Emperor Vs Alimuddin Naskar

Court: Calcutta High Court

Date of Decision: Dec. 1, 1924

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 342

Citation: (1925) ILR (Cal) 522

Hon'ble Judges: Newbould, J; Mukerji, J

Bench: Division Bench

Judgement

Mukerji, J.
(After discussing the evidence in detail, and disposing of the minor points, continued:) Lastly, it has been contended that there

has been no adequate examination of the accused under the mandatory provisions of Section 342 of the Criminal Procedure Code. The matter is

one of considerable importance, and is constantly coming up before the Court, and I desire to deal with it here.

2. Section 342, Sub-section (1), is divided into two parts. The opening words of the Sub-section ""For the purpose of enabling the accused to

explain any circumstances appearing in the evidence against him"" govern both the clauses that follow. It is with the latter clause, which is

mandatory, that we are concerned here. Reading the aforesaid words into this clause, in the place of the words for the purpose aforesaid, the

clause would run thus: The Court shall, for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him,

question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence. The

precise question for consideration is what is the nature of this questioning that the Legislature had in view.

3. Under Act XXV of 1861 and Act VIII of 1869 the examination of the accused person was discretionary with the Court. Section 202 of Act

XXV of 1861, which appeared in the Chapter headed On preliminary enquiry by the Magistrate in cases triable by the Court of Session, ran thus:

It shall be in the discretion of the Magistrate, from time to time, at any stage of the enquiry, to examine the accused person, and to put such

questions to him as he may consider necessary. It shall be in the option of the accused ""person to answer any such question"". Section 373 of Act

XXV of 1861, which was in the Chapter headed, Trials before the Court of Session, ran thus: ""The Court, at the close of the evidence on behalf of

the accused person, if any evidence is adduced on his behalf, or otherwise at the close of the case for the prosecution, may put any question to the

accused person, which it may think proper. It shall be in the option of the accused person to answer such question"". In Act VIII of 1869 a slight

variation was made, Section 202 of the earlier Act being left untouched, and Section 373 being altered as follows: The Court, at the close of the

case for the prosecution, and at the close of the evidence on behalf of the accused person (if he produces any evidence), may put any questions to

the accused person which it may think proper. It shall be in the option of the accused person to answer such questions, and after such questions

shall have been answered by the accused person, he or his Counsel or agent may address the ""Court on the subject thereof."" A new section,

namely, Section 262A, was also introduced which provided that the Magistrate might examine the accused person subject to the provisions of

Sections 202, 203, 204 and 205. The discretion thus vested in the Courts was often not exercised, and this led to the following instructions being

issued by this Court by a letter dated 28th July 1864: ""Although the Code of Criminal Procedure does not make it imperative on a Magistrate to

examine an accused person at any stage of the enquiry before committing him to stand his trial at the Court of Session, the Court thinks it

necessary to impress upon all Magistrates the expediency of the general adoption of this course at some stage or other of the enquiry. In the few

and exceptional cases, in which the guilt of an accused may be beyond reasonable doubt, the practice in force may be permitted without risk; but

inasmuch as it is discretionary with a Magistrate to discharge or commit an accused person, according as he finds that the evidence is, in his

opinion, sufficient for his conviction by the Court of Session or otherwise, it is obvious that the truth of any ordinary case will be best elicited and

obscure points will be cleared away, by any explanation that the accused may wish to give, when, after hearing all the evidence against him, or at

any time in the discretion of the Magistrate, he may be subjected to an examination before the Magistrate on points requiring elucidation, it being

clearly explained to the accused that it is his option to answer such questions or not. The Court, however, desires to explain that in issuing these

discretions, it in no way sanctions any proceedings of an inquisitional nature."" The italics in the above extract are mine. It is clear upon the words

used that the examination was to be on points requiring elucidation, was not to be of an inquisitorial nature, and the object aimed at was to elicit the

truth by enabling the accused to explain matters, and also clearing up obscure points by means of such explanations.

