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question beyond saying that the present order of acquittal on the charge of murder should not be taken as precluding the prosecution of the prisoner for an offence relating to property.

For the aforesaid reasons we accept the appeal and, setting aside the conviction and the sentence, direct that the accused be released forthwith.

N. F. E.

Appeal accepted

APPELLATE CRIMINAL.

Before Mr. Justice Fforde.

LACHHMAN SINGH. Appellant

versus

THE CROWN. Respondent.

Criminal Appeal No. 468 of 1925.

Criminal Procedure Code, Act V of 1898, section 342 (1)
—*Examination of accused by the Court, during the course of the prosecution evidence, but not afterwards—Illegality—effect of.*

Where the accused was questioned by the Court after two witnesses for the prosecution had given evidence, and, a charge having then been framed to which the accused pleaded not guilty, four more witnesses were examined for the prosecution and then the defence evidence taken, the accused not being further questioned by the Court.

Held, that the provisions of section 342 (1) of the Criminal Procedure Code are mandatory and that the conviction and sentence must therefore be set aside, the trial be resumed from the close of the prosecution case, and the accused be examined before entering upon his defence.

Surendra Lal Shaha v. Isamaddi (1), and Hamid Ali v. Sri Kissen Gosain (2), followed.

Appeal from the order of J. W. Fairlie, Esquire, Sub-Divisional Magistrate, Rupar, District Ambala, dated the 10th April 1926, convicting the appellant.

(1) (1924) 84 I. C. 325.

(2) 1925 A. I. R. (Cal.) 574.

SHAMAIR CHAND, for Appellant.

D. R. SAWHNEY, Public Prosecutor, for Respondent.

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JUDGMENT.

FFORDE J.—The appellant, who has been an absconder for over six years, has been tried for the attempted murder of Sant Ram and Dwarka Nath, and has been convicted under section 307, Indian Penal Code, and sentenced to seven years' rigorous imprisonment with three months' solitary confinement.

Mr. Shamair Chand, who appears for the appellant, has raised the objection that the trial was illegal, inasmuch as the appellant was not questioned generally on the case after the witnesses for the prosecution had been examined and before he was called on for his defence, as required by section 342, subsection (1), of the Code of Criminal Procedure. It is admitted by the Public Prosecutor and, indeed, it is apparent on the record, that the appellant was in fact questioned by the Court after two witnesses for the prosecution had given evidence. A charge was then framed and he was asked to plead to that charge, whereupon he pleaded not guilty. Four more witnesses for the prosecution were examined, and after the prosecution evidence had been closed the defence evidence was taken. The appellant was not questioned further by the Court. It is clear upon these facts that the provisions of section 342 (1) have not been complied with.

The learned Public Prosecutor argues that, provided an accused person is examined in the course of the prosecution evidence, it is not necessary that he should be examined generally at the close and before he enters on his defence. The section, however, expressly requires that for the purpose of enabling the accused

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person to explain any circumstances appearing in the whole of the evidence which has been produced against him, the Court shall question him generally at the conclusion of the prosecution evidence and before he is called upon to enter on his defence.

There are a number of decisions of the High Courts in India holding that non-compliance with the requirements of section 342 (1) is an illegality, and that a conviction resulting after such a mode of trial must be set aside. Mr. Shamair Chand has referred me to *Surendra Lal Shaha, petitioner v. Isamaddi, opposite party* (1), decided by a Division Bench of the Calcutta High Court where the examination of the accused appears to have taken place at a later stage than is provided in section 342. The Court in that case set aside the conviction and sentence and ordered the trial to be taken up from the close of the prosecution evidence, and directed that the accused be examined in accordance with the provisions of section 342 before they entered on their defence. Mr. Shamair Chand has also referred to *Hamid Ali, complainant v. Sri Kissen Gosain, opposite part* (2). In this case the Court after recording the depositions of some of the prosecution witnesses had recorded the statements of the accused, but after further prosecution witnesses had been examined no statements of the accused were recorded. Upon these facts, which are precisely analogous to the facts before me, the Court, consisting of a Division Bench of the Calcutta High Court, held that it had no alternative but to set aside the finding and sentence, and ordered the trial to be resumed from the point where the Court examined the accused person after the examination of the prosecution witnesses

(1) (1924) 84 I. C. 325.

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was concluded. The learned Judges in that case impressed upon the Magistrates the necessity for the strict observance of the provisions of the Code of Criminal Procedure, and pointed out that where the terms of the Code were perfectly clear there was no excuse whatever for a deliberate disregard of them.

I have no doubt whatever myself that in the present case, the Court having failed to comply with the requirements of section 342 (1), the trial has been rendered illegal. The conviction and sentence must, therefore, be set aside, the trial must be taken up from the close of the prosecution case, and the accused be examined in accordance with the provisions of section 342 before he enters on his defence.

It is unfortunate that this course must be adopted, as it seems to me that the only result is to put the accused to the ordeal and expense of a further trial. But, as the provisions of this section of the Criminal Procedure Code are mandatory and not merely directory, I have no alternative.

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Appeal accepted.

Case remanded.

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