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and no cheating could then have happened. The definition of cheating is so comprehensive that I must add a sentence or two with reference to the argument that the mere inducing the clerk to do a thing (*viz.*, to give the certificate), which he would not have done unless so deceived, would amount to cheating. It is to be noted that the act or omission must be one that causes, or is likely to cause, damage to such person, damage or loss, &c. But here the mere certificate by itself and until indorsed, and until further action had been taken upon it, could not possibly have caused loss or damage to any person. And further, as a matter of fact, no such certificate was delivered to Dhundi. For these reasons, I think the decision below wrong in law, and would recommend its reversal."

BRODHURST, J.—For the reasons stated by the Sessions Judge, I annul the Deputy Magistrate's finding and sentence of the 29th February, 1886, and direct that the fine, if realized, be refunded.

Conviction set aside.

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November 11.

APPELLATE CRIMINAL.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

QUEEN-EMPRESS *v.* RAM SARAN AND OTHERS.

Accomplice—Evidence—Corroboration—Act I of 1872 (*Evidence Act*), *ss.* 114 (*b*), 133.

The law in India, as expressed in s. 133 and s. 114 of the Evidence Act, and which is in no respect different from the law of England on the subject, is that a conviction based on the uncorroborated testimony of an accomplice is not *illegal*, that is, it is not *unlawful*; but experience shows that it is unsafe, and hence it is the practice of the Judges, both in England and in India, when sitting alone, to guard their minds carefully against acting upon such evidence when uncorroborated, and, when trying a case with a jury, to warn the jury that such a course is unsafe. There must be some corroboration independent of the accomplice, or of a co-confessing prisoner, to show that the party accused was actually engaged directly in the commission of the crime charged against him. A second accomplice does not improve the position of the first, and, if there are two, it is necessary that both should be corroborated. The accomplice must be corroborated not only as to one but as to all of the persons affected by the evidence, and corroboration of his evidence as to one prisoner does not entitle his evidence against another to be accepted without corroboration. *R.* v. *Webb* (1), *R.* v. *Dyke* (2), *R.* v. *Addis* (3), and *R.* v. *Wilkes* (4), referred to.

(1) 6 C. and P. 595.
(2) 8 C. and P. 261.
(3) 6 C. and P. 388.
(4) 7 C. and P. 272.

The possession of property taken from a murdered person is not adequate corroboration of the evidence of an accomplice charging such person in possession with participation in the murder; though it would no doubt be corroboration of evidence that the prisoner participated in a robbery, or that he had dishonestly received stolen property.

In the trial of *R*, *S*, and *M*, upon a charge of murder, the evidence for the prosecution consisted of (i) the confession of *P*, who was jointly tried with them for the same offence, (ii) the evidence of an accomplice, (iii) the evidence of witnesses who deposed to the discovery in *R's* house of property belonging to the deceased, and (iv) the evidence of witnesses who deposed that, on the day when the deceased was last seen alive, all the prisoners were seen together near the place where the body was afterwards found.

Held that there was no sufficient corroboration of the statements of the accomplice or of the co-confessing prisoner *P*.

THE appellants in this case, Ram Saran, Piru, Mohib Ali, and Ram Ghulam were convicted by Mr. G. J. Nicholls, Sessions Judge of Ghazipur, of the murder of a boy called Gur Prasad, and were sentenced to death, the order of the Sessions Judge being dated the 18th August, 1885. The facts of the case, so far as they are material for the purposes of this report, are stated in the judgment of Straight, J.

The appellants were not represented.

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

STRAIGHT, J.—In this case four persons—Ram Saran, Piru, Mohib Ali, and Ram Ghulam—have been convicted by the Sessions Judge of Ghazipur of the murder of a boy named Gur Prasad, son of Damri, *Bania*, on the 16th June, 1885. All the convicts have appealed, and the case has also come in the ordinary course before us for confirmation of the sentences of death which have been passed on the appellants. The case is one which has caused my brother Tyrrell and myself great anxiety, and has occupied much of our time, and looking to the care with which the Judge tried it, and to the circumstance that the assessors concurred with him in his verdict, we have hesitated long before arriving at the conclusion, as regards some of the appellants, that the convictions cannot be sustained.