4. Then came Act X of 1872 in which the discretionary nature of the examination was retained, so far as enquiries into cases triable exclusively by

the Court of Session were concerned, and in the trial of those cases the examination was also made compulsory, and a provision was introduced

allowing a discretion in Courts for the examination of accused persons in all other enquiries and trials. The relevant sections in that Act were as

follows:

5. Section 193, in the Chapter ""Of enquiry into cases triable by the Court of Session or High Court"" ran thus: ""The Magistrate may, from time to

time, at any stage of the inquiry and without previously warning the accused person, examine him, and put such questions to him as he considers

necessary. The accused person shall not render himself liable to punishment for refusal to answer such questions or for giving false answers to

them, but the Magistrate shall draw such inference as may to him seem just from such refusal."" To this there was an Explanation in these words:

The answers given by an accused person may be pat in evidence against him, not only in the case under inquiry, but also in trials for any other

offences which his replies may tend to shew he has committed.

6. Section 214, in the Chapter On the trial of warrant cases by Magistrate, made the provisions of Section 193 to apply to trials conducted under

that Chapter.

7. Section 250, in the Chapter headed ""Trial by Court of Session,"" ran in these words: The Court 41 may, from time to time, at any stage of the

trial, examine the accused person, and shall question him generally on the case after the witnesses for the prosecution have been examined and

before he is called on for his defence.

8. Section 342, in the Chapter headed ""Evidence how was taken"", was in these words: In all inquiries and trials a Criminal Court may, from time to

time, and at any stage of the proceedings, put any questions to the accused person which such Court may think proper.

9. Section 343 ran thus: The accused person shall not be liable to any punishment for refusing to answer or for answering falsely, questions asked

u/s 342, but the Court shall draw such inference as seem just from such refusal.

10. The above was the law introduced by Act X of 1872. To say the least the wording of the statute was dangerously wide. For some time it went

on being administered in the Courts producing all the consequences that the departure from the general policy of the English Criminal law was

bound to bring on, and more than fulfilled the expectations embodied in the view of Sir George Campbell as contained in his reported speech on

the Bill. He is reported to have said as follows: ""Not only were those provisions (meaning the rules of English Law) now unnecessary in England,

but they are specially out of place in a country where it was not pretended that the subject enjoyed that liberty which is the birth right of an

Englishman; and it was not intended to introduce rules into the Criminal law which were designed with the object of securing the liberties of the

people. That being so, His Honour thought that they might fairly get rid of some of the rules the object of which was to secure for the people that

jealous protection which the English law gave to the accused. It seemed to him that they were not bound to protect the criminal according to any

code of fair play, but that their object should be to get at the truth, and anything which would elicit the truth was regarded to be desirable for the

interests of the accused if he was innocent, for those of the public if he was guilty. That being so he would say that he had no sympathy whatever

for those things which his honourable friend Mr. Stephen had called superstitions. For instance, His Honour did not see why they should not get a

man to implicate himself if they could; why they should not do all they could to get the truth from him; why they should not cross question him, and

adopt every other means, short of absolute torture, to get at the truth."" The way in which the law was administered was fraught with dangerous

consequences, and was found unsuitable in course of time, and the different High Courts laid dawn a series of rulings in which it was held that the

power that the law gave should be used to ascertain from the accused how he can explain the facts adduced in evidence against him, and not to

drive or entrap him into making self-incriminating statements, and it was enjoined that questions must not be put to the prisoner when there was

nothing against him in the evidence adduced by the prosecution, or in the middle of the case for the prosecution, so as to make out a case against

the accused when there was none, or so as to supplement the case for the prosecution when it was defective. These series of rulings made it

necessary to amend the law when the Code was revised in 1882. In the amendment made by Act X of 1882 the provisions relating to the

examination of an accused person, which were scattered in different Chapters in the previous Acts, were removed from those Chapters and

brought under the Chapter headed General provisions relating to inquiries and trials. One noticeable alteration was made by the addition of the

