SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Emperor Vs. Alimuddi Naskar and anr.

Emperor Vs. Alimuddi Naskar and anr.

SooperKanoon Citation : sooperkanoon.com/874521

Court : Kolkata

Decided On : Dec-01-1924

Reported in : AIR1925Cal361

Appellant : Emperor

Respondent : Alimuddi Naskar and anr.

Judgement :
JUDGEMENT

Newbould, J.

1. 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 Alimuddi Naskar and Belat Naskar under Section 302 read with Section 120-B, Indian Penal Code, are right and that the sentences of death are necessary. The appeals are accordingly dismissed and the sentences of death are confirmed.

2. As regards the point of law that was raised in this case that there has been no adequate examination of the accused under Section 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 of Rez Mahamad Shekh v. The Emperor [Criminal Revision No. 237 of 1924] We then held in agreement with the decision of Rankin, J., in Promotho Nath Mukhopadhya v. King-Emperor A.I.R. 1923 Cal. 470 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, 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 optimis legis interpres consuetude.

3. 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, 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 must 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 of 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.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com