EXAMINATION/STATEMENT OF THE ACCUSED

**[Sections 154, 342, & 364, Cr.P.C]**

Examination not in question and answer from. The failure to record the statement under section 342 in the from of questions and answers as required by section 364 is a defect which is curable under section 533. AIR 1945 Lah. 91 Sultan v. Emperor, distinguishing Nazir Ahmed v. Emperor. AIR 1936 PC 253 on the ground that such a statement is quite different from confessional statement made under section 164.

Statement of accused not recorded in question and answer form u/S. 342, Cr.P.C. Held, accused prejudiced. Case remanded for re-recording the statement of the accused according to law. NLR 1990 Cr. 692. Muhammad Ramzan.

Statement u/S. 342, Cr.P.C. not signed or thumb marked by accused in violation of mandatory provisions of section 164, Cr.P.C. is illegality not curable u/S. 537, Cr.P.C. Case remanded for re-recording of the statement of the accused. NLR 1989 Cr. 264. Wahid Bakhsh Rana.

Confession not in question and answer form: Confession held admissible. (DB) PLD 1950 Lah. 212 Wali Muhammad v. Crown.

Signature of accused. The record of confession must be signed by the accused. Without signature it is not admissible in evidence unless the defect is cured as provided by section 533. 1883 AWN 243 Gajadhar. (FB) 35 Cr. LJ 385 Muhammad Ali v. Emp.

Defects in recording of confession: Where the confession though signed by the accused was not recorded in the manner prescribed by section 364 and there was no certificate that the record contained in full the statement made by the accused, it was admitted in evidence in spite of the defects and held to be proved by its production. 1881 PR No. 20 Ahmed Din. 1881 PR NO. 21 Sher Singh.

Recording of confession provision disregarded: Lahore High Court Rules and Orders Vol. III, Chapter XIII and Punjab Government circular letter No. 6091-J-36/39829 (H. Judicial dated 19-12-1936). Directions not complied with. Confession held not duly made and therefore inadmissible. PLD 1950 Lah. 68 (1)(B) Barkat Bano.

Failure to keep memorandum under section 364 (3): Held irregularity curable under section 533, Cr.P.C. (SC) PLD 1958 SC 383 Hazrat Jamal.

Section 342, Cr.P.C. applies to a summons case tried summarily under section 362 the accused is prima facie prejudiced if no statement is taken at all. (DB) 42 Cr.LJ 71 Emp. v. Kondiba Balaji.

Summary trials and summons cases: The provisions of section 342, Cr.P.C. apply to summons cases and summary trials and non-compliance vitiates trial; but when accused pleads guilty under section 243, the examination under section 342, Cr.P.C. is not necessary but the admission of guilty should be recorded in the words of the accused as nearly as possible. Retrial ordered. ILR 15 Lahore 60 Karam Din v. Crown. ILR 15 Lah. 277 Abdul Rehman v. Crown. 1975 P.Cr. LJ 246 State v. Muhammad Sadiq.

Statement of co-accused under section 342, Cr.P.C. is not evidence against the accused even under section 30, Evidence Act, 1975 P.Cr.LJ 1116 Ghulam Hussain v. State Bank.

Statement of accused cannot be made use of against person other than the maker. (DB) PLD 1961 Lah. 146 Ghulam Muhammad.

Accused's own statement admitting occurrence but pleading provocation and apprehension of assault on sister. Entire prosecution evidence disbelieved. Held, the plea of the accused has to be accepted as a whole. 1977 P.Cr.LJ 549. Ishtiaq Ahmed PLJ 1978 Cr.C. (Lah.) 16 Muhammad Hanif.

Accused cannot be questioned unless a circumstance appears against him in evidence. PLD 1950 BJ 5 Ghulam Farid v. Crown.

Accused should not be left to guess implication of questions put to him. There should be no implications and no mental reservations under section 342, Cr.P.C. (DB) PLD 1954 Sindh 256 Inayat Hussain Shah v. Crown.

Object of Section 342, Cr.P.C. is that the accused should be given notice of points which he must meet in the order to exonerate himself. (FC) PLD 1955 FC 88 Abdul Wahab v. The Crown.

Putting a general question is not enough: Accused's attention must be called to vital points in evidence and his explanation sought nevertheless examination of the accused is not to be for cross-examining him or for filling up gaps in the prosecution case. It is meant to assist the accused to explain the circumstances against him. (FC) PLD 1952 FC 63 Aminul Haq v. The Crown.

