

order of the trying Magistrate is illegal, and should be quashed.

THE ORDER OF THE HIGH COURT.

HARRISON J.—For the reasons given by the learned Sessions Judge, I set aside so much of the order of the Magistrate as embodies the condition regarding maintenance.

A. N. C.

Revision accepted.

1926

NATHA SINGH

v.

MST. HARNAM
KAUR.

HARRISON J.

APPELLATE CRIMINAL.

Before Mr. Justice Campbell and Mr. Justice Addison.

SANTOKH SINGH, Appellant

versus

THE CROWN, Respondent.

1926

March 12

Criminal Appeal No. 64 of 1926.

*Criminal Procedure Code, Act V of 1898, section 465—
Unsound mind—accused appearing to be of—Failure of
Sessions Judge to hold fresh inquiry, after previous in-
quiry by the Committing Magistrate—Trial vitiated.*

In the committal proceedings the Magistrate having reason to think the appellant incapable of making his defence by reason of unsoundness of mind took action under section 464 of the Code of Criminal Procedure and after examining the Civil Surgeon recorded an order that the accused was sane.

Held, that it was nevertheless incumbent upon the Sessions Judge, if he had any doubt about the accused's mental state at the time of the trial, to hold another inquiry into the question whether the accused was then capable of making his defence, to take the opinion of the assessors, and to come to a decision on that question before proceeding further with the trial, and the Judge's neglect to follow the mandatory provisions of section 465 of the Code must vitiate the trial.

Pala Singh v. King-Emperor (1), followed.

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Appeal from the order of Lt.-Col. B. O. Roe, Sessions Judge, Jullundur, dated the 14th December 1925, convicting the appellant.

RAGHUNATH SAHAI, for Appellant.

Nemo, for Respondent.

The judgment of the Court was delivered by—

CAMPBELL J.—This is an appeal by Santokh Singh against his conviction for an offence under section 302, Indian Penal Code, and the sentence of death passed by the learned Sessions Judge is also before us for confirmation.

We regret to find that the trial will have to be set aside because the learned Sessions Judge has overlooked the provisions of section 465 of the Code of Criminal Procedure. The Committing Magistrate acted correctly under section 464. He had reason to think that the appellant might have been incapable of making his defence by reason of unsoundness of mind so he summoned and examined the Civil Surgeon, Major Shamsher Singh, and after doing so recorded an order that the medical evidence showed the accused (as he was then) to be sane. It was nevertheless incumbent on the learned Sessions Judge himself to hold another enquiry into the question whether the accused was capable of making his defence when the latter came before him on commitment, to take the opinion of the assessors on that question and to come to a decision before proceeding further with the trial. It was necessary for the learned Sessions Judge to take these proceedings if he had any reason for supposing that the accused when brought up for trial was of unsound mind. The question whether he was of unsound mind at the time of the alleged offence was

an entirely separate one to be enquired into in an entirely separate manner.

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What the learned Sessions Judge actually did is described by him in his judgment as follows :—

“ In this Court the accused has refused to plead at all, assuming an appearance of imbecility. He would only roll his eyes about and gaze at the ceiling and refuse to answer any question that was put to him. I therefore recorded a plea of not guilty and also recorded all the evidence in the case.”

After this passage comes the discussion of the evidence. Then the learned Sessions Judge records the following :—

“ The only point for decision in the case is as to whether the provisions of section 84, Indian Penal Code, apply to the case. This section says that nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act. The Civil Surgeon who had the accused under observation for some time has found that though of peculiar temperament he knew the nature of the deed he was committing. Before the Committing Magistrate the accused made a perfectly intelligent statement and I am of opinion that his imbecility in this Court was *largely assumed.*”

We point out incidentally that the evidence of the Civil Surgeon, on which the learned Sessions Judge appears to have relied in coming to his conclusion on the question whether section 84 of the Indian Penal Code applied, was not on the Sessions Judge's record. The reference is to the deposition of the Civil Surgeon in the Committing Court to which we have

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alluded above. This deposition was not evidence against the appellant at the trial.

The observations of the learned Sessions Judge quoted, particularly the words "largely assumed," indicate that the learned Sessions Judge's mind was not free from all doubt as to the appellant's mental state at the time of the trial and in these circumstances his neglect to follow the mandatory provisions of section 465 must vitiate that trial.

We follow the course taken by the learned Judges of the Punjab Chief Court in returning to the same learned Sessions Judge a case for retrial on similar grounds [*Palu Singh v. King-Emperor* (1)]. The conviction and sentence are set aside and the learned Sessions Judge is directed to hold a fresh trial which should commence with the proceedings required by section 465, Criminal Procedure Code, to be followed by a formal finding as to the capacity of the accused for making his defence. The accused should remain in detention and under medical observation until the fresh trial is held, and the result shown by evidence in the enquiry under section 465, Criminal Procedure Code.

N. F. E.

Appeal accepted.

Case remanded for fresh trial.

(1) 54 P. R. (Cr.) 1905.