 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.

(4) No oath shall be administered to the accused when he is examined under Sub-section (1).

9. Dealing with the position as the Section remained in the original from under the old Code, a three Judge Bench of this Court, (Fazal AH, Mahajan and Bose, JJ) interpreted the section in Hate Singh Bhagat Singh v. State of Madhya Bharat: AIR1953SC468 . that "the statements of the accused recorded by committal magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box; they have to be received in evidence and treated as evidence and be duly considered at the trial."

10. Parliament, thereafter, introduced Section 342A in the old Code (which corresponds to Section 315 of the present Code) by which permission is given to an accused to offer himself to be examined as a witness if he so chose.

11. In Bibhuti Bhusan Das Gupta and Anr. v. State of West Bengal: 1969CriLJ654 , another three Judge Bench (Sikri, Bachawat and Hegde, JJ) dealing with the combined operation of Section 342 and 342A of the old Code made the following observations:

Under Section 342A only the accused can given evidence in person and his pleader's evidence cannot be treated as his. The answers of the accused under s.342 is intended to be a substitute for the evidence which he can give as a witness under Section 342A. The privilege and the duty of

answering questions under Section 342 can not be delegated to a pleader. No doubt the form of the summons show that the pleader may answer the charges against the accused, but in so answering the charges, he cannot do what only the accused can do personally. The pleader may be permitted to represent the accused while the prosecution evidence is being taken. But at the close of the prosecution evidence the accused must be questioned and his pleader cannot be examined in his place.

12. The Law Commission in its 41st Report considered the aforesaid decisions and also various other points of view highlighted by legal men and then made the report after reaching the conclusion that --

(i) In summons cases where the personal attendance of the accused has been dispensed with, either under Section 205 or under Section 540A, the court should have a power to dispense with his examination; and

(ii) In other cases, even where his personal attendance has been dispensed with, the accused should be examined personally.

13. The said recommendation has been followed up by the Parliament and Section 313 of the Code, as is presently worded, is the result of it. It would appear prima facie that the court has discretion to dispense with the physical presence of an accused during such questioning only in summons cases and in all other cases it is incumbent on the Court to question the accused personally after closing prosecution evidence. Nonetheless, the Law Commission was conscious that the rule may have to be relaxed eventually, particularly when there is improvement in literacy and legal aid facilities in the country. This thinking can be discerned from the following suggestion made by the Law Commission in the same Report:

We have, after considering the various aspects of the matter as summarized above, come to the conclusion that Section 342 should not be deleted. In our opinion, he stage has not yet come for its being removed from the statute book. With further increase in literacy and with better facilities for legal aid, it may be possible to take that step in the future.

14. The position has to be considered in the present set up, particularly after the lapse of more than a quarter of a century through which period revolutionary changes in the technology of communication and transmission have taken place, thanks to the advent of computerisation. There is marked improvement in the facilities for legal aid in the country during the preceding twenty-five years. Hence a fresh look can be made now. We are mindful of the fact that a two Judge Bench in Usha K. Pillai (supra) has found that the examination of an accused personally can be dispensed with only in summons case. Their Lordships were considering a case where the offence involved was Section 363 of the IPC. The two Judge Bench held thus: "A warrant case is defined as one relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Since an offence under Section 363 IPC is punishable with imprisonment for a term exceeding two years it is a warrant-case and not a summons-case. Therefore, even in cases where the court has dispensed with the personal attendance of the accused under Section 205(1) or Section 317 of the Code, the court cannot dispense with the examination of the accused under

Clause (b) of Section 313 of the Code because such examination is mandatory."

15. Contextually we cannot bypass the decision of a three Judge Bench of this Court in Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra and Anr. : 1973CriLJ1783 as the Bench has widened the sweep of the provision concerning examination of the accused after closing prosecution evidence. Learned Judges in that case were considering the fallout of omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence. The three Judge Bench made the following observations therein:

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, where such an omission had 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: [1963]3SCR489 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.