words for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him; another was the substitution of

the word may for the word shall as regards the drawing of inference against the accused: and there were other changes made as well. The result of

the amendment was to frame the scattered provisions into one comprehensive section, i.e., Section 342 of Act X of 1882, and it has retained its

shape in Act V of 1898 and has not been affected by the amending Acts of 1923. The object of the amendment is stated in the following extract

from the Report of the (Select Committee on the Bill of 1882: We think that the present law gives too great a latitude to the Courts with regard to

the examination of an accused person. ""The object of such an examination is to give the accused an opportunity of explaining any circumstances

which may tend to criminate him, and thus to enable the Court, incases where the accused is undefended, to examine the witnesses in his interest. It

was never intended that the Court should examine the accused with a view to elicit from him some statement which will lead to his conviction. We

have, therefore, limited the power of interrogating the accused by adding to the first paragraph the words For the purpose of enabling the accused

to explain any circumstances appearing in the evidence against him. We think the accused should always have this opportunity of explaining, and

we have, therefore, required the Court to question him generally for the purpose before he enters on his defence.

11. The section as it stands is undoubtedly for the benefit of the accused: the provisions embodied in it enable him to explain the circumstances

appearing against him in the evidence. I cannot, however, concur in the view that it is intended merely for his benefit. It is a part of a system for

enabling the Court to discover the truth, and it constantly happens that the accused''s explanation, or his failure to explain, is the most incriminating

circumstance against him. The result of the examination may certainly benefit the accused if a satisfactory explanation is offered by him it may

however, be injurious to him if no explanation or a false or unsatisfactory explanation is given. These conclusions to my mind, follow from the

words without previously warning the accused which appear in the first part of Sub-section (1), and the provision as to the drawing of inference

contained in Sub-section (2). If that be the intention of the Legislature, as I have no doubt it is upon the words of this section, it inevitably follows

that the Court should not only have the power to point out to the accused the circumstances appearing in the evidence which require explanation,

but that it must out of fairness to the accused exercise that power in such a way that the accused may know what points in the opinion of the Court

require explanation, failure or refusal to give which will entitle the Court to draw an inference against him.

12. To this interpretation three main objections are suggested. It is said that the expression question him generally indicates, as contra distinguished

from the expression put such questions to him as the Court considers necessary, that the points need not be put to the accused, but a general

question will suffice. In my opinion the word generally does not limit the nature of the questioning to one or more questions of a general nature

relating to the case, but it means that the questions should relate to the whole case generally, and should not be limited to any particular part or

parts of it. It will be seen that the word generally appeared in Section 250 of Act X of 1872 when the intention of the Legislature was quite clear as

to why they were departing from the English rules of procedure. There is no foundation for the argument that the word generally was put in out of

solicitude for the accused with a view to protect him against a detailed examination by the Court; and indeed, when a detailed examination is

permissible under the first part of the section, even without previously warning the accused, there is no reason why it should not have been intended

in the latter part as well. A second argument relates to the provision enabling the Court and the jury, if any, to draw an inference. It is contended

that the expression circumstances appearing in the evidence mean those that appear to the accused, and it is urged that there is no point in requiring

the Court to point out to the accused what appears to it as calling for explanation, for in a trial with the jury, the jury will also be entitled to draw

inferences against the accused if the circumstances are not explained, and it is asked how can a Judge be expected to put to the accused what

circumstances are weighing in the mind of the jury. At first sight, this seems to be a difficulty, but it will be observed that Sub-section (2) provides

for inference being drawn from the refusal to answer the questions, and also from the answers given to the questions themselves, and not from the

omission to explain the circumstances. The Court can always frame questions dealing with such salient points in the case as in its opinion call for

explanation. Lastly it is argued that it will be extremely difficult to frame questions such as would not elicit incriminating answers or be questions of

a catching nature. To this the answer is that the incompetency of a tribunal in administering the law, or the difficulty in administering it, is no ground

for whittling down its provisions. Besides, I do not see why it would not be possible to put before the accused the salient facts and circumstances

as they appear in the evidence against him, and. ask him if he has any explanation to offer.

