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is entitled to the crops sown by him, and to free ingress and egress to gather and carry them. The decree in this case should have been framed accordingly, but I need say nothing more about the matter, because that part of the decree has not been made the subject of complaint before us by the plaintiff-respondent.

Then as to the question of costs, which has been made the subject of a separate ground of appeal by the defendant-appellant before us. S. 220 of the Civil Procedure Code gives ample power and discretion to the Court in connection with costs, and in the present case the defendant, having all along acted wrongly in declining to accept the plaintiff's deposit, and in giving up possession to him, was properly made liable for the plaintiff's costs by the Courts below.

I would dismiss this appeal with costs.

OLDFIELD, J.—I concur in the proposed order.

Appeal dismissed.

APPELLATE CRIMINAL.

1886
June 28.

Before Mr. Justice Straight, Offg. Chief Justice.

QUEEN-EMPRESS *v.* BALDEO AND OTHERS.

Accomplice—Corroboration—Dacoity—Possession of stolen property.

Criminal Courts dealing with an approver's evidence in a case where several persons are charged should require corroboration of his statements in respect of the identity of each of the individuals accused. *Queen-Empress* v. *Ram Saran* (1), *Queen-Empress* v. *Kure* (2) and *Reg.* v. *Mullins* (3) referred to.

A, *B*, *M*, *R* and *N* were tried together on a charge under s. 460 of the Penal Code. The principal evidence against all of them was that of an approver. Against *A*, *B*, and *M* there was the further evidence that they produced certain portions of the property stolen on the night of the crime from the house where the crime was committed. With regard to *R*, it was proved that he was present when *B* pointed out the place where some of the property was dug up, but he did not appear to have said anything or given any directions about it.

Held, with reference to *A*, *B* and *M*, that it could not be said that their recent possession of part of the stolen property, so soon after it had been stolen, was not such corroboration of the approver's evidence of their participation in the crime as entitled the Court to act upon his story in regard to those particular persons.

(1) *Ante*, p. 306. (2) Weekly Notes, 1886, p. 65.
(3) 3 Cox C. C. 526.

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Held that, inasmuch as there was no sufficient material to warrant the inference of guilty knowledge on *R*'s part, and, with regard to *N*, no property was found with him or produced through his instrumentality, both *R* and *N* ought to have been acquitted.

These were appeals from convictions by Mr. G. H. Pearse, Sessions Judge of Meerut, dated the 14th April, 1886. The appellants, Baldeo, Ram Bakhsh, Mir Singh, Amir Bakhsh and Amman were convicted, under s. 460 of the Indian Penal Code, of house-breaking by night, in the course of the commission of which offence one Bahal Singh was murdered by some of them.

The appellants were jointly tried with three other persons called Masita, Mohsam Khan and Jamna, who were acquitted, the last mentioned being charged under s. 411 of the Penal Code.

Bahal Singh was a man reputed to be possessed of considerable wealth in coin and ornaments. On the night of the 4th January, 1886, his house was broken into, and he was murdered and the house plundered. The only direct evidence against the appellants was the evidence of an accomplice called Ghariba. He stated that a dacoity on Bahal Singh had been contemplated for some time; that Baldeo, appellant, told him that he had five or six good men at his disposal, the three chaukidars Amman (appellant), Amir Bakhsh (appellant) and Masita, Mohsam Khan and his son, Ram Bakhsh (appellant), and asked him to get one or two men; that he enlisted Mir Singh Jat (appellant), a very powerful man; that Baldeo, who was a neighbour of Bahal Singh's, fixed the 4th January, as he found the house would be empty; that the gang assembled at about 7 or 8 P. M., after dark, and fixed the rendezvous for midnight, the three chaukidars going off meanwhile on their rounds; that five men, Baldeo, Ghariba, Mir Singh, Amir Bakhsh and Mohsam Khan, escaladed the wall; that Baldeo had brought a rope, with which they let down Mohsam Khan into the courtyard; that he opened the door of the staircase and they all got down, opening for the other three; that Baldeo was the guide entirely; that Mir Singh was told off to overpower Bahal Singh, which he did by leaping on him on his charpai and smothering him; that the property was in a room close to where Bahal Singh was sleeping; and that it was quickly removed and carried off to Baldeo's house and divided.

