the judgment which related to a preliminary point taken by the defendant that the appeal had abated as against the representatives of Syed Mohiuddin Mirza, is not material to this report.]

The result is that the decree of the learned Subordinate Judge will be varied by ordering that the respondents Syed Mohiuddin Mirza and Mr. Patridge as Administrator of the estate of the deceased Syed Mohiuddin Mirza are liable severally for a moiety of the sums paid in excess of the amounts of cess due for the years 1318 to 1325, *M.S.*, amounting to Rs. 5,000. In the circumstances these sums will carry no interest up to the date of this decree but interest at 6 *per cent. per annum* will be payable on the amount awarded hereunder from this date up to the date of realization.

The appellant is entitled to the costs of this appeal from the first defendant who alone has contested the appeal. Each party will bear his own costs of the application for setting aside the abatement.

FOSTER, J.—I agree.

Decree varied.

REVISIONAL CRIMINAL.

Before Jwala Prasad, J.

MOHAMMAD NASIRUDDIN

v.

KING-EMPEROR.*

1925.

Jan., 20.

Code of Criminal Procedure, 1898 (*Act V of* 1898), *section* 342—*Examination of accused, scope of—Penal Code*, 1860 (*Act XLV of* 1860), *section* 441—*Criminal trespass—entry with intent to have forcible sexual intercourse.*

* Criminal Revision no. 699 of 1924, from an order of T. S. Macpherson, Esq., Sessions Judge, Manbhum, dated the 21st November, 1924, upholding the order of Babu J. G. Brahma, Subdivisional Magistrate of Sambalpur, dated the 29th September, 1924.

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The first part of section 342, Criminal Procedure Code, 1898, [" the Court may at any stage of any inquiry or trial..... put such questions to him (accused) as the Court considers necessary "] is discretionary and its object is merely to enable the Court, during the examination of the witnesses for the prosecution, to put to the accused any question that may be considered necessary for the purpose of obtaining an explanation of any circumstances appearing in the evidence against him.

The second part of the section (" and shall..... question him generally on the case after the witnesses for the prosecution have been examined ") is mandatory, but it is a sufficient compliance with the law if the Court gives to the accused an opportunity, by questioning him generally on the case, to explain the circumstances appearing against him in the evidence. Therefore, where, before the conclusion of the evidence for the prosecution, the accused was asked certain questions with regard to the circumstances appearing in the evidence against him, and, after the conclusion of the examination of the witnesses for the prosecution, the Court addressed him as follows :

" You have heard the evidence given by the prosecution witnesses in your presence to-day. Have you got anything else to say?",

and the accused answered, " No,"

Held, that the requirements of the section had been complied with.

Dura Ram v. *King-Emperor*(1), *Banamali Kumar* v. *King-Emperor*(2) and *King-Emperor* v. *Alimuddin Naskar*(3), referred to.

The petitioner was convicted under section 456, Penal Code, and sentenced to two months' rigorous imprisonment. The conviction was upheld by the Sessions Judge of Manbhum.

The petitioner was a Ticket Collector at Jharsuguda railway station and was in the habit of taking his food in the kitchen of the Refreshment Room. Rammurti, the complainant was a Madrasi who had recently gone to Jharsuguda as a Refreshment Room clerk. He occupied a quarter in the railway godown

(1) (1925) 6 Pat. L. T. 33. (2) (1925) 6 Pat. L. T. 39.
(3) (1924-25) 29 Cal. W. N. 231.

consisting of a room the door of which opened on to the closed lattice-work verandah which itself had a door. Rammurti's household consisted of his mother, a woman of about 50 years, and his nieces aged about 19 and 14, of whom the former was a widow and the latter a married woman. On the night of the occurrence the ladies slept in the house and Rammurti on the verandah of the Railway Mail Service office just in front of his quarter and opposite to it. He locked the door of the verandah on the outside and kept the key with himself. About 1-30 A.M., on the night of the 13th July, the mother of the complainant Rammurti, called the elder Sundaramma, being aroused by the cackling of the fowls in the kitchen of the Refreshment Room, heard stones thrown against the door of the room in which the ladies slept. Shortly, afterwards she saw a man thrust his head within the door of the room and throw small stones at her grand-daughters. The junior Sundaramma woke up, nudged her grand-mother and both of them recognized the petitioner and cried out to Rammurti. Rammurti ran up to the verandah and recognized the petitioner running away. The door of the verandah was found open and stones and cinders were found here and there in the room and some on the beds of the younger woman. Rammurti forthwith went to the Assistant Station Master on duty who went with the Yard Foreman and a constable to the complainant's quarters, found the brass lock with which Rammurti had closed the door of the verandah lying broken on the ground outside and the state of the apartments as described above. An information was lodged by Rammurti with the police next morning, and after investigation the accused was sent up.