13. There is scarcely any reported decision which directly bears upon the question of sufficiency of an examination under the mandatory provisions

of Section 342 of the Criminal Procedure Code. There are three unreported decisions of this Court to which I shall presently refer. In Criminal

Revision No. 237 of 1924 Unrep. decided on 24 June 1924, (Newbould and Chakravarti JJ.), where it appeared that the question put to the

accused was ""What is your defence?"" it was argued that the question was not of the nature contemplated by the section. This Court (Newbould

and Chakravarti JJ.) refused to follow the decision of a single Judge of the Patna High Court in the case of Bhokhari Singh v. King-Emperor

(1924) Pat. 198, and held that the question was sufficient. In Criminal Revision No. 182 of 1923 Unrep. decided on 19 Dec. 1923 (Greaves and

Pauton JJ, the question put to the accused was ""What is your defence?"" In that case Greaves J. (Panton J. concurring) observed as follows: ""I

think there is no doubt that the proper method u/s 312 of the Criminal Procedure Code is to put, at the close of the prosecution case and before

the accused enter on their defence, shortly and succinctly, the main points which appear upon the prosecution evidence bearing against the

accused. But what we have got to consider in this case is whether what has been done is sufficient compliance with Section 342, or whether

Section 342 has been complied with. We do not for a moment suggest that the course adopted here is a desirable course, and we think that the

Magistrate should have followed the course which I have already indicated. But we are not prepared to interfere in the present case on the ground

that Section 342 has not been complied with, for all the accused had an opportunity of stating what their defence was upon the evidence as given,

and it was open to them to do as they have done, and instead of answering the general questions put to them, to rely on the written statement for

the purpose of meeting the case for the prosecution."" In Criminal Appeal No. 547 of 1923 Unrep. decided on 15 Jan. 1924 (Greaves and Panton

JJ), the accused had been asked if they desired to make any farther statement to what they had done before the Committing Magistrate, and they

refused to do so. Greaves and Panton JJ. observed thus in their judgment in that case: Now, we have; had occasion to point out more than once

that the proper method of applying Section 342 is to bring to the attention of the accused specific matters which appear in the evidence against

them, and that merely questioning them generally as to whether they have anything to say or to add to what was said before the Committing

Magistrate is not a satisfactory method of applying Section 342, and we hope that the Courts in future will bear this in mind when the time comes

to question the accused under the provisions of Section 342, but we are not prepared to say that what was done in this case necessitates a new

trial.

14. As I have said there is no reported decision in which the question directly arose for consideration, but there are a series of cases in which the

section has been interpreted by the different Courts which have had occasion to administer it, and though most of these decisions are not to be

treated as binding on us, it is not undesirable to refer to them as they throw some light on the question. In the case of Hossein-Buksh v. Empress

(sic) (1880) I. L. R. 6 Calc. 96 102 at p. 102, in dealing with Section 250 of Act X of 1870 quoted above, Prinsep J. observed (Morris J.

concurring) that the real object in the power given to the Court was to elicit from the accused how he proposes to meet such portions of the

evidence which, in the opinion of the Court, implicates the accused, in the commission of the offence with which he stands charged. In the case of

Queen-Empress v. Hargobind Singh (1892) I. L. R. 14 All. 242, 253, at p. 253, Sir John Edge C. J. and Tyrell and Knox JJ. observed that it

required no knowledge of law to understand the section, and to understand that it is not for the purpose of ascertaining what witnesses the accused

intends to call, or what evidence they will give or what his defence is, that a Court is justified or authorized in examining an accused under that

section. In the case of Raghu Bhumij v. Emperor (1920) 5 P. L. J. 430, Sultan Ahmed J. observed thus: ""The real object of the latter part of

Section 342, Clause (1), is to ascertain from the prisoner how he can meet what the Judge may consider to be damnatory evidence against him.