The circumstances of the case are shortly these. On Tuesday, the 16th June, the deceased boy, Gur Prasad, was staying with his sister at Sikandarpur, and on that day he left her house, and

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neither by her eyes nor by the eyes of any other of his relatives was he ever again seen alive. At the time he left, he was wearing certain articles of jewellery, and his sister's attention having been aroused at about noon by his non-appearance, she inqured after him, but in consequence of his father being absent at the time, no serious steps were taken to bring his disappearance to the notice of the authorities. It was not until Thursday, the 18th, that complaint was made to the police, when at the instance of the sister, they were informed that the boy was missing, and that no trace of him could be found. On the same day, Piru, one of the accused, was sent for, but he does not appear to have given any information at that time. He was warned that he had better give information or he would be sent before the Magistrate, and was then allowed to go to his home. On the 19th he was again sent for, but no serious information was then obtained from him; but on the 20th, having been again brought to the thanah, and in consequence of information then given by him, the police went to the house of the accused Ram Ghulam. There, according to the evidence of two witnesses for the prosecution, after some hesitation, Ram Gulam produced from a hole in the corner of his room certain of the articles of jewellery which the boy was wearing when he left his sister's house on the 16th June, and which must have been taken from his body. So that, as regards Ram Ghulam we have this evidence, that upon information given by Piru, the police went to his house which was searched, and that he there dug up these ornaments. Following on Piru's statement regarding the ornaments, the house in which he himself lived was examined, and under the earthen floor a grave was discovered, and therein undoubtedly was found the body of the unfortunate lad Gur Prasad. At this stage it appears that Ram Ghulam and Piru were taken into custody, and so remained during all the subsequent proceedings.

Now it seems that all the four appellants, together with one Sukhai, *Teli*, were intimate friends and acquaintances; that with the exception of Ram Saran they all belonged to a disreputable class known as "Mokhs"; and that they were in the habit of dancing and frequenting public places together. On the 30th June Sukhai made a long statement to the Deputy Magistrate, not the Magistrate who was subsequently engaged in the inquiry—

by which he implicated not only himself and Piru, but also Ram Ghulam, Ram Saran and Mohib Ali, the other appellants, already mentioned as having been concerned in the boy's murder. On the 1st July, Piru also made a statement bearing a singularly close resemblance to that made by Sukhai, and for the purpose of this judgment, it may be at once remarked here that the two accounts circumstantially coincide in representing that Sukhai and Piru and the other three appellants were engaged in the murder of Gur Prasad on the night of Tuesday, the 16th June. In addition to these materials for arriving at a conclusion in the matter, there is also the evidence of two men, one Ishri, *Mali*, and the other Rang Lal, to the effect that Rang Lal, about noon on the 16th, saw Piru, Sukhai, and Mohib Ali, with the boy at Sukhai's door, and that Ishri, on the evening of the 16th instant, before sun set, saw the four prisoners, with Sukhai, sitting in Shamshera's *dalan*, *i.e.*, near the place where the body was afterwards found. Now these circumstances, so far as my memory serves me, exhaust the matters proved on behalf of the prosecution, and upon these materials the Judge has convicted all the four appellants. I may, in passing, observe that Piru, who pleaded guilty in the Sessions Court, was nevertheless tried jointly with the other accused, and therefore his confession made before the Deputy Magistrate on the 1st July, and subsequently repeated before the Judge, might be taken into consideration as against the other prisoners.