16. The above approach shows that some dilution of the rigor of the provision can be made even in the light of a contention raised by the accused that non questioning him on a vital circumstance by the trial court has . caused prejudice to him. The explanation offered by the counsel of the accused at the appellate stage was held to be a sufficient substitute for the answers given by the accused himself.

17. 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: [1963]3SCR489 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 enquire 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."

18. 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.

19. 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 Sub-section (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 of 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 circumstances about which the accused was not asked to explain cannot be used against him.

20. But the situation to be considered now is whether, with the revolutionary change in technology of communication and transmission and the marked improvement in facilities for legal aid in the country, is it necessary that in all cases the accused must answer by personally remaining present in Court. We clarify that this is the requirement and would be the general rule. However, if remaining present involves undue hardship and large expense, could be Court not alleviate the difficulties. If the court holds the view that the situation in which he made such a plea is genuine, should the court say that he has no escape but he must undergo all the tribulations and hardships and answer such questions personally presenting himself in court. If there are other accused in the same case, and the court has already completed their questioning, should they too wait for long without their case reaching finality, or without (sic) registering further progress of the trial until their co-accused is able to attend the court personally and answer the court questions? Why should a criminal court be rendered helpless in such a situation?

21. The one category of offences which is specifically exempted from the rigour of Section 313(1)(b) of the Code is "Summons cases." It must be remembered that every case in which the offence triable is punishable with imprisonment for a term not exceeding two years is a "summons case." Thus, all other offences generally belong to a different category altogether among which are included offences punishable with varying sentences from imprisonment for three years up to imprisonment for life and even right up to death penalty. Hence there are several offences in that category which are far less serious in gravity compared with grave and very grave offences. Even in cases involving (sic) serious offences, can not the court extend a helping hand to an accused who is placed in a predicament deserving such a help?

22. Section 243(1) of the Code enables the accused, who is involved in the trial of warrant case instituted on police report, to put in any written statement. When any such statement is filed the Court is obliged to make it part of the record of the case. Even if such case is not instituted on police report the accused has the same right (vide Section 247). Even the accused involved in offences exclusively triable by the Court of sessions can also exercise such a right to put in written statements [Section 233(2) of the Code]. It is common knowledge that most of such written statements, if not all, are prepared by the counsel of the accused. If such written statements can be treated as statements directly emanating from the accused, hook, line and sinker, why not the answers given by him in the manner set out hereinafter, in special contingencies, be afforded the same worth.

23. We think that a pragmatic and humanistic approach is warranted in regard to such special exigencies. The word "shall" in Clause (b) to Section 313(1) of the Code is to be interpreted as obligatory on the Court and it should be complied with when it is for the benefit of the accused. But if it works to his great prejudice and disadvantage the Court should, in appropriate cases, e.g., if the accused satisfies the court that he is unable to reach the venue of the court, except by bearing huge expenditure or that he is unable to travel the long journey due to physical incapacity or some such other hardship relieve him of such hardship and at the same time adopt a measure to comply with

the requirements in Section 313 of the Code in a substantial manner. How this could be achieved?

24. If the accused (who is already exempted from personally appearing in the Court) makes an application to the court praying that he may be allowed to answer the questions without making his physical presence in court on account of justifying exigency the court can pass appropriate orders thereon, provided such application is accompanied by an affidavit sworn to by the accused himself containing the following matters: (a) A narration of facts to satisfy the court of his real difficulties to be physically present in court for giving such answers, (b) An assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning, (c) An undertaking that he would not raise any grievance on that score at any stage of the case.

25. If the court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the court to supply the questionnaire to his advocate (containing the questions which the court might put to him under Section 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire [as a matter of precaution the Court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for answers]. If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the court, he shall forfeit his right to seek personal exemption from court during such questioning.

26. In our opinion, if the above course is adopted in exceptional exigency it would not violate the legislative intent envisaged in Section 313 of the Code.

27. In the present case the trial court can pass appropriate orders if an application is made by the accused relating to the examination under Section 313 of the Code, in the light of the legal principles stated above. This criminal appeal is disposed of accordingly.

