

that such appeals should be filed promptly and therefore it was laid down that there was no necessity that any copy of the judgment or decree appealed from should accompany the memorandum of appeal. The same view was taken by a Bench of this Court in Letters Patent Appeal No. 107 of 1920 decided on the 21st of the present month. There is an *affidavit* accompanying the memorandum of appeal in which it is stated that the appellant previously was under the impression that the limitation was 90 days, and that holidays could be deducted. Ignorance of law, however, is no excuse.

We, therefore, uphold the objection of the counsel for respondents and dismiss the appeal with costs.

*Appeal dismissed.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Okevis and Mr. Justice Scott-Smith.*

UMAR DIN—*Appellant*,

*versus*

THE CROWN—*Respondent*.

Criminal Appeal No. 15 of 1920,

*Criminal Procedure Code, Act V of 1898, sections 164 (3) and 342—confessions recorded by Magistrate—without making a memorandum of the enquiry made to satisfy himself that the confession is made voluntarily—examination of accused by the Court—improper questions.*

*Held*, that although it is most advisable that a Magistrate recording a confession under section 164 of the Code of Criminal Procedure should make a memorandum of enquiry showing what steps he has taken to fully satisfy himself that the accused person is confessing voluntarily, a confession otherwise duly recorded, is not inadmissible in evidence merely because no such memorandum has been made.

*Nga Shwe Sin v. Emperor* (1), and *Queen-Empress v. Narayan*, (2), distinguished.

1921

DYAL SINGH  
v.  
BUDHA SINGH.

1921

March 1.

1921

UMAR DIN

v.

THE CROWN.

*Held also*, that although a Court may under section 342 of the Code at any stage of any enquiry or trial put such questions to the accused as the Court considers necessary, it is not competent to the Court to cross-examine the accused or to ask him questions with the object of trapping him into some sort of admission.

*Appeal from the order of F. W. Kennaway, Esquire, Additional Sessions Judge, Lahore, dated the 1st-2nd December 1920, convicting the appellant.*

GHULAM RASUL, for Appellant.

HERBERT, Government Advocate, for Respondent.

The judgment of the Court was delivered by—

SCOTT-SMITH, J. —Umar Din *alias* Umba has been convicted by the Additional Sessions Judge of Lahore of the murder of Mangal, of village Sahuke, on the night between 17-18th July 1920. He has appealed to this Court, and his appeal has been argued before us by Mr. Ghulam Rasul, and the case is also before us for confirmation of sentence under section 374, Criminal Procedure Code.

\* \* \* \* \*

Umar Din, appellant, was arrested on the 24th July 1920, and the Police applied to the Magistrate for his confession to be recorded on the following day. The Magistrate could not take it then and passed an order that the accused persons would remain in the judicial lock-up. So from the 26th July onwards Umar Din was not in police custody. His confession was recorded by Mr. Wace, Magistrate, 1st class, on the 27th July 1920, and on the 5th August Mr. Keelan, the Committing Magistrate, examined some of the witnesses for the prosecution, and on the 7th of August he recorded Umar Din's statement in which he admitted the correctness of the confession made by him on the 27th July, and which was at that time read out to him. When he was again examined on the 19th August by the Committing Magistrate he retracted his confession and said that he had made it under the influence of police torture.

1921

UMAR DIN  
v.  
THE CROWN.

Now with regard to the confession, counsel for the appellant has raised the objection that the Magistrate recorded no memorandum of the enquiry made from Umar Din before the confession was recorded. He based his objection upon section 164, Criminal Procedure Code, which lays down that no Magistrate shall record any such confession unless upon questioning the person making it he has reason to believe that it was made voluntarily. Now the law which makes this provision does not say that the Magistrate should make any memorandum of the enquiry which he makes at the time before recording the confession of an accused. No authority has been referred to which lays down that in the absence of any memorandum of enquiry the confession otherwise duly recorded shall be inadmissible in evidence. We note that a proper certificate as laid down in section 164 (3) has been appended by the Magistrate at the end of the confession. Counsel for the appellant referred to *Nga Shwe Sin v. Emperor* (1), where it was held that it is the imperative duty of the Magistrate, before recording a confession, to carefully examine the accused person and, to the best of his ability, ascertain that he is not wishing to speak owing to any inducement, threat or promise, but that his confession is purely voluntary. In that case it appears that each accused was asked once at the end of his statement whether he confessed voluntarily or was induced to do so, and it was held that it was not a sufficient compliance with the provisions of section 164 (3). In that case it will be noticed that stress was laid upon the necessity of the Magistrate making an enquiry, though it was not laid down that in the absence of a memorandum of the Magistrate's enquiry the confession is inadmissible. *Queen-Empress v. Narayan* (2) was also referred to, but that too is not an authority for the proposition put forward by counsel. We, therefore, are unable to hold that the confession of Umar Din is inadmissible. At the same time we consider it to be most advisable that in all such cases a Magistrate should record a memorandum of enquiry showing what steps he has taken to fully satisfy himself that an accused person is confessing voluntarily.

(1) (1906) 4 Cr. L. J. 385.

(2) (1901) I. L. R. 25 Bom. 543.

1921

UMAR DIN  
v.  
THE CROWN.

In view of the fact that on the 7th August, *i. e.*, 11 days later, Umar Din adhered to his confession before the Committing Magistrate, we see no reason to suppose that he did not make it voluntarily.

\* \* \* \* \*

Before we close we wish to draw the attention of the Committing Magistrate to the manner in which he cross-examined the accused in recording his statement on the 19th August. Section 342, Criminal Procedure Code, allows a Court at any stage of any enquiry or trial to put such questions to the accused as the Court considers necessary, and lays down that the Court shall for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, question him on the case after the witnesses for the prosecution have been examined and before he is called for his defence. It is not competent to the Court under this section to cross-examine the accused; see the authorities in Henderson's Criminal Procedure Code, 8th edition, page 681. The Magistrate, moreover, in the present case not only cross-examined the accused, but even after the latter had retracted his confession put certain questions to him which assumed that the accused was still confessing, for instance, after the appellant had denied having sharpened the *toka*, the Magistrate asked the following question:—

“ Was any one there when you sharpened it ? ”

He put many other questions of like character which appear to have been put with the object of trapping the appellant into some sort of admission after he had resiled from his confession and had said that he had made it under the influence and ill-treatment of the police. These questions were not, in our opinion, proper and should not have been put.

*Appeal dismissed.*