The Courts below found the prosecution story as stated above to be true and established by evidence in the case.

C. M. Agarwala (with him *Manmotha Nath Pal*), for the applicant: The accused was examined twice by the Court, once while the witnesses for the

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prosecution were being examined and again after the conclusion of the examination of the prosecution witnesses. In the first examination he was asked certain questions regarding the circumstances appearing in the evidence against him. On the second occasion he was asked merely a general question which could not convey to him what the Court considered to be the circumstances appearing in the evidence against. The provisions of the section are mandatory and require the Court to give the accused an opportunity of explaining the circumstances appearing against him after the conclusion of the prosecution case. One of the objects of this provision is to inform the accused which of the points dealt with in the prosecution are considered by the Court to have been established so that he may know what points he has to meet. When the examination of the accused is conducted on these lines he not only knows what rebutting evidence he should produce but he is able also to confine his defence to the points which have been made against him. Questions put to him before the conclusion of the examination of the prosecution witnesses are not a compliance with the mandatory portion of the section because the witnesses examined after such questions have been put may either disclose other points not covered by the questions or they may nullify the effect of evidence given by the previous witnesses. So long as section 342 remains in the Code in its present form a Court should not in its judgment rely on circumstances appearing in the evidence against the accused unless he has been questioned with regard to those circumstances after the close of the prosecution case. Secondly, the conviction under section 456 of the Penal Code is bad, because there is no finding that the accused intended to commit an offence or to intimidate, insult or annoy any person in possession of the house. His entry was surreptitious so he did not intend to intimidate, insult or annoy any one. He cannot be held to have intended to have entered with the object of committing an offence unless it is found expressly that the woman with whom he is alleged to have

intended to have sexual intercourse was ignorant of his intention or was not a consenting party. [*Durga Ram* v. *King-Emperor*(1), *Banamali Kumar* v. *King-Emperor*(2), *King-Emperor* v. *Alimuddi Naskar*(3), *Ambika Charan Sarkar* v. *Emperor*(4), *Balmakund Ram* v. *Ghansamran* (5) and *S. Vullappa* v. *S. Bheema Row*(6) referred to.] In any case he only entered as far as the doorway and no harm has been done to any one. The sentence, therefore, is too severe.

H. L. Nandkeolyar (Assistant Government Advocate, for the Crown): The examination of the accused under section 342 was sufficient. I rely on *Banamali Kumar* v. *King-Emperor* (2) and *King-Emperor* v. *Alimuddi Naskar* (3). Secondly, the entry of the accused uninvited into a room occupied by women, to all of whom he was unknown, could not but be an insult and annoyance to them. This case is on a different footing from those in which the entry is at the invitation or with the connivance of an inmate of the house; it is denied that any of the women had ever spoken to the accused.

Agarwala, replied.

JWALA PRASAD, J. (after stating the facts set out above, proceeded as follows:) Mr. *Agarwala*, on behalf of the petitioner, takes an exception to the validity of the trial upon the ground that the Magistrate failed to comply with the provisions of section 342 of the Code of Criminal Procedure. It is not denied that the accused was, as a matter of fact, examined by the Magistrate on the 25th August, 1924, after the close of the prosecution case and before he was called upon to enter into his defence. The objection is as to the manner of the examination of the accused by the Magistrate. The accused was first examined on the 7th August, 1924. On the 25th August he was examined under the latter portion of

(1) (1925) 6 Pat. L. T. 33.
(2) (1925) 6 Pat. L. T. 39.
(3) (1924-25) 29 Cal. W. N. 231.
(4) (1906) 4 Cal. L. J. 169.
(5) (1895) I. L. R. 22 Cal. 391.
(6) (1918) I. L. R. 41 Mad. 156, F.B.

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section 342 of the Code. The question put to him by the Magistrate was as follows:

"You have heard the further evidence given by the prosecution witnesses in your presence to-day. Have you got to say anything else?"