R.P. SETHI, J.

28. I have perused the judgment of Brother Thomas, J. in depth but regret my inability to agree with it.

29. Section 313 of the CrPC, 1973 corresponds to Section 342 of the Old Code. The Section casts a duty upon the court to question the accused after the witnesses of the prosecution have been examined and before he is called upon for his evidence. Exception is, however, made in a summons case where the personal appearance of the accused has been dispensed with by the Court. The object of the Section is "for the purposes of enabling the accused to explain any circumstances appearing in the evidence against him."

30. The Section is based upon the maxim of audi alteram partem which has been acknowledged as the cardinal principle of natural justice. It is a principle of English Law that the whole burden of proving the evidence is on the prosecution which means the accused can stand-by and do nothing as he is protected from all judicial questioning at the trial. The present section makes a departure from the English Law and allows the court to put questions to the accused and "the answers given by him 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". Examination under the Section is not intended to be an idle formality. It has to be carried out in the interests of justice and fair play to the accused. In Ajmer Singh v. State of Punjab: 1953CriLJ521 this Court observed that it was not a sufficient compliance with the Section, to generally ask the accused that, "having heard the prosecution evidence what he has to say about it". The accused must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and the questions put to him must be fair and he couched in a form which even an ignorant or illiterate person may be able to appreciate and understand. Elaborating the scope of Section 342 of the Old Code this Court in Rama Shankar Singh and Ors. v. State of West Bengal: AIR1962SC1239 :

Section 342 of the CrPC by the first Sub-section provides, in so far as it is material: "For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court... shall... question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence." Duty is thereby imposed upto the Court to question the accused generally in a cases after the witnesses for the prosecution have been examined to enable the accused to explain any circumstance appearing against him. This is a necessary corollary of the presumption of innocence on which our criminal jurisprudence is founded. The object of the section is to afford to the accused an opportunity of showing that the circumstances relied upon by the prosecution which may be prima facie against him, is not true or is consistent with his innocence. The opportunity must be real and adequate. Questions must be so framed as to give the accused clear notice of the circumstances relied upon by the prosecution, and must give him an opportunity to render such explanation as he can of that circumstance. Each question must be so framed that the accused may be able to understand it and to appreciate what use the prosecution desires to make of the evidence against him. Examination of the accused under Section 342 is not intended to be an idle formality, it has to be carried out in the interest of justice and fair play to the accused: by a slipshod examination which is the result of imperfect appreciation of the evidence, idleness or negligence the position of the accused cannot be permitted to be made more difficult than what it is in a trial for an offence.

31. The provisions of Section 313 are for the benefit of the accused and for enabling him to obtain the full benefit under the Section it is imperative that he must be examined by the Court after the witnesses of the prosecution have been examined and before he is called upon the enter upon his defence (State of Maharashtra v. Lakshman Jairam: AIR1962SC1204 . It has to be remembered that in our country it often happens that an accused is tried in a language which he understands but indifferently well, and for that reason as well as for other equally grave reasons the intention of the statute is that at a certain stage in the proceedings, the court itself shall put aside all counsel, all pleaders, all witnesses, all representatives, and shall call upon each individual accused with the authority of the court's own voice to take advantage of the opportunity which then arises to state in his own way anything which he may desire to state. The importance of the statement of the accused under the Section was highlighted by this Court in Hate Singh Bhagat Ram v. State of Madhya Bharat: AIR1953SC468 where it was pointed out that the statements of the accused recorded under the section are intended in India to take the place of what in England and in American he would be free to state in his own way in the witness-box and that they have to be received in evidence and

treated as evidence and be duly considered at the trial. The statement recorded under the Section can be taken into consideration in determining the innocence or the guilt of the accused. The accused is obliged to explain each and every circumstances appearing in the evidence against him. (State of Maharashtra v. Laxman Jairam: AIR1962SC1204).

