

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Sankaran-Nair.

GIDDIGADU

v.

EMPEROR.*

1908.
February 22,
23.

Evidence Act I of 1872, s. 30—Confession of co-accused not to be acted upon without corroboration—Misdirection to jury.

The confession of a co-accused is on an even lower footing than the evidence of an accomplice and a conviction based on such a confession alone is bad in law.

Section 30 of the Evidence Act only provides that such a confession is to be an element in the consideration of all the facts of the case, but it does not do away with the necessity for other evidence.

It is the duty of the Judge, when there is no other evidence than the confession of a co-accused to direct the jury accordingly and tell them to acquit the accused; and his omission to do so is a misdirection which will vitiate a conviction.

CRIMINAL APPEAL by the fourth prisoner against the sentence of S. G. Roberts, Sessions Judge of Kurnool Division, in case No. 41 of the Calendar for 1908. The facts for the purpose of this report are sufficiently set out in the judgment.

No one appeared for appellant.

The Public Prosecutor for respondent.

JUDGMENT.—In this case there is absolutely no evidence against the appellant (the fourth accused) except the confessions of his co-accused which implicate him also. The Sessions Judge in his charge to the jury has instructed them “it is a rule of law that where a person confesses a crime and implicates himself, if he implicates the persons who have been tried along with him to the same extent as he implicates himself, then if you accept his statement as being true and voluntarily given as against himself, you can safely accept it as true as against the other persons.” He gave no caution as to the necessity in such a case for corroboration as against the person implicated. We think that there was a plain misdirection and that it materially prejudiced the accused. The rule of law is contained in

* Criminal Appeal No. 806 of 1908.

section 30 of the Indian Evidence Act, and it does not go at all so far as the Sessions Judge states. It merely says "when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court *may take into consideration* such confession as against such other person, as well as against the person who makes such confession."

The wording of the section shows that such a confession is merely to be an element in the consideration of all the facts of the case, but does not do away with the necessity for other evidence.

The statement of a co-accused is of less probative force than the evidence of an accomplice, for it is affected by all the inherent weakness of such evidence, and it cannot be tested, as such evidence can, by cross-examination, nor is it given under the sanction of an oath. It is a general rule of practice that it is not safe to convict upon the uncorroborated evidence of an accomplice, and the confession of a co-accused is on an even lower footing. Conviction on such a confession alone has long been held to be a case of "no evidence and bad in law." (*Proceedings, dated 24th January 1873*(1), *Reg v. Hulagu*(2) and *Empress v. Ashootosh Chuckerbutty*(3).) The Sessions Judge should have directed the jury accordingly, and told them to acquit the fourth accused.

We set aside his conviction as bad in law, and direct that he be acquitted.

BENSON
AND
SANKARAN-
NATH, JJ.
GIDDIGADDI
2.
EMPEROR.

(1) 7 M.H.C.R., App. 15.

(2) (1876) I.L.R., 1 Mad., 163.

(3) (1879) I.L.R., 4 Calc., 483 (F.B.).