The same view has been taken by a later decision of the same Court in the case of Bhokari Singh v. Emperor (1924) Pat. 198, in which Kulwant

Sahay J. observed that it was compulsory for the Court, u/s 342, to question the accused in such a way as to enable him to explain any

circumstances which appear in the evidence against him. It was held in that case that the mere asking the accused, as to whether he has anything

further to say, is not a sufficient compliance with the second part of the section, and that the questions must be framed in such a way as to enable

the accused to know what he is to explain, and as to what ate the circumstances against him, and for which an explanation is needed. In another

case of the same Court, namely, the case of Panchu Choudhry v. Emperor (1921) 23 Cri. L. J. 233, 235, in which the Committing Magistrate had

put a specific question to the accused as to whether he had committed the offence, and the accused answered in the negative, and then in the trial

Court he was asked whether he wished to add anything to the statement which he had made before the Committing Magistrate; Bucknill J.

observed as follows: ""It can easily be seen that if it is to be said that a judicial officer must ask this or that question, or this or that series of

questions, under the provisions of Section 342 of the Criminal Procedure Code the practical effect of the working of that section could be

criticized in revisional applications on every possible occasion. I can well understand that where an accused is undefended, the tribunal may well

point out to him the elements of the evidence adduced against him which seems in his own interest to demand his explanation: but where an

accused is defended by a legal practitioner, it would, I think, be altogether impossible to expect, or desirable to contemplate, a tribunal entering

upon a lengthy examination of an accused person which might easily develop into a recounting of the history of the whole case or into, what would

be far worse, some sort of cross-examination."" With all deference to the learned Judge, I should observe that this distinction between a defended

and an undefended case ignores the object of the section itself, which h as been so forcibly pointed out by Rankin J. in his judgment in the case of

Pramatha Nath Mukerjee King-Emperor (1923) I. L. R. 50 Cal. 518, 522 that this examination is a matter entirely between the accused and the

Court, and that the legal advisers do not come in or count in this examination at all. In another case of the same Court, namely, that of Fatu Santal

v. Emperor (1921) 6 P. L. J. 147, Sir Dawson Miller C.J. and Adami J. observed as follows: In the present case, it does not appear that any

question whatever was asked of him, or that his attention was directed to any portion of the evidence which might appear to call for an explanation,

and in these circumstances it seems to us that the trial was entirely irregular and that the verdict cannot stand. In this case, the accused had been

examined by the Committing Magistrate, but there was no examination by the trial Judge. The Lahore High Court, in the recent case of Harnama v.

Emperor (1921) 22 Cri. L. J. 276 had to deal with the effect of non-examination of the accused when he filed a written statement, and declined,

when asked, to add anything to it. Broad way J. while holding that the omission was not fatal, observed as follows: Although it would have been

better for the Magistrate to have put definite questions to the appellants, I am unable to hold that the procedure adopted in the case was so illegal

as to vitiate the whole trial. In the case of In re Basrur Venkata Row (1911) 13 Cri. L. J. 226, 932 of the Madras High Court, Spencer J. dealing

with a letter from which an inference adverse to the accused was drawn by the Court, observed as follows: ""If it was intended to treat this letter as

a circumstance appearing against the first accused and to draw inference from it against him, it would have been a fair and natural procedure for the

Judge, in the exercise of the power which he had under Sections 342 and 289 of the Criminal Procedure Code, to examine the accused about it,

and put such questions as would enable him to explain its significance. As it was, he was asked no question and he made no statement relative to

the document."" The precise point came up for consideration in a case in the Central Provinces, where the procedure seems to be well-settled, in

the case of Mussammat Tani v. Emperor (1918) 20 Cri. L. J. 12, in which Batten J. C. and Kotwal A. J. C. following an earlier decision of the

Nagpur Judicial Commissioners Court in Emperor v. Katay Kisan 17 C. P. L. R. 113, held that the object of Section 342 of the Criminal