32. The object of the section would be defeated if, instead of the accused, his lawyer replies the question with his invented ingenuity. The imaginative suggestions of the counsel cannot be a substitute for the taking of the statement from the accused. The Section enables a judge to ascertain from time to time, form the accused as to what explanation he may desire to offer regarding any fact stated by a witness against him. It has to be noticed that the non compliance of the provisions of Section is not a mere irregularity. Omission to put questions to the accused on specific points vitiates the trial. Omission to put specific points appearing against the accused apparently occasions prejudice to him which cannot be rectified under Section 465 of the CrPC. It is true that all omissions on some points to be put to the accused under Section 313 would not vitiate the trial but the failure to put vital points and circumstances is sure to occasion a miscarriage of justice and thus vitiates the trial to that extent. This Court in S. Harnam Singh v. The State (Delhi Admn.): 1976CriLJ913 highlighting the importance of Section 313 of the Cr.P.C., (Section 342 of Old Code) and the obligations of the Court in that regard, held:

Section 342 of the CrPC, 1898 casts a duty on the court to put, at any enquiry or trial, questions to the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstances appearing in evidence against the accused is required to be put to him specifically, distinctly and separately. Failure to do so amounts to a serious irregularity vitiating the trial if it is shown to have prejudiced the accused. If the irregularity does not, in fact, occasion a failure of justice, it is curable under Section 537 of the Code.

33. The question as to whether it is obligatory for the court to examine the accused himself and not his counsel under the Sections has been the subject of controversy between the various High Courts in the country which is reflected in the following judgments:

66(1988)CLT148: AIR1954All231 ; : AIR1953All781 ; : AIR1934All693 ; : 1969CriLJ654 ;; : AIR1959All623 ; AIR1959All518 ;: AIR1968Delhi202 :: AIR1968Delhi202 .

34. The conflict of judicial pronouncements by various High Courts was settled and set at rest by a three Judges Bench of this Court in Bibhuti Bhushan Das Gupta v. State of "West Bengal: 1969CriLJ654 . The Court noted that the question of the pleader representing the accused for purposes of Section 342 (Old Code) and his examination in place of the accused, has been the subject of sharp conflict of judicial opinion in the country. Most of the decisions, upto 1962, were based upon the majority view of the three Judge Bench judgment of Calcutta High Court in Prova Devi v. Mrs. Fernades: AIR1962Cal203 . After a full examination of all the decided cases on the subject, this Court agreed with the minority view expressed in Preva Devi's case (supra). In this regard it was held:

The main arguments in favour of the view that the examination of the pleader is sufficient compliance with the provisions of Section 342 may be summarized as follows. The pleader

authorised to appear on behalf of the accused can do all acts which the accused can do. The representation of the pleader extends throughout the trial except as provided in Section 366(2). The form of the summons shows that the pleader may answer to charge on behalf of the accused at every stage of the proceedings. He may even pleads guilty under Sections 242, 243, 151A, 255 and 271. There is no reason why he cannot be examined under Section 342. That section is subject to and controlled by Section 205. The accused can refuse to answer questions under Section 342 and there is no point in insisting on his personal attendance if he has no intention to answer them. Accused persons will suffer harassment and inconvenience if the magistrates have no discretion to dispense with their personal examination under Section 342. Having considered all these arguments we are not convinced that pleader can be examined in place of the accused under Section 342.

Section 342 reads as follows:

342 (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiring or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any may draw such inference from such refusal or answers as sit thinks just.

(3) 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.

(4) No oath shall be administered to the accused when he is examined under Sub-section.

