### section 340 (2)

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Any person accused of an offence before a criminal court or against whom proceedings are instituted under this code in any  such court shall, if he does not plead guilty , give evidence on oath in disproof of the charges or allegations made against him or any person charged or tried together with him at the same trial:

Provided that
he shall not be asked, and ,if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged or for which he is being tried, or is of bad character,

## unless-

(1) The proof that he has committed or been convicted of such offence is admissible in evidence to show that he is guilty of the offence with which he is charged or for which he is being tried;

(2) He has personally or by his pleader asked questions of any witness for the prosecution with a view to establishing his own good character,or has given evidence of his good character;

(3) He has given evidence against any other person charged with or tried for the same offence.

## opportunity to disprove allegations

Provisions of section 340 (2) is in the nature of an advantage which provided an opportunity to accused persons to disprove allegations against him.

## cannot be compelled to be a witness

Accused cannot be compelled to be a witness against himself under section 340(2)crpc   and as such the provisions are not violative  of Article 13 (b) of the constitution.(  1990P.Cr.L.J. 1073 (DB)

## Statement on oath

If the accused makes a statement on oath under section 340(2) he is to be cross examined by the prosecutor .

## incrimating questions

During the cross examination the prosecutor is bound to ask him questions which may incriminate him in the commission of the offence, which will in fact amount to compelling him to be a witness against himself.,which is prohibited by clause (b) of Article 13 of the Constitution.

## PLJ1989 Cr.C. 64

It is pretty evident that the section 340 (2) is inconsistent   with clause (B) of Article 13 of the Constitution.

## section 342 and 340 (2) provides  valuable rights

Section 342 and section 340(2) are valuable rights which accrue to an accused for explaining incriminating evidence standing against him as well as for defending himself in his capacity as a witness. These are basic rights. Therefore opportunity ought to be provided with respect to his examination under section 342 or for his appearing as his own witness under section 340(2) so that he is left with no grievance of having not been heard personally. (NLR 2004 Cr. 326 (DB).

## STATEMENT UNDER SECTION 342 CANNOT BE  TREATED AS STATEMENT UNDER SECTION 340(2)

Statement of accused on oath under section 340(2) cannot be equated with the statement required to be recorded under section 342 crpc because the purpose of examination of accused under section 342 is almost different from his examination under section 340 (2) .Under section 342 explanation of accused is sought about important and material pieces of prosecution evidence appearing against him, while under section 340(2) evidence is offered to disprove the case set up by the prosecution ( 2007 P.Cr.L.J. 133)

## section 340(2) mandatory provision

Provisions of section 340(2) are mandatory ,court is duty bound to examine accused on oath and accused has to give evidence on oath when called upon by the court  to meet the requirements of section 340(2) as accused can not escape doing so.

## Omission causes illegality

Omission to record statement of accused on oath would be  an illegality and not an irregularity curable under section 537 crpc

## Basic difference between section  342 and section 340

## https://2.bp.blogspot.com/-YwMx-e_jHZA/WcQOhhz3GcI/AAAAAAAAAcI/QAnrMsdrx5A6Kt-fwWL3oOipN2MT0EfMwCLcBGAs/s1600/download.jpg

Section 340(2) is directed to the person accused.

Section 342 is directed to the Court.

## PLD 1988 Lah.368