Procedure Court is (i) to communicate to the accused to the full extent what, may be found necessary in each particular case, what is alleged

against him in the evidence for the prosecution, and (ii) to ascertain from him what explanation or defence in law or in fact, he wishes to put

forward in respect thereof. It was expressly laid down by the Court that it is necessary that the attention of the accused should be drawn to all the

vital parts of the evidence against him and that it was not a sufficient compliance with the provisions to ask the accused the general question, Have

you anything more to say in this case? or You have heard the prosecution witnesses against you what have you to say? I have not been able to find

any opinion of the Bombay High Court in this matter, but specimens of examinations that are to be found in some of the reported cases point to a

detailed examination being the practice that obtains in that Presidency. In one of the cases in that Court, viz., Basapa Ningapa v. Emperor (1915)

16 Cri. L. J. 765; 17 Bom. L. R. 892, Hay ward J. characterised the examination of the accused person held by the Committing Magistrate as

perfunctory, indicating that something more than a general question is necessary, and observed that the law requires that an opportunity shall be

given to the accused himself to explain, and not that this important step in the procedure should be left to his pleader. The same view has been

endorsed by the Courts in Burma. In the Court of the Judicial Commissioner of Upper Burma Riggs J.C., in the case of Nga San Nyein v.

Emperor (1917) 18 Cri. L.J. 774 held that the object of examining an accused person is to afford him an opportunity of explaining away evidence

against him, that each point appearing in evidence should be put to him and he should be invited to offer his explanation or comment on it, anything

in the nature of cross-examination being avoided. The Burma High Court, in the case of Maung Hman v. Emperor (1923) I. L. R. 1 Bang. 689 had

to deal with this question very recently, and May Oung J. held in that case that a Judge or Magistrate should note every point which he thinks he

will have to put into the scale against the accused, and then question him on each point, otherwise it will be impossible for the accused to know

what is in the Court''s mind, and he cannot be reasonably expected to explain it, and that it is not sufficient to pat a general question to the accused

such as, What have you to say regarding the statement of the complainant''s witnesses.

15. In the present case, Alimuddin Naskar was asked by the Committing Magistrate What is your defence?: he replied I am innocent, what I have

to say I shall say in the Sessions Court. In the Court of Session the said statement was read to him, and he was then asked Do you wish to say

anything more? He then made a statement. Belatali Naskar was put the same question in the Committing Magistrate''s Court, and he gave the same

reply as Alimuddin Naskar. He was asked by the Judge the same question that was put to Alimuddin Naskar, and he then made a statement. I am

of opinion that the examination of the two accused persons was perfunctory, and not a sufficient compliance with the provisions of the law. In my

opinion the law intends that the salient points appearing in the evidence against the accused must be pointed out to him in a succinct form, and he

should be asked to explain them if he wishes to do so. It may be that when a general question as to whether he wishes to say anything is asked, he

will reply in the negative. If he does so, it will be no use asking him any further questions. If on the other hand it does not appear that he would

refuse to answer questions put to him, or it appears that he desires to respond, his attention should be called to the salient points appearing against

him, so that an opportunity is really afforded to him to explain them, if he can do so. In such examination, every precaution should be taken not to

entrap him to make incriminating answers, and all questions in the nature of cross-examination should be avoided. In my opinion it is not

impracticable to conduct the examination in the manner indicated above.

16. Though the examinations of the accused persons have not been adequate, the statements made by them indicate that they were not altogether

ignorant of some of the salient points appearing in the evidence against them. Alimuddin endeavoured to explain that he had no motive, that he was

not concerned in the earlier incidents, that the Naskars were named as accused out of enmity, and that at a subsequent stage, and that the

prosecution witnesses were relations and servants of Momrej. He also wanted to create an appearance in his favour by stating that the Naskars

spent the whole day after the night of the occurrence at the spot, hut none named them then. Belatali stated that he was absent from the village and

was falsely implicated. In the present case I am unable to hold that there has been any prejudice to the accused persons. A refusal to give the

accused an opportunity to make a statement, at a stage when the mandatory part of Section 342 of the Criminal Procedure Code is operative,

vitiates the trial, but an insufficient examination, at that stage does not necessarily invalidate it.