Pleader may be examined under section 342, Cr.P.C. on behalf of the accused exempted from appearance under section 205, Cr.P.C. (DB) PLD 1954 Lah. 107 Crown v. Jahan Dad.

Contra: (DB) 47 Cr.LJ 302 = AIR 1945 Cal. 482 Adel-ud-Din v. Emp.

Provisions of Section 342, Cr.P.C. are mandatory: Omission to examine accused vitiated trial, even though the accused be eventually acquitted. PLD 1960 Lah. 140 State v. Barkat Ali See PLD 1960 Lah. 823 (FB).

No question u/S. 342 Cr.P.C. asked about sale of liquor from the accused, held, conviction for sale of liquor could not be maintained. PLJ 1996 PSC 239, Khushi Masih.

Joint statement of accused under section 342, Cr.P.C. is illegal and vitiates trial. ILR 6 Lah. 554 Mst. Ghasiti v. Crown. AIR 1937 Sindh 304 Emp v. Shinalal. PLD 1967 Pesh. 62 Abdullah.

Unduly details examination of accused savouring of cross-examination disapproved. Court not bound to question accused about "each and every piece of evidence led by prosecution". (DB) PLD 1960 Lah. 1192 Jamal.

Previous conviction: The court cannot question the accused about his previous convictions when examining him under section 342, Cr.P.C. as that is done to explain only what is already in evidence against him before the court. (FB) 45 Cr.LJ 364 Emp. v. Dalip Singh. 211 IC 283.

Statement partly accepted: Accused making statement inconsistent with  proved and established facts. Incriminatory part accepted and exculpatory one rejected. (DB) 1975 P.Cr.LJ 48 Imamuddin etc.

Statement of the accused in Court should be taken into consideration in its entirety if conviction is to be based solely on it. Accused's attention to such admission or his explanation for same not called for by the Court during accused's examination. Held, it would be most unfair and a violation of the principle of natural justice. (FC) PLD 1952 FC 1 Rahim Bakhso v. Crown. PLJ 1978 Cr.C. (Lah.) 16 Muhammad Hanif.

Statement of the accused to be accepted in its entirety, when the prosecution evidence is rejected totally. 1992 SCMR 2047, State v. Muhammad Hanif etc. PLD 1991 S.C. 520, Sultan Khan v. Sher Khan etc.

When prosecution evidence is rejected in entirety, the statement of the accused u/S. 342 Cr.P.C. has to be accepted in toto and without scrutiny 1983 SCMR 2047, State v. Muhammad Hanif etc.

Statement of accused u/S. 342, Cr.P.C. is to be considered as a whole i.e., inculpatory part as well as exculpatory part unless there is other reliable evidence to show that exculpatory part of the statement is false. PLD 1991 SC 520 Sultan Khan. v. Sher Khan etc. PLJ 1991 SC 327.

Statement of accused u/S. 342, Cr.P.C. has to be accepted or rejected in its entirety. 1991 SCMR 61. Ghulam Qadir v. Esab Khan etc.

Statement of the accused u/S. 342 Cr.P.C. has to be accepted or rejected as a whole. It is not permissible to accept the inculpatory part to corroborate the prosecution evidence. PLD 1995 S.C. 343, Shabbir Ahmed.

Statement of the accused u/S. 342 Cr.P.C. not to be partly accepted or partly rejected. It has to be accepted as a whole or rejected as a whole. PLJ 1995 S.C. 569, Shamoon.

Statement of accused to be accepted as a whole when court disbelieves prosecution evidence. PLJ 1982 Cr.C. (Mul) 109 Inayat Ullah etc.

Statement of the accused relied upon: in its entirety when prosecution evidence disbelieved as interested. Conviction u/S. 302, PPC altered to 304 (1), PPC and sentence reduced to 4 years' R.I. Supreme Court upheld the High Court Judgment. PLJ 1984 SC 318. Sattar Khan v. Rashid Khan etc.

Statement of the accused to be taken in its entirety where conviction is sought to be based entirely on such statement. In the absence of any other evidence statement of the accused is to be accepted as a fact though apparently not fully established. 1983 SCMR 76 Faiz etc.