Sub-section (1) of Section 342 consists of two parts, the first part gives a discretion to the court to question the accused at any stage of an inquiry or trial without previously warning him. Under the second part the court is required to question him generally on the case after the witnesses for the prosecution have been examined and before he is called for his defence, the second part is mandatory and imposes upon the court a duty to examine the accused at the close of the prosecution case in order to give him an opportunity to explain any circumstances appearing against him in the evidence and to say in his defence what he wants to say in his own words. He is not bound to answer the questions but if he refuses to answer or gives false answers, the consequences may be serious, for under Sub-section (2) the answers as it thinks fit. Under Sub-section (3) the answers given by the accused may be taken into consideration in the inquiry or trial. His statement is material upon which the Court may act, and which may prove his innocence, (see State of Maharashtra v. Laxman Jairam). Under Sub-section (4) on oath is administered to him. The reason is that when he is examined under Section 342 he is not a witness. Before Section 342A was enacted, he was not a competent witness for the defence. His statement under Section 342 was intended to take the place of what he could say in his own way in the witness box. (see Hate Singh v. State of Madhya Bharat). Under Section 342A he is not a competent witness. But the provisions of Section 342A does not affect the value of his examination under Section 342. Under sub section (3) of S, 342 his answers may be put in evidence for of against him in other inquires or trials for other offences. For instance if in a trial for murder he says that the concealed the dead body and did

not kill the victim his statement may be used as evidence against him in a subsequent trial for an offence under Section 201.

The privilege of making a statement under Section 342 is personal to the accused. The clear intention of the Section is that only he and nobody else can be examined under it. This conclusion is reinforced if we look at Section 364. The whole of his examination including every question put to him and every answer given by him must be recorded in full and interpreted to him in a language which he understands, and he is at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth the record has to be signed by him and the Magistrate. The idea that the pleader can be examined on his behalf is foreign to the language of Sections. 342 and 364. It was well observed by Rankin J. in Promotha Nath v. Emperor: AIR1923Cal470 that:

... the intention of the statutes is that at a certain stage in the case, the court itself shall put aside all counsel, all pleaders, all witnesses, all representatives and shall call upon an individual accused with the authority of the Courts own voice, to take advantage of the opportunity which then arises to state in his own way anything which he may be desirous of stating... what is necessary is that the accused shall be brought face to face solemnly with an opportunity given to him to make a statement from his place in the dock in order that the Court may have the advantage of hearing his defence is he is willing to make one with his own lips.

The proposition that a pleader authorised to appear on behalf of the accused can do all acts which the accused himself can do at the trial is too wide. If the statue gives the accused a personal privilege or imposes upon him a personal duty, only he can exercise the privilege or perform the duty. Thus under Section 366(2) the accused must hear the judgment in person unless the sentence is one of fine only or unless he is acquitted. Under Section 342A only the accused can give evidence in person and his pleader's evidence cannot be treated as his. The answers of the accused under Section 342 is intended to be a substitute for the evidence which he can give as a witness under Section 342A. The privilege and the duty of answering questions under Section 342 cannot be delegated to a pleader. No doubt the from of the summons show that the pleader may answer the charges against the accused, but in so answering the charges, he cannot do what only the accused can do personally. The pleader may be permitted to represent the accused while the prosecution evidence is being taken. But at the close of the prosecution evidence the accused must be questioned and his pleader cannot be examined in his place.

Section 205 and 540A do not expressly mention that the pleader cannot be examined under Section 342 but this does not lead to the inference that the pleader can be so examined. On the other hand Sections. 353, 360, 361 and 366 expressly provide that the pleader may represent the accused for certain purposes, but from this fact alone no inference can be drawn that the pleader cannot represent the accused for purposes of Section 342 or other sections. It is from the scheme, purpose and language of Section 342 that we are driven to the conclusion that the examination under the section must be of the accused persons and not his pleader.

In Dorabshah v. Emperor the Bombay High Court held that where the accused is permitted to appear by his pleader under Sections 205 the pleader may on his behalf be examined and may plea guilty under Sections. 242 and 243. Whether the Court can act upon an admission of guilt by the pleader

under Sections. 242, 243, 251A, 255 and 271 does not directly arise in this case and we express no opinion on it. It is sufficient to say that the language of those sections and the effect of admissions under them are entirely different.

