

NAGAPPA  
v.  
ISMAIL.

acceptance of the amount of an instalment in arrear on account or in satisfaction of such instalment and not as a mere part payment in reduction of the whole debt amounts to a waiver within the meaning of Act XV of 1877, sch. II, art. 75.

---

## APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Muttusami Ayyar.*

QUEEN-EMPRESS

v.

ARUMUGA AND OTHERS.\*

*Criminal Procedure Code, s. 297—Evidence of accomplice—Corroboration—  
Misdirection to Jury.*

A Judge should caution a Jury not to accept the evidence of an approver unless it is corroborated: the omission to do so amounts to misdirection.

APPEAL against convictions by W. F. Grahame, Acting Sessions Judge of Tinnevely, and a Jury, in sessions case No. 30 of 1888 on charges of dacoity, house-breaking by night, and theft in a building.

The Sessions Judge said to the Jury in the course of his charge :—

“Witnesses, 1 *Gangan Pujari*, 2 *Virasinnu*, 3 *Gurusami*, and 4 *Solai Nadan*, are the only witnesses for the prosecution whose evidence is of importance. Of those witnesses, the fourth, *Solai Nadan*, is an approver. According to the evidence of those witnesses, a band of twelve or thirteen men, among whom were the prisoners and witness 4, *Solai*, made their way into the inclosure of the temple of *Gangai Amman* near *Vepalapati*, tied the hands of witnesses 1, 2 and 3, unlocked the door of the temple with a key which first witness, *Gangan Pujari*, had, and stole from the temple cloths, money and other articles worth about Rs. 300.

“The men also took some ornaments which had been worn by *Gangan Pujari* and his mother and sister, who slept at the temple that night. They then fastened up in the temple witnesses 1, 2

and 3 and the mother and sister of *Gangan Pujari*, and then made their escape. The property before the Court has been identified as part of the property stolen from the temple, and the approver, *Solai*, has pointed out the two billhooks and one brass pot as having been thrown into a well because none of the robbers would take them, and the other brass pot as having been taken by first prisoner. The seventh witness, Head Constable *Subramania Pillai*, has deposed that the billhooks and brass pot were found in the well. First witness *Gangan* identified only prisoners 3 and 4. Witness 2, *Virasinnu*, and third witness *Gurusami* identified only prisoners 1 and 3, and the complicity of prisoners 2 and 5 rests on the evidence of the approver alone."

The Jury returned a verdict of guilty against all five prisoners, and the Sessions Judge sentenced them to seven years' rigorous imprisonment.

The prisoners preferred this appeal.

*Mr. Norton* and *Anandachariu* for appellants.

*The Acting Government Pleader (Subramanya Ayyar)* for the Crown.

The Court (*Collins, C.J.*, and *Muttusami Ayyar, J.*) delivered the following

JUDGMENT :—It is admitted by the Government Pleader that the case against the second and fifth prisoners rests substantially on the evidence of the approver, as the third witness for the prosecution did not mention the name of fifth prisoner when before the Magistrate.

The Sessions Judge should have cautioned the Jury not to accept the approver's evidence unless it was corroborated, and in our opinion it is misdirection not to do so. We set aside the conviction of the second and fifth prisoners and order them to be discharged.

As regards the first, third and fourth prisoners there is other evidence corroborating the approver. We therefore confirm the conviction of the first, third and fourth prisoners, but we reduce the sentence to four years' rigorous imprisonment.

---