With regard to Piru, his case may be dismissed at once. The Judge, upon the materials before him, very properly convicted Piru of murder; and that he took part in the commission of the crime there cannot be a moment's doubt. While the evidence as to the cause of death is not strictly proved as regards the other accused, Piru's own admission as to the mode in which death was caused is clear against himself, so that he cannot take advantage of the fact that there is no scientific proof of the cause of death. With regard to the other three appellants the matter stands thus. As to Ram Ghulam, the case for the prosecution is supported by the confession of Piru, by the evidence of Sukhai, who received a pardon and was called as a witness, by the circumstance that on the 20th June, some ornaments belonging to Gur Prasad were

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discovered at his house, and by the evidence of one of the two witnesses to whom I have referred, who says that he saw Ram Ghulam with the other prisoners on the evening of the 16th instant before sunset. That is the whole of the case against him; and, with the exception of the digging up the ornaments, it is the same against Ram Saran and Mohib Ali; and it raises crisply and clearly the question as to whether, upon the materials which I have described, we can sustain the convictions and direct that the capital sentences be carried out.

Now I cannot help saying that there is a great deal of loose talk in Courts of Justice regarding the precise position of an accomplice witness, and the legal effect of a conviction based upon such a witness's evidence. The law in this country, as expressed in ss. 133 and 114 of the Evidence Act, is in no respect different from the law of England. It simply reproduces a rule of practice which the English Courts have recognized, time out of mind, and which, I may add, their tendency of late years has been to apply with great strictness. The rule is this. A conviction based on the uncorroborated testimony of an accomplice is not *illegal*, that is, it is not *unlawful*. But experience teaches that it is not safe to rely upon the evidence of an accomplice unless it is corroborated, and hence it is the practice of the Judges, both in England and in India, when sitting alone, to guard their minds carefully against acting upon such evidence when uncorroborated; and, when trying a case with a jury, to warn a jury that such a course is unsafe. Further, not only is it necessary that the evidence should be corroborated in material particulars, but the corroboration must extend to the identity of the accused person; and in this connection I may refer to the case of *R.* v. *Webb* (1), in which Williams, J., said:—"You must show something that goes to bring home the matter to the prisoners. Proving by other witnesses that the robbery was committed in the way described by the accomplice is not such confirmation as will entitle his evidence to credit, so as to affect other persons. Indeed, I think it is really no confirmation at all, as every one will give credit to a man who avows himself a principal felon, for at least knowing how the felony was committed. It has been always

(1) 6 C. and P. 595.

my opinion that confirmation of this kind is of no use whatsoever." Then again, in the well-known case of *R.* v. *Dyke* (1), Gurney, B., said:—Although in some instances it has been so held, you will find that in the majority of recent cases it is laid down that the confirmation should be as to some matter which goes to connect the prisoner with the charge. I think that it would be highly dangerous to convict any person of such a crime on the evidence of an accomplice unconfirmed with respect to the party accused." So in the case of *R.* v. *Addis* (2), Paterson, J., expressed a similar view. Again the *dicta* of Lord Abinger have frequently been referred to in cases of this kind, and are cited in Taylor's work on Evidence as crisply and fully representing the latest principles which the Courts in England have applied in dealing with this question. Upon the opening of the case he said:—"I am clearly and decidedly of opinion, and always have been, and always shall be, that there must be a corroboration as to the particular prisoner:" and when he came to sum up the case to the jury, he said:—"I am strongly inclined to think that you will not consider the corroboration in this case sufficient. No one can hear the case without entertaining a suspicion of the prisoner's guilt, but the rules of law must be applied to all men alike. It is a practice which deserves all the reverence of law, that Judges have uniformly told juries that they ought not to pay any respect to the testimony of an accomplice, unless the accomplice is corroborated in some material circumstance. Now, in my opinion, that corroboration ought to consist in some circumstance that affects the identity of the party accused." He then goes on to make a remark which is most thoroughly applicable to cases of the kind which occur in this country:—"A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only of the truth of that history, without identifying the persons, that is really no corroboration at all. If a man were to break open a house, and put a knife to your throat, and steal your property, it would be no corroboration that he had stated all the facts correctly; that he had described how the person did put the knife to the throat, and did steal the property; it would not at all tend to show that the

(1) 8 C. and P. 261. (2) 6 C. and P. 388.