We are not impressed with the argument that an accused person will suffer inconvenience and harassment if the Court cannot dispense with his attendance for purposes of Section 342. The examination under the section becomes necessary when at the close of the prosecution evidence the magistrate finds that there are incriminating circumstances requiring an explanation by the accused. If there is no evidence implicating the accused no explanation from him is necessary and he need not be examined under Section 342. If there is evidence implicating him, it is in his interest that he should be examined personally.

There are exceptional cases when an examination of the accused personally under Section 342 is not necessary or possible. Where the accused is a company or other juridical person it cannot be examined personally. It may be that the Court may then examine a director or some other agent on its behalf (see Express Diary Ltd. v. Corporation of Calcutta ILR 1959 Cal. 622. Exceptional cases apart, only the accused in person can be examined under Section 342.

35. The Law Commission of India in its 41st Report submitted in September, 1969 dealt in detail with the history, purpose and object of the then Section 342 of the Code and after noticing the law in England, on the subject, felt the necessity by realising the importance of examination of the accused by the Criminal Courts in the Country, observed:

Furthermore, differing form civil cases in this respect, the parties in criminal cases are not equally placed. The whole machinery of the States is against the accused, the accused has no investigating machinery, no power of search and no power of questioning, which the prosecution has. If he puts forth a definite case, he may not in many cases be able to prove it. This is also the reason why in civil cases preponderance of evidence is sufficient, but in criminal cases a shadow of doubt, operates in favour of the accused. Even where the State provides counsel for the accused, experience shows that the Court has to guide counsel who is usually a junior member of the Bar. In this state of affairs, examination of the accused under Section 342 appears to be essential proceeding. The mode of applying the section would, no doubt, vary with the knowledge intelligence and experience of the Judge. If in a particular case the Judge exceeds the permissible limit and subjects the accused to an inquisitorial examination the superior courts will correct the error. The words "question him generally" in the Section are clearly intended to prevent unfair interrogation of the accused.

36. Dealing with the question of examination of pleader in places of accused, noticing the conflicting judgments of various High Courts and the final verdict of this Court in Bibhuti Bhushan Das Gupta's case (supra), the Commission opined:

Where the Court has dispensed with the personal attendance of the accused, is it necessary that his pleader should be examine under Section 342, or should such examination he of the accused himself? There is also a controversy on this point, and different views have been expressed both as to what the law is and as to what it should be. One view is that the accused himself should he

examined in all cases, and even where his personal attendance has been dispensed with at other hearings, the court must require him to be present for examination under Section 342. Another view is that where it is not a serious case and personal attendance has been dispensed with, the court may also dispense with the examination of the accused or of his pleader. It is against the intendment of Section 342 to examine the pleader instead of the accused and such examination serves no useful purpose.

On the basis of the judgment of this court and the recommendations of the Law Commission, Section 313 of the Code was enacted by the legislature mandating upon the criminal courts to necessarily examine the accused and not their pleaders, after the witnesses of the prosecution have been examined and before the accused entered upon his defence.

37. Dealing with the substituted Section 313 of the Code, brought on the statute book on the best of the recommendations of the Report of the Law Commission, this Court again in Usha K. Filial v. Raj K. Srinvas: 1993CriLJ2669 unambiguously held:

