

APPELLATE CRIMINAL.

Before Mr. Justice Walsh and Mr. Justice Dalal.

EMPEROR v. KALWA AND OTHERS.*

1926
February,
25.

Act No. I of 1872 (*Indian Evidence Act*), sections 30 and 114
—Confession—Corroboration—Presumption.

Amongst the presumptions a criminal court may make is the presumption that an accomplice is unworthy of credit unless he is corroborated in some material particular.

General hostility to the victim cannot be considered to be corroboration of a direct statement connecting an accused with a particular crime. Corroboration must point to the identification of the person charged with the particular act with which the direct evidence connects him.

Where there was nothing in the case of the appellant outside the confession of a co-accused pointing to his complicity in the crime of murder, *held*, that the appellant must be acquitted.

Emperor v. Kehri (1), not applied. *Emperor v. Ashoo-tosh Chuckerbutty* (2), followed.

THE facts of this case sufficiently appear from the judgement of the Court.

Sir C. Ross Alston, Mr. F. Owen O'Neill, Mr. K. O. Carleton and Mr. K. D. Carleton, for the appellants.

The Government Advocate (*Babu Lalit Mohan Banerji*), for the Crown.

WALSH and DALAL, JJ. :—This is an appeal by five men who have been convicted for participation in a murder. Two of the appellants, who are unrepresented, *viz.*, Kalwa, who confessed and whose confession has taken great prominence in the evidence at the trial and in the consideration of the case in court, and Rasila, have been condemned to death. Against

* Criminal Appeal No. 5 of 1926, from an order of Preet Nath Ghose, Additional Sessions Judge of Cawnpore at Banda, dated the 23rd of December, 1925.

(1) (1907) I.L.R., 29 All., 494. (2) (1878) I.L.R., 4 Calc., 489.

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them there is positive evidence, in addition to the confession of Kalwa, going to show that they were seen coming away from the scene of the crime. Bhure Singh, also unrepresented before us, has been convicted under sections 460 and 302, read with section 109 of the Indian Penal Code, and sentenced to transportation for life upon the statement of the confessing accused who testified to his presence at the commission of the crime and whose evidence against Bhure Singh is clearly corroborated in a manner impossible for the appellant to get over. The two remaining appellants, both of whom have been convicted and sentenced to transportation for life, have been found guilty of abetment, in the sense of instigation and counselling, largely also upon the direct evidence of the confession and such other circumstances as the Judge thought sufficient to justify his accepting the confession against these two men. These two men have been represented by counsel: Jagmohan by Mr. *O'Neill*, and Brij Narain by Sir *Charles Alston*, and their cases, no doubt, present some difficulty and have caused us to examine very closely the grounds upon which the learned Judge convicted them. Four other persons were also charged but acquitted, the charge against them being in substance the same as against Jagmohan and Brij Narain, namely, that they were instigators and took part in the preparation and counselling of the crime.

[The judgement proceeded with a discussion of the evidence against the appellants which it is unnecessary to report at length, but the following extract, which deals with the value to be attached to the confession of a co-accused and the corroboration required before such confession can be safely acted upon as against the other accused, is of general importance and is reported below.]

The view we take is this that in declining to apply the legal proposition, which now has stood for many years, laid down in the case of *Emperor v. Kehri* (1), we prefer to follow the view of Chief Justice GARTH, in *Emperor v. Ashootosh Chukerbubby* (2), quoted in the judgement in the case of *Emperor v. Kehri* (1), to the view taken by the members of the Court in *Kehri's* case. As a matter of fact, if it has not already been pointed out, it is as well to point out that in the judgement in *Kehri's* case in the passage where Mr. Justice KNOX differs from Chief Justice GARTH and gives his reasons for so doing, he has committed himself to a mis-statement of fact with reference to the confession having been made in the presence and hearing of the co-accused. We prefer to follow the old established practice,—a practice almost invariably followed throughout India even by those who accept the decision in the order against *Kehri*—, which is well expressed in illustration (b) to section 114 of the Evidence Act, namely, that amongst the presumptions a court may make is the presumption that an accomplice is unworthy of credit, unless he is corroborated in material particulars. That is a direction of law or of practice—it matters not which—which we ourselves should give to every jury in any case in which we had to direct them upon the law and which in matters of fact we ourselves should follow. Applying that principle to the case of *Jagmohan*, we accept Mr. *O'Neill's* contention that there is nothing in the case outside the confession pointing to his complicity in this particular crime. The existence of general enmity and a desire, however strong, or a motive however effective, to procure the death of another person may be a piece of circumstantial evidence, but is not corroboration of a sworn statement of participation in a particular crime. Corroboration must

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(1) (1907) I.L.R., 29 All., 454. (2) (1878) I.L.R., 4 Cal., 483.

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point to the identification of the person charged with the particular act with which the direct evidence connects him.

MISCELLANEOUS CIVIL.

1926
February,
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Before Mr. Justice Lindsay and Mr. Justice Mukerji.

BACHHAN (PLAINTIFF) v. THE MUNICIPAL BOARD OF
MIRZAPUR (DEFENDANT).*

Act No. VII of 1870 (Court Fees Act), section 7 (iv) (d)—Act No. VII of 1887 (Suits Valuation Act), section 8—Suit for declaration of title and for an injunction—Valuation for computation of court fees and for purposes of jurisdiction.

Plaintiff sued (a) for a declaration of his title as to a certain plot of land and (b) for an injunction restraining the defendant from interfering with the construction of a *chabutra* which he desired to erect on the land in question. He valued his suit at Rs. 1,100 for the purposes of jurisdiction and paid a court fee of Rs. 20, *viz.*, Rs. 10 for the declaration of title and Rs. 10 for the injunction sought.

Held that as regards the claim for an injunction the proper court fee payable should be an *ad valorem* fee calculated on the valuation given by the plaintiff for the purpose of jurisdiction.

This was a reference as to the correct amount of court fee payable on a plaintiff's suit and two appeals. The facts out of which the reference arose appear from the judgement of the High Court.

Dr. Kailas Nath Katju, for the appellant.

Mr. Sankar Saran, for the respondent.

LINDSAY and MUKERJI, JJ.:—The suit was brought for the purpose of obtaining a declaration of title regarding a certain piece of land in Mirzapur

* Stamp Reference in Second Appeal No. 1894 of 1925.