

(1925) 01 CAL CK 0001

Calcutta High Court

Case No: None

Messer Bepari and Others

APPELLANT

Vs

King-Emperor

RESPONDENT

Date of Decision: Jan. 16, 1925**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 364

Citation: AIR 1926 Cal 430

Judgement

1. In this appeal the learned Counsel appearing for the appellants has succeeded on a preliminary point and it is unnecessary to deal with the facts. It is contended that the trial was vitiated owing to the failure of the learned Sessions Judge to comply with the provisions of Section 342 and Section 364, Criminal P.C. As regards non-compliance with Section 342 the affidavit filed on behalf of the appellants is in a form to which the Court has more than once taken serious objection. The statement in the affidavit is as follows: "That during the trial before the Court of Sessions at the close of the prosecution case and before the accused were called on to enter upon their defence the accused were not examined u/s 342, Criminal P.C." This statement leaves in doubt whether the accused were examined at all or whether they were examined but not at the right stage of the trial, or whether they were examined at the right stage of the trial; and it is contended that that examination was not in compliance with the provisions of Section 342, Criminal P.C. In argument we are told that what happened was that at the close of the prosecution case the accused's pleader and not the accused themselves were asked if they wished to make any statement and the accused's pleader stated that they would not do so. If that is what happened, it was certainly not compliance with Section 342, since one of the essential points for which that section provides is that the accused themselves should have an opportunity of making their statement directly to the Court and not through the intervention of a pleader. On behalf of the Crown it is stated that information has been received that the accused themselves were questioned. Had

the appeal depended solely on this point we should have thought it our duty to enable the Crown to give evidence in the form of an affidavit on this point and should have adjourned the appeal for this purpose. But it appears that the objection as to the procedure u/s 364, Criminal P.C., is sound. All that appears on the record as regards the examination of the accused is contained in the order sheet, the relevant portion being as follows: "Trial resumed to-day. The statements of the accused recorded in the committing Magistrate's Court are put in by the Public Prosecutor. The accused do not make any further statement in this Court and decline to examine any witness." No record of the accused's examination was recorded and the provisions of Section 364, Criminal P.C., on this point are mandatory; and in two recent unreported cases it has been held that similar omission to comply with the provisions of this section vitiated the trial. These unreported cases are Criminal Reference u/s 307, Criminal P.C., No. 47 of 1924, decided on the 11th September 1924, and Criminal Appeal No. 348 of 1924 decided on the 3rd November 1924. Following these decisions we must hold that the trial of the appellants was not in accordance with law.

2. We accordingly allow this appeal. We set aside the convictions and the sentences passed on the appellants and direct that the case be re-heard according to law.