Statement of accused u/S. 342, Cr.P.C. to be relied on as a whole when prosecution version rejected in toto. PLJ 1982 SC 632 Faiz etc.

Sessions Judge asking the accused only whether he made the statement before the Committing Magistrate (which was read to him) and whether he wanted to add anything to it, held, trial not vitiated unless prejudice caused to the accused. (DB) PLD 1953 Lah. 14 Ali Shan v. Crown: PLD 1954 Sindh 141 Muhammad Shafi v. Crown. (Contra) PLD 1960 Lah. 547 Fazal.

Sessions Judge relying on accused's statement before Committing Magistrate and asking him whether he wanted to add anything to it or would he produce defence, held that it was violation of mandatory provisions of section 342. Conviction set aside. Case remanded. PLD 1953 Lah. 14 and PLD 1954 Sindh 141 ref. (DB) PLD 1960 Lah. 547 Fazal overruled See PLD 1960 Lah. 822.

Sessions Judge reading out accused's statement made before Committing Magistrate and asking him whether he made that statement and whether he wanted to say anything else. Held, omission not incurable under section 537, Cr.P.C. Court to determine on circumstances of the case whether it was curable. (FB) PLD 1960 Lah. 822 Akbar Ali (DB) PLD 1960 Lah. 687 Bashir Ahmed. (DB) PLD 1960 Lah. 880 Muhammad Ishaq.

Accused not examined after prosecution evidence, but called upon to produce defence. Held non-compliance with the provisions of section 342 Cr.P.C.. is not curable under section 537, Cr.P.C. the trial was vitiated. 1977 P.Cr.LJ 12 Sultan Ali.

Important piece of evidence not put to the accused nor opportunity given to him to explain the evidence. Such evidence cannot be used for conviction. (FC) PLD 1952 FC 1 Rahim. v. Crown PLD 1952 FC 63 Aminul Haq v. Crown PLD 1955 FC 88 Abdul Wahab v. Crown; PLD 1955 FC 129 Abdus Salam v. Crown and PLD 1958 FC 300 Munawar v. Crown.

Report of Chemical examiner not put to the accused when examined u/S. 342 Cr.P.C., as such the accused was not given opportunity to cross examine the witness in the light of the Chemical Examiner's report.ÿCase remanded for de nono trial. PLJ S.C. 689, Muhammad Mumtaz.

Accused not examined about abscondence; abscondence cannot form basis of conviction. (DB) PLJ 1978 Cr.C. (BJ) 164 Kaura.

Question about matching of empties with the gun of the accused not put to him, held not fatal to prosecution as no failure of justice occurred. PLD 1978 SC 1. Allah Dad.

Question about dying declaration not put to accused u/S. 342, Cr.P.C. Held, prejudice caused to the accused. Conviction set aside and case remanded for retrial. (DB) PLJ 1988 Cr.C. (Lah.) 225. Mannu Khan etc.

Dying declaration not up to the accused for explanation held does not prejudice the accused. The dying declaration was F.I.R. and the accused who was represented by the counsel had full knowledge of it. Accused was not taken by surprise. The defect was curable under section 537, Cr.P.C. (SC) 1974 SCMR 219 Wahid Bakhsh.

Question about admission: Accused not questioned under 342, Cr.P.C. about an admission in his statement. The accused cannot be convicted on such statement alone. (DB) 1972 P.Cr.LJ 166 Muhammad Tufail. 1974 P.Cr. LJ 180 Muhammad Siddique etc.

Each piece of evidence, and each circumstance having an incriminating effect against him in relation to offence charged should be put to the accused when examined under section 342, Cr.P.C. When no prejudice is caused to the accused, however, perfunctory nature of his examination, trial is not vitiated. (SC) 1969 SCMR 461 Muhammad Sonafar Ali.

Circumstances from which inference adverse to the accused is sought to be drawn should be put to the accused under section 342, Cr.P.C. (SC) 1969 SCMR 777 Din Muhammad v. Crown. (DB) PLD 1972 Lah. 129 Miana. 1969 P.Cr.LJ 1573 Din Muhammad v. Crown.

After recording fresh evidence the accused is to be examined u/S. 342 Cr. P.C. to explain incriminating evidence against him. PLJ 1993 Cr.C. (SAC) 207, Asghar Ali.

Any circumstance against the accused in evidence must be put to the accused u/S. 342 Cr.P.C. before it is used against him. 1999 SCMR 697, Sheral.