The nature of the evidence corroborating that of the accomplice, Ghariba, appears from the following extract from the Sessions Judge's judgment:—

"The corroborative evidence against Baldeo is that of the Sub-Inspector Narain Prasad, Rukha and Sohan Pal, as to his pointing out certain silver articles buried on the Jamna bank. This is also the evidence against his son, Ram Bakhsh. They both went together to point these things out. Fakir Chand and Harnam prove that Amir Bakhsh produced some '*kharas*' and a piece of wire from a ruined house. After Amman had denounced Ghariba, and Mir Singh and Ghariba, who had been swindled by Mir Singh and Baldeo in the division of the property, had made a clean breast of it, two Gujars, Jit and Sawant, were employed if possible to trace the property. Baldeo, as shown above, produced certain small things, and Mir Singh also admitted that he had some things which his uncle, Jamna, could give up. It may here be noted that Jit said he made promises to the different accused if they would disgorge, but those promises were in private conversation, and certainly carried none of the authority specified in s. 24, Evidence Act. Mir Singh named five articles, an '*arsi*,' '*chilas*,' '*gandas*,' '*balis*' and a '*polchi*,' all of silver. Jit and Sawant went with a third man to mauza Behari and told Jamna that Mir Singh had sent for these articles. Jamna gave them up all except the '*polchi*.' When the things were shown to Mir Singh in presence of the Inspector, he at once said that the '*polchi*' had not been sent."

The Sessions Judge further observed as follows:—"While the inquiry was on, there was apparently a competition among most of the accused to give a certain amount of information in the hope of securing impunity for themselves. Nothing of course in the nature of a confession made during the police inquiry can be put in evidence except so far as anything was elicited from it. Fakir Chand, for instance, proves that not only was Amman constantly frequenting Baldeo's house before the murder, but that Amman gave the first information concerning the complicity of Ghariba and Mir Singh to the two outside Jats. In consequence of this certain property was recovered from Mir Singh, and Ghariba was sufficiently alarmed to turn Queen's evidence, besides disgorging some of his share."

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The Sessions Judge was of opinion, referring to *Empress* v. *Kure*, that the circumstances which appear above were sufficient corroboration of the evidence of Ghariba to warrant the conviction of Baldeo, Ram Bakhsh, Amman, Amir Bakhsh and Mir Singh, the appellants, under s. 460 of the Penal Code. He acquitted Masita and Mohsam Khan, there being no corroborative evidence against them; and he also acquitted Jamna, who had been charged under s. 411 of the Penal Code in respect of the property delivered by him to the two Jats, Jit and Sawant.

Mr. *W. M. Colvin*, for Baldeo, Mir Singh and Ram Bakhsh, appellants.

The appellants Amir Bakhsh and Amman were not represented.

The *Public Prosecutor* (Mr. *C. H. Hill*), for the Crown.

STRAIGHT, Offg. C. J.—These are five appeals from a decision of the Judge of Meerut, passed on the 14th of April last, convicting the appellants under s. 460 of the Penal Code, and sentencing Baldeo and Mir Singh to transportation for life, and Amman, Ram Bakhsh and Amir Bakhsh to seven years' rigorous imprisonment. The five appellants were tried, along with three other persons, by name Masita, Mohsam Khan and Jamna, who were acquitted, for having, on the night of the 4th January last, been jointly concerned in the breaking into the dwelling-house of one Bahal *bania* of Kutana, in the course of the commission of which offence the said Bahal was murdered. The only direct evidence against the appellants is that of an approver, by name of Ghariba, but as to Baldeo, Mir Singh and Amir Bakhsh there is the further proof that they produced, or caused to be produced, certain portions of the property stolen on the night of the crime from the house of Bahal. I have already, in the case of *Queen-Empress* v. *Ram Saran* (1), entered at length into the question of the nature and extent of the corroboration to be required to make it safe or proper to act upon the evidence of an accomplice, and it would be a useless waste of time to repeat the remarks I then made. I entirely adhere to each and every one of them, and the learned Judge is in error in supposing that the view I took in the case of *Queen-Empress* v. *Kure* (2) was in any sense at variance with the