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party accused participated in it. Here you find that the prisoner and the accomplice are seen together at the public-house. If they were found together under circumstances that were extraordinary, and where the prisoner was not likely to be unless there were concert, it might be something. But he lives within one hundred and fifty yards, and there is nothing extraordinary in his being there, and he left when they were shutting up the house. It is perfectly natural that he should have been there, and have left when he did. The single circumstance is, that the prisoner was seen in a house which he frequents, where he may be seen once or twice a week, and there the case ends against him: all the rest depends on the evidence of the accomplice. The danger is, that when a man is fixed, and knows that his own guilt is detected, he purchases impunity by falsely accusing others. I would suggest to you that the circumstances are too slight to justify you in acting on this evidence." The same view was expressed in *R.* v. *Wilkes* (1) by Alderson, B., and in many other rulings.

So that, as I understand the rule, there must be some corroboration independent of the accomplice, or, as in the present case, of the accomplice and the co-confessing prisoner, to show that the party accused was actually engaged directly in the commission of the crime charged against him. I may add that it is of no value and makes no difference if there are two accomplices. A second accomplice does not improve the position of the first, nor does the fact that there are two make it unnecessary that both should be corroborated. Again, the accomplice must be corroborated, not only as to one, but as to all, of the persons affected by the evidence, and because he may be corroborated in his evidence as to one prisoner, it does not justify his evidence against another being accepted without corroboration.

These principles seem to me to be embodied in the Evidence Act in force in this country, and in applying them to the case before us, the question is—what is the corroboration here, and is there any independent evidence corroborating the statements of Piru and Sukhai in such a manner as to prove satisfactorily that

(1) 7 C. and P. 272.

the other three appellants were actually engaged in the murder of Gur Prasad?

First with reference to Ram Ghulam there is the evidence of Ishri, *Mali*, and of him alone, who says that in the evening, about an hour before sunset on the 16th June, he saw the four prisoners in Shamshera's *dalan*. If that is corroboration of the kind that is necessary, it does corroborate the statements of Piru and Sukhai, both of whom say that shortly before sunset the prisoners were sitting with the boy Gur Prasad in Shamshera's *dalan*. But is it sufficient corroboration? It is conceded that the prisoners were in the habit of going about together. There is nothing remarkable in this; it was an occurrence which might have been observed any day: and I may remark that it renders the witness's evidence liable to some suspicion; for if the prisoners were so continually together, why should he have noticed their being together upon this particular occasion?

The only other circumstance affecting Ram Ghulam, is that he produced the jewels from the corner of his house on the afternoon of Saturday the 20th June. I have given much anxious consideration and reflection to the question whether this can be regarded as corroboration showing that Ram Ghulam participated in the murder. It would no doubt be corroboration of the evidence of an accomplice that the prisoner participated in a robbery, or that he has dishonestly received stolen property, but, in my opinion, it can be carried no further. It is quite within the bounds of possibility that a murderer might hand the proceeds of his crime to a person who might be found in possession of them and be in guilty possession of them to the extent of knowing they were stolen; but it requires a very long and dangerous leap to arrive at the conclusion that the possession of the property taken from a murdered person is adequate corroboration of the evidence of an accomplice, charging such person in possession with participation in a murder. Under these circumstances, I have come to the conclusion, though not without much doubt and hesitation, that there is no proper corroboration of the statements of the accomplice, Sukhai, or of the co-confessing prisoner, Piru, sufficient to satisfy the requirements of the law, and that for this reason the appeal of Ram Ghulam must be allowed and he must stand acquitted.