The answer of the accused was "No." In his earlier examination he was asked whether he entered the house of Rammurti by breaking the lock of the door and threw stones at his nieces who were sleeping in the room. His answer was, "No." Then he was asked why this case was brought against him. He said that the case was brought against him out of grudge and then he detailed this plea by giving facts and circumstances in his statement. It is said that on the 25th August, 1924, after the close of the prosecution case and before the accused was called upon to enter into defence, the Magistrate ought to have asked the accused questions upon the evidence in the case that showed the participation of the accused in the offence of which he was charged so as to give him an opportunity to explain those circumstances. The contention is that the Magistrate who heard the evidence of the prosecution must have told the accused on what points he considered the evidence sufficient against the accused for the purpose of enabling the accused to explain those circumstances. It is true that at that stage it is imperative upon a Magistrate:

"to question the accused generally on the case"

and the object of this examination is to

"enable the accused to explain any circumstance appearing in the evidence against him."

This provision in the Code has been the subject of great divergence of opinion. Lately there has been a difference of opinion in this Court [vide *Durga Ram* v. *King-Emperor* (1), and *Banamali Kumar* v. *King-Emperor* (2)]. Kulwant Sahay, J., held that the examination of an accused person under the latter part of section 342 should be a detailed one and the Magis-

(1) (1925) 6 Pat. L. T. 33. (2) (1925) 6 Pat. L. T. 39.

trate ought to let the accused know as to what are the circumstances indicated in the evidence against him for obtaining if possible an explanation of the accused and that the putting of a simple question as to whether the accused had anything to say is not a sufficient compliance with the provisions of the law. Foster, J., took a contrary view. The matter has recently been dealt with by the Calcutta High Court in the case of *King-Emperor* v. *Alimuddi Naskar* (1). Newbould, J., held that " a formal question in general terms to give the accused an opportunity of making a statement of his defence with his own lips is a sufficient compliance with the mandatory provision of section 342 of the Code of Criminal Procedure, since it enables the accused to explain any circumstance appearing in the evidence against him. To what extent the Court when complying with the mandatory provision of the section should also exercise its discretionary power under the other provisions of the section is a different question. The exercise of this discretion must vary with and depends on the circumstances of each particular case but in the majority of cases it is neither necessary nor desirable that there should be any detailed questioning of the accused." Mukerji, J., held that " in questioning the accused under section 342, Criminal Procedure Code, the Court must point out to the accused the salient points appearing in the evidence against him in a succinct form and he must be asked to explain them if he wishes to do so. If on a general question as to whether he wishes to say anything being put the accused answers in the negative it will be no use asking him any further questions."

I would invite attention to the difference in the wording of the first and the second portions of section 342, the former being discretionary and the latter mandatory. As the prosecution case goes on the first portion gives power to the Court to put any question to the accused that he thinks necessary in order to obtain an explanation of any circumstance appearing

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in the evidence against the accused. The provision says that the Court may

"put such questions to him (accused) as the Court considers necessary."

After the close of the prosecution case the mandatory portion of the section requires the Magistrate to

"question him (the accused) generally on the case."

the object being the same as in the case of an examination under the first portion of the section, namely, to enable the accused to explain any circumstance appearing in the evidence against him. It depends upon the circumstance of each case what must be the nature of the questions put by the Court, but it would be a sufficient compliance with the provision of the Code if the Court gives to the accused an opportunity by questioning him generally on the case to explain the circumstances appearing in the case against him. In this connection the examination of the accused, if any, under the first portion of the section, may usefully be looked into. In the present case the accused was in his earlier examination told the case against him as disclosed in the evidence of the prosecution and that case was that on the night of the 13th July, 1924, he entered into the house of Rammurti by breaking the lock attached to the door and threw stones at his nieces who were sleeping in the room. On the 7th of August he was asked whether he committed the act or not, and he denied it. He was then asked as to why the case was brought against him and he gave his reasons for it. After this four prosecution witnesses were cross-examined and discharged, and then the accused was asked whether upon hearing the evidence given that day he had anything to say. The witnesses for the prosecution, as observed above, were cross-examined on behalf of the accused, and thus he was fully aware that he had to explain the circumstances brought out by the prosecution evidence against him. The Magistrate then gave him an opportunity, by putting questions generally upon the case under the latter portion of section 342, to explain these circumstances against him and to disclose his own defence. His answer

was in the negative. In the circumstances of the present case I do not think the provision in the latter portion of section 342 was not complied with. It is not necessary nor is it desirable to examine the accused in great detail or to force him to disclose his defence so as to enable the prosecution to take advantage of it when the witnesses for the accused are examined. It is impossible to lay down any hard and fast rule as to the nature of the examination of an accused under section 342 of the Code. I therefore reject the contention of the learned Counsel that the trial was vitiated by not properly complying with the requirements of section 342 of the Code.