This sub section was introduced in its present form pursuant to the recommendations made in the 41st Report of the Law Commission. It now begins with the Words in every inquiry or trial' to set at rest any doubt in regard to its application to summons cases. The old sub section (1) of Section 342 has now been divided into two Clauses (a) and (b). Clause (a) uses the expression 'may' to indicate that the matter is left to the discretion of the Court to out questions to the accused at any stage of the inquiry or trial whereas Clause (b) uses the expression 'shall' to convey that it is mandatory for the court to examine the accused after the witnesses for the prosecution have been examined before he is called on for his defence. The proviso is a new provision which came to be added to sub section (1) with a view to enabling the Court to dispense with the examination of the accused under Clause (b) in a summons case if the Court has already dispensed with his personal attendance at an earlier point of time. Therefore, if the Court on completion of the prosecution evidence finds that there are certain circumstances appearing in the evidence against the accused, the Court is obliged by Clause (b) to question the accused before he is called on for his defence. This provision is general in nature and applies to all inquiries and trials under the Code. The purpose of the said provision is to give the accused an opportunity to explain the circumstances appearing against him in evidence tendered by the prosecution so that the said explanation can be weighed vis-a-vis the prosecution evidence before the Court reaches its conclusion in that behalf. It is thus clear on a plain reading of Section 313(1) of the Code that the Court is empowered by Clause (a) to question the accused at any stage of the inquiry or trial while Clause (b) obligates the Court to question the accused before he enters his defence on any circumstances appearing in the prosecution evidence against him. The Section incorporates a rule of adui alteram partem and is actually intended for the benefit of the accused person." The argument that insisting the accused to appear before the court for the purposes of his statement under Section 313 of the Code would cause him inconvenience and harassment was not considered as valid for making an exception to the general rule to his personal examination. It was found that the examination under the Section becomes necessary, only at the close of the prosecution evidence, when the magistrate finds that there are incriminating circumstances requiring an explanation by the accused.

38. The scheme of the Code shows that after the evidence of the prosecution is closed, the local

inspection, if any, held and the court witnesses in terms of Section 311 are examined, the Court would, then and then alone, direct the examination of the accused under Section 313, upon being satisfied that he was required to personally explain the circumstance appearing in the evidence against him. Such a recourse to examine the accused at this stage cannot in any way termed to be causing him inconvenience or occasioning any harassment. Otherwise in the absence of such examination, and without leading defence evidence, the accused in all probability is likely to be convicted and sentenced for the commission of the offence with which he has been charged and tried by the magistrate or the Court. In that event permitting the examination of the accused personally, is actually for his benefit. There are cases where the accused during the course of his examination under this Section, may place on record any clinching evidence which may not even require him to produce any defence evidence. The accused when personally appearing can also be in a bargaining position by persuading the Court to take a lenient view despite proof of material circumstances against him. Such a statement by which the accused may admit, any of the allegations or circumstances appearing against him, cannot be made by his pleader. Any such statement made by his counsel cannot bind the accused. The conviction or sentence passed against the accused, without offering him an opportunity of explaining the circumstances would not only violate the maxim of audi alteram pattern but also be contrary to the concept of the "due process of law" recognised and accepted by all civilised nations.

39. Looking at the history of the section, the various conflicting pronouncements of the High Courts in the country and authoritative pronouncements of this Court by Three Judge Bench, the Law Commission recommended the necessity of examination of the accused personally. The recommendation of the Law Commission were accepted by the legislature. The incorporation of the provision necessitating the examination of the accused personally, undoubtedly is the reflection of a conscious decision, which the legislature took in its wisdom.

40. There is no dispute to the settled legal position that the Courts only interpret the law and do not legislate it. Where the legislature's intention is clear, there is no scope of reading between the lines or putting an interpretation contrary to the intention of the legislature. Adding to or providing for ancillary measures can be resorted to by the Courts only in grey areas and not in the covered fields. If no its true construction statute leads to anamolous results, the courts have no option but to give effect to it and leave it to the legislature to amend or alter the law. Any other view, even based on howsoever high, cherished or pious desire cannot be the substitute of specific legislative indictment.

41. This Court in Anandji Hairidas and Co. v. Engg. Mazdoor Sangh: (1975)IILLJ12SC held:

As a general principle of interpretation where the words of a statute are plain, precise and unambiguous the intention of the Legislature is to be gathered from the language of the statute itself and no external evidence such as parliamentary debates, reports of the committees of the Legislature or even the statement made by the Minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. It is only where a statute is not exhaustive or where its language is ambiguous uncertain, clouded or susceptible of more than one meaning or shades of meaning that external evidence as to the evils, if any, which the statute was intended to remedy, or of the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the Legislature had in view in using the words in question.

In C.S.T. v. Parson Tools and Plants: [1975]3SCR743 it was held:

An enactment being the will of the Legislature, the paramount rule of interpretation which overrides all others, is that a statute is to be expounded "according to the intent of them that made it.

