

(1921) 11 CAL CK 0011

Calcutta High Court

Case No: None

Kashi Pramanik and Others

APPELLANT

Vs

Damu Pramanik

RESPONDENT

Date of Decision: Nov. 18, 1921

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 342
- Penal Code, 1860 (IPC) - Section 143, 379

Citation: 77 Ind. Cas. 998

Hon'ble Judges: Walmsley, J; Pearson, J

Bench: Division Bench

Judgement

1. This Rule was issued on two grounds. The first is that the Trying Magistrate did not comply with the provisions of Section 342 of the Code of Criminal Procedure. This point is, I think, established, and following the ruling in *Emperor v. Fernandez* 59 Ind. Cas. 129 : 45 B. 672 : 22 Bom. L.R. 1040 : 22 Cri.L.J. 17 and the case in the Patna High Court in [Mitarjit Singh and Others Vs. Emperor](#), the proper course for us to follow is to set aside the conviction and sentence of the petitioners and remit the case to the Trial Court in order that the provisions of Section 342 of the Code may be followed and the matter disposed of in accordance with law.

2. The second ground is that the charges framed against the accused are defective. This is not a matter on which I should be disposed to interfere, if there were no other defects in the case. But as the case must be remitted on the first ground, I think, we should also direct that the charges be amended. The first charge u/s 143, Indian Penal Code, omits to state the common object of the unlawful assembly. The common object should always be stated when a charge is framed u/s 143, Indian Penal Code, or the connected sections. The second charge is u/s 379. Indian Penal Code, and the property said to have been stolen is described simply as Damu's property. It is represented to us that the land on which the paddy said to have been

cut by the accused was grown could have been described with such greater precision. That appears to be true and I think that as the first charge must be amended, the second charge should also be amended by a more accurate description being given of the land from which the complainant alleges the paddy was cut and removed by the accused. The amendment of the charges will involve the duty of giving the accused an opportunity of cross-examining the witnesses for the prosecution again. The case is, therefore, remitted to the first Court to be disposed of as directed above.