The next contention is that the conviction under section 456, Penal Code, is bad, inasmuch as the intention of the accused has not been found to be to commit any offence or to intimidate, insult or annoy any person in possession of the house in question. Reference has been made to the case of *Ambika Charan Sarkar* v. *Emperor*(1). In that case the finding was that the intention of the accused in entering the house of the complainant was to carry on an intrigue with the complainant's widowed sister-in-law. It was held that the entry was not an offence, nor was the intention to cause any annoyance to the occupants of the house : rather it was secretly to carry on an intrigue without the knowledge of the persons in the house. The conviction was set aside. The case of *Balmakund Ram v. Ghansamram*(2), was distinguished in that case upon the ground that the intention of the accused in that case was to commit adultery with the wife of the complainant which in itself was an offence punishable under the Code. In the case of *Queen-Empress* v.*Ryapadayachi*(3), the finding was that the accused entered the house to have sexual intercourse with the complainant's unmarried sister and it was held that the accused could not be convicted under section 456. This case was followed in the Full Bench case of

(1) (1906) 4 Cal. L. J. 169. (2) (1895) I. L. R. 22 Cal. 391.
(3) (1896) I. L. R. 19 Mad. 240.

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S. Vullappa v. *S. Bheema Row* (1), where it was held that an offence under section 441, Penal Code, is committed only when the trespass is with one of the intents specified in that section and the proof that the trespass committed with some other object was known to the accused to be likely or was certain to cause insult, or annoyance, is insufficient to sustain a conviction under section 448. Undoubtedly, in order to constitute criminal trespass under section 441, the entry into the house or property in the possession of another must be with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, and in order to sustain a conviction under section 456 it must be proved that there was in the first instance criminal trespass as defined in section 441. Thus, a mere entry into a house occupied by another with intent to carry on an intrigue or to have sexual intercourse with a woman living in that house will not in itself be a criminal trespass. In such a case it is supposed that the entry has been with the consent or connivance of the woman living in the house. However, if she along with other inmates is in possession of the house, as in the case of a joint Hindu family, the trespass in the house must cause an insult and annoyance to the other members in the house. If the object is to force an intrigue upon a woman in the house and to have a forcible intercourse with her, the intention of the entry will necessarily be to insult and annoy that woman. In the present case the finding of the Court below is that there was no prearrangement between the accused and the junior Sundaramma, or for the matter of that with any other lady in the house. The case stated in the judgments of the Courts below, on the other hand, goes to show that all the ladies in the house, the grandmother, the widowed Sundaramma and the unmarried girl Rajjo were startled at the bold attempt on the part of the accused to force himself into the house and to throw pebbles at them. The junior Sundar-

(1) (1918) I. L. R. 41 Mad. 156, F.B.

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amma is stated to have, when she suddenly woke up at hearing the noise, nudged her grandmother. Therefore, in the present case the intention was not to carry on a peaceful intrigue and intercourse with any of the ladies in the house and with the consent or connivance of any one of them, but the intention of the accused was to commit a criminal trespass into the house and an indecent and unjustifiable trespass upon the person of the occupants of the house. The concurrent finding of the Courts below in the present case makes the authorities cited by the learned Counsel on behalf of the petitioner inapplicable to the present case. This contention must, therefore, also be held to be untenable.

The last submission of Mr. *Agarwala* is that the punishment in this case is excessive and that it should be reduced. The view taken by the Court below is that the punishment in this case is lenient and that the Magistrate has erred on the side of leniency. I do not think the accused has any grievance on account of the severity of the sentence. The act committed by him is most reprehensible. Rammurti happened to come to Jharsuguda only recently with several ladies of his family. The outrage attempted upon his household is a heinous offence, and the punishment in the present case is far from being severe.

The application is refused.

Rule discharged.

APPELLATE CIVIL.

Before Ross and Kulwant Sahay, J. J.

RAM GHULAM SINGH

v.

NAND KISHORE PRASAD.*

1925.

Jan., 20.

Hindu Law—Sons' liability for father's debts, after partition.

* Appeal from Appellate Decree no. 415 of 1922, from a decision of Damodar Prasad, Esq., Additional District Judge of Patna, dated the 11th January, 1922, modifying a decision of B. Suresh Chandra Sen, Subordinate Judge, Patna, dated the 6th January, 1921.