The will of the Legislature is the supreme law of the land and demands perfect obedience". "Judicial power is never exercised" said Marshall, C.J. of the United States, "for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the Legislature; or in other words to the will of the law". "If the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so "would be entrenching upon the preserves of Legislature" the primary function of a court of law being jus decree and not just dare.

Again in S. Harnam Singh v. Shivmni: [1981]2SCR962 , this Court held "that the intention and the meaning of the statute is to be sought in the words used in the statute itself which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of the legislature. It is the duty of the Court to give fair and full effect to statute which is plain and unambiguous without regard to the particular consequence in a special case.

42. In Bank of India v. Vijay Transport: [1988]1SCR961 it was held "that interpreting the words of the provisions of a statute, the setting in which such words are placed may be taken into consideration, but that does not mean that even though the words which are to be interpreted convey a clear meaning, still a different interpretation or meaning should be given to them because of the setting."

43. I am, therefore, convinced that Section 313 of the Criminal Procedure Code does not envisage the examination bf the counsel, in place of the accused and the law laid down by this court by three Judge Bench in 1969 and later on followed in 1973, does not require any reconsideration, particularly by a Bench of the same strength and of a coordinate jurisdiction.

44. In the instant case, the appellants were tried for the offence punishable under Section 498A of Indian Penal Code read with Sections 3 and 4 of Dowry Prohibition Act. After the trial the Court convicted the appellants for reasons detailed in its order dated 23rd February 1996. Feeling aggrieved by the order of acquittal, the respondent No. 2 herein who was the informant in the case filed the criminal revision petition in the High Court. Her main contention was that the offence with which the appellants herein were charged, were triable as warrant cases and that the trial magistrate committed an error of law, by not personally examining accused No. 1 and 4 in terms of Section 313 of the Code. The factual position is that the counsel of the Code. The factual position is that the counsel of the aforesaid accused persons had filed an application seeking exemption of their personal appearance in the Court and to reply questions put under Section 313 of the Code, on their behalf. Relying upon the judgment of this Court, in AIR 1993 SC 2091, the High Court set aside the order of the acquittal and held:

In this case also, A-1 is stated to be residing in America and admitted A-4 was residing at Gadag

and there is no materials to show that A-1 was residing in America even during the relevant time. There was no impediment for the accused to appear before the Court even otherwise also as held by Their Lordships in a warrant case, there is no discretion for the Court to dispense with the examination of the accused. Under that circumstances, this revision petition deserves to be allowed.

In the result, therefore, this revision petition is allowed and the impugned order is set aside. The matter now stands remitted to the Court below with a direction to restore C.C. 22973/1993 on the file of the 10th Addl. C.M.M., Bangalore. The learned Magistrate is directed to examine A-1, and A-4 the accused to record 313 statement and proceed to pass the order in accordance with law.

Though, strictly speaking, the High Court took a view which is in confirmity with the law laid down by this Court yet it ignored the basic concept and object of Section 313, admittedly enacted for the benefit of the accused affording him the opportunity to explain the circumstances appearing in the evidence against him. The mandate of Section 313 is imperative with no exception. However, the violation of its compliance can be objected to only by the accused for whose benefit the Section has been enacted. The complainant or the prosecution cannot be permitted to allow the illegality being committed and perpetuated and after the enquiry or trial results in acquittal of the accused, to complain on the basis of the alleged violation. There is no allegation nor could there be any that the personal non-examination of the accused persons had, in any way, adversely affected the prosecution. Section 465 of the Code could not be relied upon by the prosecution for the purposes of assailing the judgment of acquittal after the completion of the trial. Despite laying down the correct position of law the High Court appears to be not justified in setting aside the order of acquittal at the instance of the informant of the crime. In the absence of any complaint by the accused for their non examination under Section 313 of the Code, there was no justification to remand the case only for the purposes of examining the concerned accused personally and to pass fresh-orders on merits in accordance with law.