

APPELLATE CRIMINAL.

Before Sir W. Morgan, C. J., and Mr. Justice Kindersley.

1878.
March 15.

REG. v. RÁMASÁMI PADAYÁCHI AND ANOTHER (13TH AND 14TH PRISONERS) APPELLANTS. (1)

Indian Evidence Act—Accomplice.

Section 133 of the Indian Evidence Act (No. I of 1872) in unmistakeable terms lays it down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision.

The rule in Section 114 of the Indian Evidence Act coincides with the rule observed in England, that though the evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the Jury or the Court credits the evidence, a conviction proceeding upon it is not illegal.

APPEAL against the sentence of the Session Court of Tanjore in Case No. 91 of the Calendar for 1877. The prisoners were accused of having, in company with others, committed a dacoity.

A. Rámuchandráyyar for the appellants.

The *Government Pleader* (Mr. *Handley*) in support of the conviction.

The Court, having considered the record, delivered the following

JUDGMENT:—We called for the record in this case because the Sessions Judge had impliedly instructed the jury that the evidence of an accomplice is irreceivable without corroboration.

The part of the charge referred to runs as follows, “against the 13th and 14th prisoners there is only the evidence of the approver, 7th witness. Much stress has been laid on a decision of the Bombay High Court (2) that such evidence corroborated only by accomplices (as here by the statement of the 6th prisoner) is not sufficient. You may consider whether the present evidence would justify a conviction, but if you believe the evidence you may convict these prisoners, for here there is no doubt that the crime was committed, and this is corroboration sufficient for conviction.”

(1) Criminal Appeal, No. 867 of 1877, against the sentence of the Court of Session of Tanjore in Case No. 91 of the Calendar for 1877.

(2) See I.L.R. 1 Bom., 475.

We consider it necessary to point out that the law itself (Section 133, Indian Evidence Act) in unmistakeable terms lays it down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision.

The jury in cases tried by jury and the Court in cases tried by assessors may no doubt presume that an accomplice is unworthy of credit unless corroborated (Section 114, Illustration *b*), but before acting on the presumption, the Court or jury is required by Section 114 and the sequel to the illustrations to take into consideration certain facts with the view to ascertain the probability of the story told, and the rule in this section is thus brought to coincide with the rule observed in England, that though the tainted evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet, if the jury in the one case, or the Court in the other, credits the evidence, a conviction proceeding upon it is not illegal.

If the decision of the Bombay High Court, to which the District Judge refers, which is probably *Reg. v. Budhu Nanku* (1), intended to lay it down in broad terms that the evidence of an accomplice is not receivable unless corroborated, we could not agree with that decision.

The jury in the present case convicted, but as the charge of the Sessions Judge, though in this respect erroneous, tended to favor rather than prejudice the prisoner, we see no ground for interfering with the conviction on account of this error in procedure, and dismiss the appeals of 13th and 14th prisoners.

Appeals dismissed.

(1) See I.L.R., 1 Bom., 475.

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REG.
v.
RAMASAMI
PADAYACHI.