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RAGA KUAR v. BHAGWAN DIN.

but no such objection has been put forward by her in her grounds of appeal. Her plea was that the execution of the decree was barred by limitation, and, though this matter has been before this Court in another shape in appeal from the District Judge, and is again before us, no such allegation has ever been formally made on her part, nor has it been entered in the memorandum of appeal. Under these circumstances we should not be justified in interfering with the order of the lower Court or delaying the execution of the decree. The appeal is dismissed with costs.

TYRRELL, J.—I concur.

Appeal dismissed.

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May 8.

CRIMINAL REVISIONAL.

Before Mr. Justice Brodhurst.

QUEEN-EMPRESS *v.* DHUNDI.

Attempt to cheat—Act XLV of 1860 (*Penal Code*), *ss.* 417, 511.

In a prosecution for an attempt to cheat, under ss. 417-511 of the Penal Code, the accused was charged and convicted of having at the central octroi office made false representations as to the contents of certain *kuppas* (skin vessels), the object of which was to obtain a certificate entitling him to obtain a refund of octroi duty. Prior to granting the certificate, the octroi officers examined the contents of the *kuppas* and found that the representations of the accused regarding them were untrue. In consequence of this discovery no certificate was given to him, and he was charged and convicted as above-mentioned. The procedure necessary for obtaining a refund of octroi duty was that the central office, on satisfying itself that the articles produced were of the nature stated, would grant a certificate, which certificate would have to be indorsed by the outpost clerk when he passed the goods (on which refund was claimed) out of the town, and the owner would have to take back the certificate so indorsed to the central office and present it to be cashed.

Held that even assuming the accused to have falsely represented the contents of the *kuppas* as alleged, he had not completed an attempt to cheat, but had only made preparation for cheating, and that the conviction must therefore be set aside.

THIS case was reported to the High Court for orders by Mr W. Young, Sessions Judge of Agra. The facts were set forth in the Judge's reference as follows :—"The applicant for revision, Dhundi, Ahir, is a servant of Kallu Mal, Bania, of Mathura, and the case against him is that he, at the central octroi office in Mathura, on the 16th December, 1885, falsely represented three *kuppas* (skins), which were there and then produced, to contain ghi,

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whereas only two contained ghi and the third contained oil, and that the object of this false representation was to obtain a certificate entitling him to a refund of octroi duty on three *kuppas* of ghi, which would have amounted to 30 annas, instead of the proper refund, which would have been 25 annas only. The prosecution alleges that, prior to granting the refund certificate, the octroi officers took the precaution of examining the contents of the three *kuppas*, and found that, in fact, two only contained ghi and the third oil. Whereupon Dhundi was charged with attempt to cheat, and was tried on that charge, and finally was convicted and sentenced to pay a fine of Rs. 4, or, in default, to suffer one month's rigorous imprisonment. Dhundi denies the facts, and says that he never alleged the three *kuppas* to contain ghi, and I notice that the prosecution produce no invoice in his master's writing, detailing the *kuppas* as three *kuppas* of ghi. This is a considerable defect in the proof, for it is usual to send such invoices when goods are presented for refund of octroi. I notice also that accused alleges enmity between the octroi superintendent and his (accused's) master. However, I should not refer this case if it had been solely the facts which were doubtful. I think that even supposing the fact to have been that the accused misrepresented the contents of the *kuppas* as he is said to have done, he yet had not completed an attempt to cheat, but only had made preparation for cheating. The procedure in case of a refund of octroi at Mathura is, that the central office, on satisfying itself that the articles produced are what they are said to be, grants a certificate, which certificate is indorsed by the outpost clerk when he passes the goods (on which refund is claimed) out of the town. The owner takes back the certificate so indorsed to the central office, and here these certificates are encashed once a week, *viz.*, on Saturdays. Now, even supposing that Dhundi by false representations had succeeded in getting a refund certificate for 30 annas, yet he still had a *locus pœnitentiæ*. He had to get it indorsed at the outpost, and had to present it on the following Saturday for encashment before he finally lost all control over it, and could no longer prevent the completion of the offence. Before that time (*i. e.*, the time of presentation on a Saturday), he might have altered his mind even from prudence, if not from penitence, and torn up the certificate,

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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.

1885
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.