

REVISIONAL CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

MUSSAMMAT GHASITI AND ANOTHER,
Petitioners,
versus
THE CROWN, Respondent.

Criminal Revision No. 1734 of 1924.

*Criminal Procedure Code, Act V of 1898, section 256—
Omission by Magistrate to record his reasons—Section 364—
Failure to examine each accused separately—Whether fatal
to the proceedings.*

Held, that provided there has been no consequent failure of justice, the Magistrate's omission to record his reasons for requiring the accused, at the same hearing as that at which the charge was framed, to state whether they wished to cross-examine prosecution witnesses, did not render the trial illegal; the provision contained in section 256 of the Criminal Procedure Code, being not mandatory, but merely directory.

Held further, however, that the recording of the statements of two accused persons collectively, instead of separately, is an illegality which vitiates the proceedings.

Allu v. The Crown (1), referred to.

Case reported by Lt.-Col. R. W. E. Knollys, Sessions Judge, Ambala, with his No. 1918-G. of 28th November 1924/3rd December 1924.

The accused, on conviction by Kanwar Ishwari Singh, exercising the powers of a Magistrate of the 2nd class in the Ambala District, were sentenced, by order, dated 25th September, 1924, under section 448 of the Indian Penal Code, each to undergo simple imprisonment for one month and to pay a fine of Rs. 25 or in default each to undergo further

simple imprisonment for one week with direction that after appeal out of the fine, Rs. 35 to be given to complainants-minors under section 545, Criminal Procedure Code. On appeal, the District Magistrate, by order, dated 3rd October, 1924, accepted the appeal to the extent of reducing the sentence to the imprisonment already undergone before the appellants were released on bail and a fine of Rs. 25 each. The remaining part of the Magistrate's order was allowed to stand.

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The facts of this case are as follows:—

The two complainants who are minors were living in the house of their deceased father when *Mussammat* Ghasiti, widow of Chhotu, and Mara, son of Bahadur Ali, who are relations of the complainants and owners of a part of the house, forcibly ejected them therefrom. The complainants brought a complaint under section 448, Indian Penal Code, against the accused; and *Kanwar* Ishwari Singh, Magistrate, 2nd class, Ambala, found them guilty, and sentenced each of them as stated above. On appeal, the District Magistrate, by order, dated 3rd October, 1924, accepted the appeal to the extent of reducing the sentence to the imprisonment already undergone before the appellants were released on bail and a fine of Rs. 25 each. The remaining part of the Magistrate's order and the convictions were allowed to stand. The accused came up to this Court on revision.

The proceedings are forwarded for revision on the following grounds:—

That the trial Court did not put up the case for the next hearing for further cross-examination of the prosecution witnesses as required by section 256, Criminal Procedure Code, nor did the Magis-

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trate record the reasons in writing for requiring the accused to state forthwith whether they wished to cross-examine the prosecution witnesses.

That the Magistrate did not examine each accused separately but recorded their statements collectively which is forbidden by section 364, Criminal Procedure Code.

Following *Allu v. The Crown* (1), there having been an infringement of the statutory requirements the trial is illegal. The case is therefore submitted to the High Court with a recommendation that the sentence be set aside and the case be returned to the Magistrate for trial in accordance with law from the stage in which the illegality has been committed.

ORDER OF THE HIGH COURT.

SIR SHADI LAL C. J.—On the 22nd of July, 1924, the Magistrate after framing a charge against the accused asked them to state whether they wished to cross-examine any of the witnesses for the prosecution; and to this question the accused gave a reply in the negative.

Now, section 256, Criminal Procedure Code, enacts that an accused person shall be required to state, at the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit forthwith, whether he wishes to cross-examine any, and, if so which of the witnesses for the prosecution whose evidence has been recorded; and the question arises whether the failure of the Magistrate to record his reasons vitiates the trial. While I hold that the Courts should always comply strictly with the provisions of the law, I do not think that the failure of the Magistrate to

(1) (1923) I. L. R. 4 Lah. 376.

record his reasons renders the trial illegal. The provision contained in section 256 is, in my opinion, not mandatory, but merely directory; and the irregularity can be cured under section 537 of the Criminal Procedure Code, provided that there has been no consequent failure of justice. It is clear that the omission to record the reasons has not caused any prejudice to the accused in this case.

I cannot, therefore, endorse the view of the learned Sessions Judge that the trial should be set aside on the ground that the Magistrate did not record his reasons in writing for requiring the accused to state forthwith whether they wished to cross-examine prosecution witnesses. It, however, appears that the Magistrate did not examine each accused separately, but recorded their statements collectively; and this is an illegality which vitiates the proceedings. Accordingly, I set aside the conviction and sentence and remit the case to the Magistrate for trial in accordance with law from the stage at which the illegality was committed.

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Revision accepted.

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