We accordingly accept the appeal, reverse the decree of the Subordinate Judge, and remand the case to his Court under Order XLI, rule 23, Civil Procedure Code, for decision on the merits. The Court fee paid on the memorandum of appeal will be refunded, and other costs will be costs in the case.

A. R.

Appeal accepted, Case remanded.

REVISIONAL CRIMINAL.

Before Mr. Justice Martineau.

DEVI DYAL—*Petitioner,*

versus

THE CROWN—*Respondent.*

1922

Nov. 27.

Criminal Revision No. 1038 of 1922.

Indian Penal Code, 1860, *sections* 499,500—*Defamation—evidence of general reputation of complainant—whether relevant—proof that accused made or published the imputation complained of—whether necessary where accused when examined by the Magistrate admitted publication—Examination of accused—confined to matters appearing in the evidence against him—Criminal Procedure Code, Act V of* 1898, *section* 342.

The petitioner was convicted of an offence under section 500 of the Indian Penal Code, for having defamed an Extra Assistant Commissioner by publishing an imputation that the latter had compelled him to pay a bribe in order to avoid a prosecution for a certain offence. The petitioner wanted to produce evidence as to the complainant having taken bribes on other occasions, and general evidence as to the complainant's reputation, but this was disallowed by the trial Court.

Held, that evidence as to the complainant having taken bribes on other specific occasions would be irrelevant, but that the petitioner was entitled to produce evidence to show that the complainant had the reputation of being a bribe-taker.

Scott v. *Sampson* (1), and Odgers on Libel and Slander, 5th Edition, page 402, referred to.

(1) (1882) 8 Q. B. D. 491.

1922

DEVI DYAL v. THE CROWN.

Held further, that it was incumbent on the prosecution to prove that the petitioner made or published the imputation complained of notwithstanding that the petitioner when examined under section 342 of the Code of Criminal Procedure admitted the publication, as a gap in the prosecution evidence could not be filled up by such a statement. A Magistrate is not entitled under section 342 of the Code to put questions to the accused if the prosecution has not let in evidence implicating him in the offence with which he is charged, and answers to questions put in contravention of that section are not admissible in evidence against the accused.

Mohideen Abdul Qadir v. *Emperor* (1), and Re *Abibulla Raruthan* (2), referred to.

Application for revision of the order of Khan Bahadur Khan *Abdul Ghafur Khan*, Khan of Zaida, *Sessions Judge, Gujranwala, dated the 30th June 1922, affirming that of S. L. Sale, Esq., District Magistrate, Gujranwala, dated the 7st March 1922, convicting the petitioner.*

G. C. NARANG, for Petitioner.

AMAR NATH CHONA, for Government Advocate, for Respondent.

MARTINEAU J.—This is an application for revision of an order of the Sessions Judge of Gujranwala affirming the conviction of the petitioner for having defamed the complainant, an Extra Assistant Commissioner, by publishing an imputation that the latter had compelled him to pay a bribe of Rs. 1,000 in order to avoid a prosecution for a certain offence.

The grounds urged in support of the application are (1) that the petitioner was not allowed to produce evidence as to the complainant having taken bribes on other occasions and general evidence as to the complainant's reputation, (2) that publication of the libel has not been proved, and (3) that part of the evidence for the defence was not considered by the learned Sessions Judge.

Evidence as to the complainant having taken bribes on specific occasions other than the one which forms the subject of this case would in my opinion be irrelevant, but I agree with the argument that the

(1) (1903) I. L. R. 27 Mad. 285. (2) (1915) I. L. R. 39 Mad. 770.

petitioner was entitled to produce evidence to show that the complainant had the reputation of being a bribe-taker. It is settled law that in an action for damages for libel or slander evidence may be given in mitigation of damages to show that the plaintiff had a general bad character (*Scott* v. *Sampson* (1) and Odgers on Libel and Slander, 5th Edition, page 402). Similarly in a criminal prosecution, where it is essential, in order to constitute the offence of defamation, that the person who makes or publishes the imputation complained of should intend to harm, or know or have reason to believe that the imputation will harm the reputation of the person concerning whom it is made or published, the question what reputation the complainant had is relevant If the petitioner in the present case were able to prove that the complainant had a notoriously bad reputation as a bribe-taker it might reasonably be argued that the imputation made as to his having taken a bribe on the particular occasion in question, even if false, could not damage his reputation as he had none to lose; and in any case proof of the complainant's bad reputation would affect the sentence to be passed in case of conviction. I hold therefore, that the evidence which the petitioner wished to adduce in proof of the complainant's bad reputation was wrongly excluded.

It is, however, not necessary to send the case back for that evidence to be recorded as the application for revision must succeed also on the second of the three grounds mentioned above. Admittedly no evidence was given by the prosecution to prove that the petitioner made or published the imputation complained of, but the Courts below have held the publication to be proved because the petitioner when examined admitted the publication. This is an erroneous view of the law. The prosecution must make out its case by evidence, and a gap in the evidence cannot be filled up by any statement made by the accused in his examination under section 342 of the Criminal Procedure Code. This has been so held in *Mohideen Abdul Qadir* v. *Emperor* (2), which is a case exactly in point. Further it has been held in Re *Alibulla Ravuthan* (3) that the

(1) (1882) 8 Q. B. D. 491. (2) (1903) I. L. R. 27 Mad. 238.
(3) (1915) I. L. R. 39 Mad. 770.

Magistrate is not entitled under section 342 of the Code to put questions to the accused if the prosecution has not let in evidence implicating him in the offence with which he is charged, and that answers to questions put by a committing Magistrate in contravention of that section are not admissible in evidence against the accused at the trial.

As no evidence has been given to prove that the petitioner made or published the imputation concerning the complainant the conviction cannot be sustained and I accordingly accept the application, set aside the conviction and sentence, and acquit the petitioner. The fine if paid will be refunded.

A. R.

Revision accepted.

REVISIONAL CRIMINAL.

Before Mr. Justice Scott-Smith.

KHAN MUHAMMAD—*Petitioner,*

versus

THE CROWN—*Respondent.*

1922
Dec. 2.

Criminal Revision No. 1687 of 1922.

Criminal Procedure Code, Act V of 1898, section 476—Meaning of the word "Court"—whether it includes the successor of a Judge before whom false evidence has been given—Delay in passing the order for prosecution.

Mr. Malan, Sessions Judge of Jhelum, on the 21st of June 1922, directed, under section 476, Criminal Procedure Code, the prosecution of the petitioner K. M. for an offence under section 193 of the Penal Code. It was contended that the alleged false evidence having been given before his predecessor, Mr Malan had no jurisdiction to direct the prosecution under section 476 of the Code of Criminal Procedure, also that the order was bad, having been passed 3 months after the conclusion of the trial by the Additional Sessions Judge.

Held, that the word "Court" in section 476, Criminal Procedure Code, includes the successor of a Judge before whom the alleged offence was committed or to whose notice the commission of it was brought in the course of a judicial proceeding.