

1922

ANANDA
CHANDRA
CHOCKER-
BETTYBRAJA LAL
SINGH.

be necessary to carry out the terms of this decree. Each party will pay his own costs both here and in the Court below.

B. M. S.

Appeal allowed in part.

CRIMINAL REVISION.

Before Newbould and Suhrawardy JJ.

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Nov. 17.

JUMMON CHRISTIAN

v.

EMPEROR.*

Accused—Examination of the accused after the examination-in-chief of the prosecution witnesses, and before their cross-examination and re-examination—Presidency Magistrate—Warrant Case—Legality of trial—Criminal Procedure Code (Act V of 1898), s. 342.

The examination of the accused, by a Presidency Magistrate, only after the examination-in-chief of the prosecution witnesses, and before the close of their cross-examination and re-examination, is not a compliance with the provisions of s. 342 of the Criminal Procedure Code, and the conviction is illegal.

Mitarjit Singh v. King-Emperor (1), Kashi Pramanik v. Damu Pramanik (2) followed.

THE petitioner was convicted, under ss. 454 and 380 of the Penal Code, by Moulvie A. Z. Khan, Third Presidency Magistrate, and sentenced to three months' rigorous imprisonment. The prosecution story was that, on the 14th July 1922, the petitioner engaged a

* Criminal Revision, No. 387 of 1922, against the order of A. Z. Khan, 3rd Presidency Magistrate, Calcutta, dated Oct. 26, 1922.

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2 P. L. T. 520; (1922) Pat. 7.

phaeton at the stand outside Wellesley Square, drove to the godown of one Siddik Khan, opened it and removed 100 tins of biscuits to Marquis Mansions. The matter was reported to the police, who held an investigation and sent up the petitioner for trial. The investigating police officer was examined-in-chief, as the first prosecution witness, on the 24th August, and cross-examined on the 19th September. The other prosecution witnesses were examined-in-chief, according to the Magistrate's *Explanation*, on the 6th September, on which date also the accused was examined. They were cross-examined and re-examined on the 14th. The Magistrate stated in the *Explanation* that he did not examine the petitioner further as the latter said he would file a written statement, which was subsequently put in. The petitioner was convicted as stated above, and thereupon obtained the present Rule on the ground that the examination was not taken in accordance with s. 342 of the Code and that the omission is an illegality vitiating the trial.

Mr. Monnier (with him *Mr. D. N. Kumar*), for the petitioner. Section 342 is mandatory. Section 256 (1) indicates the stage at which the examination of the accused must take place in a warrant case, that is after the close of the cross-examination and re-examination of all the prosecution witnesses: see *Mitarjit Singh v. King-Emperor* (1), which was followed in *Kashi Pramanik v. Damu Pramanik* (2).

NEWBOULD AND SUHRAWARDY JJ. This Rule must be made absolute on the ground that the provisions of section 342 of the Criminal Procedure Code were not complied with. Though the accused was examined

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under that section after the examination-in-chief of the witnesses for the prosecution, that is not sufficient. The examination of the witnesses cannot be held to have been concluded until they have also been cross-examined. This is the view taken by the Patna High Court in the case of *Mitarjit Singh v. King-Emperor* (1), and that decision has been followed by this Court in the case of *Kashi Pramanik v. Damu Pramanik* (2).

We accordingly make this Rule absolute, and set aside the conviction and sentence passed on the petitioner. We remit the case to the trial Court in order that the provisions of section 342 of the Criminal Procedure Code may be followed, and the matter disposed of in accordance with law.

E. H. M.

Rule absolute.

(1) (1921) 6 P. L. J. 644 ; 2 P. L. (2) (1921) 27 C. W. N. 28.
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