(1) *Ante*, p. 306. (2) Weekly Notes, 1886, p. 65.

rule I had already laid down, namely, that Criminal Courts, dealing with an approver's evidence in a case where several persons are charged, should require corroboration of his statements in respect of the identity of each of the individuals accused. In this connection I cannot do better than refer to the observations of one of the wisest and most practical minded Judges that ever sat on the English Bench, Mr. Justice Maule, in *Reg.* v. *Mullins* (1), which are singularly apposite to this country, where those who have to administer justice unfortunately know what a perverted ingenuity there is for concocting false charges, and supporting them by the most elaborately fabricated network of perjured testimony.

Says that learned Judge:—"I quite agree that the confirmation of an accomplice as to the mere fact of a crime having been committed, or even the particulars of it, is immaterial, unless the fact of the prisoner being connected with it is proved. It often happens that an accomplice is a friend of those who committed the crime with him, and he would much rather get them out of the scrape and fix an innocent man than his real associates. Confirmation does not mean that there should be independent evidence of that which the accomplice relates, or his testimony would be unnecessary. If, for instance, a burglary had been committed, and an accomplice gave evidence that a person charged was present when it was effected, if that person had been seen hovering about the premises some time before, or was seen in possession of some of the stolen property shortly after, that might be reasonable confirmation of the statement that the prisoner helped to commit the crime."

In the present case, upon careful consideration of all the facts as to Baldeo, Mir Singh and Amir Bakhsh, I am not prepared to say that their recent possession of part of the stolen property, so soon after it had been stolen, was not such corroboration of Ghariba's evidence of their participation in the dacoity as entitled the learned Judge to act upon his story in regard to those particular persons. But as to Ram Bakhsh, although he was present when his father Baldeo pointed out the place where some of the property was dug up, he does not appear to have said any-

(1) 3 Cox C.C. 526.

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thing or given any directions about it; and there is, in my opinion, no sufficient material to warrant the inference of guilty knowledge on his part. So with regard to Amman, no property was found with him or produced through his instrumentality, and under these circumstances I think that both he and Ram Bakhsh ought to have been acquitted.

I dismiss the appeals of Baldeo, Mir Singh and Amir Bakhsh, but, allowing those of Ram Bakhsh and Amman, acquit them and direct that they be released.

CRIMINAL REVISIONAL.

1886
July 1.

Before Mr. Justice Brodhurst.

QUEEN-EMPRESS *v.* RAM NARAIN AND ANOTHER.

Appeal, summary rejection of—Judgment of Criminal Appellate Court—Criminal Procedure Code, ss. 367, 421, 424, 439—*High Court's powers of revision—Delay in applying for exercise.*

The powers conferred by s. 421 of the Criminal Procedure Code should be exercised sparingly and with great caution, and reasons, however concise, should be given for rejecting an appeal under that section.

Where a Sessions Judge rejected an appeal summarily under s. 421 of the Code, by an order consisting merely of the words "appeal rejected," and an application for revision of such order was made to the High Court nearly nine months thereafter, on the ground that the Judge was wrong in rejecting the appeal without assigning his reasons for so doing,—*held* that this objection, if taken within a reasonable time, would have been valid, but as the application for revision was made with very great delay, the Court should not interfere.

THIS was an application for revision of an order of Mr. H. M. Bird, Joint Magistrate of Cawnpore, dated the 4th July, 1885, and of the order of Mr. W. Blennerhassett, Sessions Judge of Cawnpore, dated the 4th September, 1885, summarily rejecting, under s. 421 of the Criminal Procedure Code, an appeal from the Joint Magistrate's order. The facts of the case are stated in the judgment of the Court.

Pandit *Moti Lal*, for the applicants.

The *Government Pleader* (Munshi *Ram Prasad*), for the Crown.