Failure of Trial Court to examine accused u/S.342 Cr.P.C. After recording fresh evidence had resulted in prejudice to the accused. Case remanded for re-examination of the accused. 1993 SCMR 51, Asghar Ali (Cases ref. accused 1934 Lah. 631, Anand Parkash; accused 1934 Lah, 648, Kundan Lal; PLD 1961 Dacca 96, Mujib ur Rehman etc.

Failure to put to accused items of circumstantial evidence: When no prejudice is caused to the accused, the irregularity is immaterial. (SC) PLD 1955 FC 113 Ibrahim Bhak v. Crown.

In examination u/S. 342 Cr.P.C. circumstances and items appearing against accused not put up. Case remanded for retrial. (DB) PLJ 1994 Cr.C. (Lah.) 42, Atta Muhammad etc.

Confession being sole support for conviction and it is not having been put to the accused, held it caused prejudice to him. Conviction set aside. (SC) PLD 1956 SC (Pak.) 300 Munawar Ahmed.

Confession not put to the accused either by the Committing Magistrate or by the trial Court. Held, conviction based on the confession unsustainable. (DB) PLD 1952 Lah. 374 Shammun v. Crown.

Question about extra-judicial confession and motive not put to the accused. Held, such pieces of evidence cannot be used against the accused. PLJ 1985 Cr.C. (Kar.) 210 Manjoo.

Circumstantial evidence: When the prosecution case is based on circumstantial evidence the examination of the accused must be very thorough. PLD 1951 Bal. 14 Ido v. Crown.

Omission to question on certain facts appearing in evidence against the accused. Such facts may be ruled out of consideration. PLD 1956 Kar. 212 Khaliq Hussain v. Crown.

Matching of empties with crime weapon being a circumstance against the accused must be put to him. PLD 1955 FC 88 = 1974 P Cr.LJ 65 = 1974 P.Cr.LJ 543 referred. (DB) PLJ 1976 Pesh. 70 Sher Ahmed. PLD 1976 Pesh. 90. Contra (SC) PLD 1978 SC 1. Allah Dad etc.

Failure to question accused on important ingredients of the case though not of the charge. Not open to court to come to finding on such matter and thereby to come to an inference in regard to knowledge or intention of the accused with reference in regard to offence charged. (FC) PLD 1953 FC 189 S.M.K. Alvi v. Crown.

Non-compliance with the provisions of section 342, Cr.P.C. causing prejudice to the accused. Conviction set aside. Retrial ordered from the examination stage. (FC) PLD 1955 FC 129 Abdus Salam Molla v. Crown.

No examination after conclusion of prosecution evidence trial vitiated. Conviction set aside. 1974 P.Cr.LJ Note 129 Abdullah.

Plea of accused not recorded and no prosecution allegations put to him. Conviction set aside. Statutory provision to record accused's plea as nearly as may be in accused's own words, designed to enable trial Court and superior Courts to know that the accused understood that he was really pleading guilty to the offence charged. 1971 P.Cr.LJ 658 Dr. Ghulam Mustafa.

Case essentially founded on evidence of eye-witnesses. Accused not questioned on other matters e.g. motive, tracks, identification, threats held out by accused. Omission, held, immaterial in the circumstances of the case. (FC) PLD 1955 FC 132 Lalan v. Crown.

Failure to question the accused on main evidence against him. No suggestion by the counsel that the case of the accused had been prejudiced. Conviction upheld, perfunctory examination of the accused by the trial Courts regretted. (FC) PLD 1956 FC 143 Muhammad Yaqub v. Crown.

Certificate with statement u/S. 342, Cr.P.C. The trial Court after the statement of the accused affixing the stamp that the statement of the accused was recorded in his presence and hearing and contained full and true account of the statement made by him, held, is not contemplated by law. The certificate must be in the hand of the Magistrate. This being illegality not curable u/S. 537, Cr.P.C. case remanded to the trial Court. NLR 1985 Cr. 275 Fateh Khan (See sec. 364 (2) and (3), Cr.P.C.)

Non-examination of accused on oath, or not giving the accused an opportunity to make statement on oath u/S. 340(2), Cr.P.C. amounts to an illegality not curable u/S. 537, Cr.P.C. NLR 1985 Cr. 389. Faqir Hussain PLD 1985 Lah. 434.