17. For the above reasons; I am of opinion that the two accused persons have been rightly convicted. I accordingly uphold the conviction of

Alimuddin, Naskar and Belat Naskar u/s 302-120B of the Indian Penal Code, and also the conviction of Belat Naskar u/s 302 of the Indian Penal

Code.

18. As to the sentences, giving the matter my most anxious consideration and taking into account all the circumstances of the case, I am unable to

find any reason for passing a lesser sentence on either of the two accused than the maximum penalty which the law provides for the offences of

which they are guilty. The offences committed by them are most diabolical in their conception and brutal in their execution, and I accordingly

confirm the sentences of death passed on the two accused and dismiss their appeals.

Newbould J.

19. My learned brother in his judgment which he has just delivered has dealt fully with the facts and the evidence in this case. It is sufficient for me

to say that I am in entire agreement with his finding that the convictions of Alimuddin Naskar and Belat Naskar u/s 302 read with Section 120B of

the Penal Code, and of Belat Naskar u/s 302 of the Penal Code are right, and that the sentences of death are necessary. The appeals are

accordingly dismissed, and the sentences of death are confirmed.

20. As regards the point of law that was raised in this, case that there has been no adequate examination of the accused u/s 342 of the Code of

Criminal Procedure, we are in agreement that the trial has not been vitiated by any failure to comply with the mandatory provisions of this section.

But with the utmost respect for the opinion of my learned brother, I am unable to agree with him that the examinations of the accused persons at

the present trial were not adequate. I adhere to the view expressed by Chakravarti J. and myself in the unreported case Mahamud Sheikh v.

Emperor, Unrep. Cr. Rev. No. 237 of 1924, decided on 24 June 1924 (Newbould and Chakravarti JJ). We then held, in agreement with the

decision of Rankin J. in Pramatha Nath Mukerjee v. King Emperor (1923) I. L. R. 50 Cal. 518, 522, 523, that what is necessary is that the

accused should be brought face to face solemnly with an opportunity given to him to make a statement from his place in the dock in order that the

Court may have the advantage of hearing his defence, if he is willing to make one, with his own lips. We further held that the question put in that

case ""What is your defence"" was a sufficient compliance with the mandatory provisions of Section 342 of the Criminal Procedure Code. One of

the reasons given for this decision was that for many years it had been the more usual practice for Courts, when examining an accused under this

section, to put to him questions of a formal nature in words similar to those which had been used in that case, and we applied the maxim optimus

legis interpres consuetude.

21. I still think that a formal question in general terms, which gives the accused an opportunity of making a statement of his defence with his own

lips, is a sufficient compliance with the mandatory provisions of Section 342 of the Criminal Procedure Code, since it enables the accused to

explain any circumstances appearing in the evidence against him. To what extent the Court, when complying with the mandatory provisions of the

section, should also exercise its discretionary powers under the other provisions of the section, is a different question. The exercise of this

discretion mast vary with, and depend on, the circumstances of each particular case. But in the majority of cases it is in my opinion neither

necessary nor desirable that there should be any detailed questioning of the accused. The point at which the Court is bound to question the

accused is after the witnesses for the prosecution have been cross examined. From the cross-examination it will usually appear that the accused

understands what are the circumstances appearing in the evidence which require explanation. If this is apparent it is unnecessary for the Court to

tell the accused what those circumstances are. The superior Courts of this country have repeatedly emphasised that the examination oÃ¯Â¿Â½ the

accused, under this section, should not be of an inquisitional nature. There is great danger, if the lower Courts are required to depart from the usual

practice of putting a formal question, and in all cases to specify the circumstances appearing in evidence against the accused, that something of the

nature of cross-examination will frequently result. There is a very thin line of distinction between stating the circumstances which require explanation

and asking the accused to explain those circumstances.