

CRIMINAL REVISION.*Before Greaves and Duval JJ*

SURENDRA LAL SHAHA

v.

ISAMADDI.*

1924
April 7*Accused—Examination of accused after close of the defence—Legality of conviction—Criminal Procedure Code (Act V of 1898) s. 342.*

The examination of the accused under s. 342 of the Criminal Procedure Code must take place at the close of the prosecution case and before the accused has entered upon his defence, and his examination at a later stage vitiates the conviction and sentence.

Re-trial ordered from the close of the prosecution case.

The opposite party, Isamaddi, lodged a complaint against the accused, under sections 426 and 447 of the Penal Code, before the Subdivisional Officer of Barisal. The case was transferred to and heard by a local Sub-Deputy Magistrate. The examination and cross-examination of the prosecution witnesses closed on the 4th October 1923. Defence witnesses were examined on the 15th November, and the trial postponed to the 29th for arguments. The accused was examined on the latter date for the first time. The trial Magistrate was then transferred, and the case was withdrawn to his own file by the Additional District Magistrate who heard arguments, and thereafter convicted and sentenced the accused to fines. They now obtained the present Rule.

Babu Birbhusan Dutt, for the petitioner. Section 342 of the Criminal Procedure Code requires the

* Criminal Revision No. 130 of 1924, against the order of D. Macpherson, Additional District Magistrate of Bakarganj, dated Dec. 12, 1923.

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examination of the accused after the close of the prosecution case and before he is called upon to enter on his defence. An examination after the latter stage of the case is illegal, and the conviction is bad.

Babu Bhagirath Chandra Das (with him *Babu Gopendra Nath Das*), for the opposite party. The examination of the accused after the prosecution has closed and after he was called upon to inter into his defence, is a sufficient compliance with section 342. He gets the opportunity of explaining the evidence against him.

GREAVES AND DUVAL JJ. We make the Rule absolute on the ground on which it was granted, namely, that there was no examination of the accused in accordance with the provisions of section 342 of the Code of Criminal Procedure. This examination must take place at the close of the prosecution case and before the accused have entered on their defence, and it is no compliance with the section if the examination takes place at a later stage.

The result is that the conviction and sentence are set aside, and the trial must be taken up from the close of the prosecution case and the accused must be examined in accordance with the provisions of section 342 before they have entered on their defence.

E. H. M.