Accused not examined u/S. 340(2) Cr.P.C., on oath, as he had expressed his intention to the Court, but the Court overlooked it and did not examine him on oath. Sec 340(2) Cr.P.C. lays down that the accused shall be competent witness for defence and may give evidence in disproof of charges against him. Held, omission by the Court in re-examining the accused as his own witness in disproof of allegations against him, has vitiated the trial. Appeal accepted. (D.B) PLJ 1996 Cr.C (Kar.) 33, Ghulam Hussain.

Examination of accused as a witness on oath explained:

1. If prosecution evidence makes out no case against the accused he cannot be compelled to give evidence on oath u/S. 340, Cr.P.C. nor can he be examined u/S. 340, Cr.P.C.

2. If there is evidence against the accused he should be given an opportunity to give evidence on oath in his defence u/S. 340, Cr.P.C.

3. If court considers necessary, it can compel the accused to give evidence on oath and in case of refusal the accused can be punished u/S. 178 or 179, PPC as the case may be and adverse inference may also be drawn.

4. Under Article 44, Qanun-e-Shahadat accused is liable to cross-examination.

5. Non-compliance of section 340, Cr.P.C. can be cured u/S. 537, Cr.P.C. The case was remanded for retrial from the stage of examination of the accused. PLJ 1985 Cr.C. (Lah.) 546 Faqir Hussain.

Evidence on oath by accused is a statutory right and must be properly observed as laid down u/S. 340-A, Cr.P.C. It is discretion of the accused to make statement on oath. PLJ 1987 FSC 38 Khalid Hussain.

Accused not called upon to make a statement on oath u/S. 340 (2), Cr. P.C. is of no consequence as section 340 (2), Cr.P.C. is inconsistent with Article 13 (b) of the Constitution of Pakistan (1973). (DB) PLD 1988 Kar. 539 Muhammad Yousaf Zia.

Evidence of accused on oath can be recorded after his defence witnesses are examined PLD 1987 Lah. 423 Shahid Nawab.

Statement of accused to be considered as evidence: PLJ 1986 Cr.C. (Kar.) 589. Muhammad Saleh.

Statement of accused u/S. 342, Cr.P.C. being without oath cannot be read as statement u/S. 340 (2), Cr.P.C. which is to be recorded on oath. Case remanded to trial court for recording the statement u/S. 340 (2), Cr.P.C. in accordance with law. (DB) PLJ 1991 Cr.C. (Lah.) 11. Mukhtar Ahmed.

Statement u/S. 342 Cr.P.C. cannot be treated as confession, as the provisions of 342 do not warrant that the trial Court should warn or caution the accused before his answers are recorded that if he confesses or admits anything, same will be used against him. Sentence of death cannot be awarded so lightly. 8 Bom. L.R. 240, Emp. v. Chinia Bhika Koli ref. Appellants acquitted. (DB) PLJ 1993 Cr.C. (Lah.) 249, Muhammad Shafi etc.

No recording of statement of accused u/S. 340 (2), Cr.P.C. or not affording such opportunity to the accused makes the trial incomplete. Case remanded for retrial from the stage of the examination of accused. (DB) PLJ 1989 Cr.C. (Pesh.) 178. Abdul Ghaffar etc.

Accused not asked by court to make a statement on oath u/S. 340 (20, Cr. P.C. Held, the trial was incomplete; case remanded for retrial from the stage of recording the statement of the accused u/S. 340 (2), Cr.P.C. PLD 1991 FSC 135. State v. Ghulam Abbas. Also (DB) NLR 1990 Cr. 533.

Evidence of accused under oath u/S. 340 (2), Cr.P.C. unless recorded the trial would be incomplete and it shall be an incurable irregularity. NLR 1990 Cr. 706. State v. Mukamil Shah. = PLJ 1990 Cr.C. (Pesh.) 426.

Appellant having categorically refused to give statement on oath, adverse inference is to be drawn against him. PLJ 1991 FSC 25. Altaf Hussain, Contra Supreme Court, PLJ 1991 SC 504.

Accused cannot be compelled to make a statement u/S. 340(2), Cr.P.C. on oath, and on his failure to make a statement on oath he cannot be sent to prison and no adverse inference can be drawn against him. PLD 1991 SC 787 Amir Khatun v. Faiz Ahmed etc. = PLJ 1991 SC 504.