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It follows as a necessary consequence that, if the case for the prosecution as against Ram Ghulam fails, it must fail as against the other two accused, Ram Saran and Mohib Ali; for neither of them was found in possession of any property whatever belonging to Gur Prasad, and there is no other evidence. I have only a few words to add as to the remarks made by the learned Judge, towards the close of his judgment, in regard to the materials upon which he bases his conclusions. He says:—"These narratives are corroborated by the finding of the corpse buried in Piru's house"—which is undoubtedly strong evidence against Piru,—"by the finding of the ornaments hidden on the premises of Ram Ghulam"—upon this point I need not repeat the observations I have already made—"by the evidence of Rang Lal and of Ishri, *Mali*,"—as to which again I need not repeat what I have said—"by the association of all five, or of all but Sukhai, in the lease of the grove from Misri Lal, a grove which adjoins that of Damri Lal, where the boy had gone for mangoes,"—a fact of very little value—"by the neglect of Shamshera, brother of Piru, a town chaukidar, to give his message about the boy's being missed"—a matter the importance of which, or how it affects the prisoners, I am unable to see,—"by the association in depravity of all four (Ram Saran being excepted), by Ram Saran's close intimacy with Ram Ghulam, and by the propinquity of the dwellings of Sukhai, Mohib Ali, and Piru, and of Damri Lal, and by the bad character of all five men." Now, here I must observe that the learned Judge appears to me to have been over-pressed by certain matters which ought not to have influenced his mind at all. He had nothing to do with the bad characters of the prisoners. Their characters were absolutely irrelevant to the case. If they or any of them had previously been convicted of any crime, such as was relevant to the particular matter now charged, such, for instance, as robbery, dacoity, or any similar offence, such conviction might have been proved in a formal and proper manner and would then have been relevant. But the bad characters of the accused were not relevant, and the Judge appears to have allowed his mind to be influenced by matters which were calculated to mislead him, and to cause his mind to place a colouring upon the facts, which did not assist him in forming a calm and dispassionate judgment on the case.

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Before concluding, I must remark, that according to the statements of Sukhai and Piru, the jewels were given on the night of the murder to one Durga Tewari. It is not clear from the statements of Piru whether Durga was aware of the manner in which the jewels had been obtained; but, if Sukhai be believed, Durga was not aware of it, and did not know that the ornaments were the proceeds of a murder. It is remarkable that Durga Tewari was never placed in the witness-box to state what actually happened, and whether the jewels were in fact handed to him as stated. This evidence would have been important; because I am not sure that if the jewels had been handed to him in the presence of all the prisoners, immediately after the murder and near the scene of it, there would not have been corroboration of the statements of those two persons. My brother Tyrrell and I have most anxiously considered this case. We may of course have our suspicions as to the correctness of the conclusions arrived at by the Judge and the assessors; but our decisions in criminal cases, and especially in so grave a matter as a capital offence, must not depend on mere suspicion but must be regulated by the principles of law laid down for the guidance of Courts of Justice. We have no alternative but to allow the appeals of Ram Saran, Mohib Ali, and Ram Ghulam, and direct that they stand acquitted. With regard to Piru, his appeal is dismissed, and we direct that the capital sentence be carried into execution.

TYRRELL, J.—I fully concur in what has fallen from my brother Straight and in the orders he proposes.

PRIVY COUNCIL.

P. C.*
1886
February 17.

BALWANT SINGH (APPELLANT) *v.* DAULAT SINGH (RESPONDENT).

[On Appeal from the High Court, North-Western Provinces]

Civil Procedure Code, s. 549.

An appeal, although it may have been rejected by the appellate Court, under s. 549 of the Code of Civil Procedure, upon failure by the appellant to furnish security demanded under that section, may be restored, on sufficient grounds, at the Court's discretion.

* Present; LORD BLACKBURN, LORD MONKSWELL, LORD HOBHOUSE, SIR R. COUCH.