1875.

REG.

KHANDERA'V BA'JIRA'V.

The acquittal, therefore, is not to be set aside the less, because the Judge and the jury have both committed a mistake. Taking this view we reverse the jury's verdict; and our next duty is to find what precise offence or offences the accused or any of them have committed. We consider it proved that all the accused committed theft of the complainant's bonds, and put him under bodily restraint as a means of doing so. This is sufficient to constitute dacoity, and we find all the accused guilty of it. Nos. 1 and 2, in committing that offence, inflicted grievous hurt by cutting off the complainant's nose. The minimum punishment which can be inflicted for that offence under Section 397 is seven years' rigorous imprisonment. We say rigorous, because it would not be appropriate to a case like this to order simple imprisonment. Looking, however, to the conduct of these two accused and the state of the country, we think it our duty to pass upon each of them a sentence of transportation for ten years. In the case of the others a smaller sentence will suffice. They were present at the infliction of grievous hurt by the first and second accused, and if their object also was to assist in that transaction, they would, under the law, be equally guilty of the graver offence. The circumstances proved in this case do not, however, render it necessary to hold that the common object of the whole assembly was to inflict grievous hurt, or that this was a necessary or any probable consequence of the robbery. We shall, therefore, pass upon each of the accused Nos. 3 to 7 a sentence of two years' rigorous imprisonment.

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## [APPELLATE CRIMINAL JURISDICTION.]

*Appeal by the Government of Bombay.*

REG. *v.* MARUTI D'ADA' AND OTHERS.

*Abetment—Acquittal of principal no bar to conviction of abettor.*

1875. Oct. 12.

The offence of abetment under the Indian Penal Code is a substantive offence. The conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.

THIS was an appeal by the Government of Bombay praying for the reversal of the order of acquittal recorded by N. Daniell,

1875.

REG. v. MARUTI DA'DA' AND OTHERS.

Session Judge of Poona, in favour of three of the accused persons, viz., Náráyan, Sitábái, and Máruti; and the restoration of the convictions and sentences passed by W. R. Hamilton, Magistrate, F.C.

The accused Máruti was charged by Mr. Hamilton with the offences of house-breaking and committing theft in the dwelling house of complainant Govindráv; Constancio, Malhár, Náráyan, and Sitábái were charged with having abetted Máruti in the commission of these offences. All the accused were convicted and sentenced to undergo various terms of imprisonment and pay fines.

In appeal Náráyan, Sitábái, and Máruti having been acquitted by the Sessions Court, the Government appealed to the High Court against the acquittals.

The appeal was heard by WEST and NA'NA'BA'I HARIDA'S, JJ.

*Dhirajlál Mathurádás*, Government Pleader, for the Government, went into the evidence and argued that there was ample evidence for the conviction of the three accused by the Session Judge.

*Pándurang Bálibhádrá*, for the accused Náráyan and Sitábái, argued *contra*, and further urged:—If the principal offender, Máruti, be acquitted, his abettors, Náráyan and Sitábái, could not legally be convicted. The most important item of evidence against Máruti consists of the confession of Malhár, but as he was not charged with the same offence, his confession is no evidence against Máruti. The acquittal of Máruti necessarily involves the acquittal of his abettors. See case of *Chaman Bápáji* noted under Section 108 of the Indian Penal Code cited in West's Edition of the Acts and Regulations. The confession of Malhár, even if treated as the evidence of an accomplice, must be corroborated: *Reg.* v *Mohesh Biswas and others* (1); though it may be taken into consideration under the Indian Evidence Act I. of 1872, Section 30: *Reg.* v. *Naga and others* (2); *Reg.* v. *Chunder Bhutta Charjee* (3).

*Dhirajlál Mathurádás* in reply:—The principle of these decisions has not been contravened by the Magistrate. The offence of abetment under the Indian Penal Code is a substantive offence.

(1) 19 Calc. W. R. 16 Cr. Rul. (2) 23 Calc. W. R. 24 Cr. Rul.
(3) 24 Calc. W R 42 Cr Rul.

It is not an appendage of the principal offence, and each may be tried independently of the other. All the sections of the code which speak of abetment, especially Section 114, which provides that abettors present at the commission of the offence shall be deemed to have themselves committed the principal offence, and Section 109, which enacts generally that the punishment for both shall be the same, show that the conviction of an abettor should not be made contingent on the conviction of the principal.

WEST, J., after commenting on the evidence and expressing the opinion of the court against the acquittal of Náráyan and Sitábái and in favour of that of Máruti, proceeded thus :—

The acquittal of this prisoner (Máruti) makes it necessary to consider a point of law arising from it, and urged by Mr. Pándurang Bálibhádrá for the prisoners Náráyan and Sitábái. He contended that the principal offender having been acquitted, his clients could not be convicted of abetment, and referred us to the case of *Reg.* v. *Chaman Bápáji*, noted under Section 108 of the Indian Penal Code in West's Edition of the Acts and Regulations. It was there held by Sir Richard Couch, late Chief Justice of this Court, and another Judge, on the 22nd of January 1864, that the principal offender being acquitted, a second prisoner could not, in the same trial, be convicted of abetment of the same offence. This ruling was in accordance with the state of the English law as it existed when an accessory could refuse to plead before the conviction of his principal. It is satisfactory, however, to find that a different state of things prevails now, and that we are not, therefore, bound, even according to the analogies of the English criminal law, to follow the decision cited. Recent English cases, founded on new legislation, have gone the other way. We shall refer to the case of *Reg.* v. *Hughes* (1). The headnote of that case runs thus :—"An indictment in the first two counts charged the prisoner and *H* jointly with stealing. A third count charged the prisoner alone with receiving the stolen goods. At the trial no evidence was offered against *H*, and he was acquitted, in order that he might be called as a witness against the prisoner. By the evidence it appeared that the prisoner was an accessory before

(1) 6 Jur. 177.

1875.

REG. v. MARUTI DA'DA' AND OTHERS.

the fact to the stealing by *H*, and that he afterwards received the stolen goods. The Jury returned a general verdict of guilty against the prisoner, which was entered upon all the counts: *Held* that the prisoner was not entitled to an acquittal upon the first two counts by reason of the principal, *H*, having been acquitted, the 11 and 12 Vic., C. 46, Sec. 1, having made the crime of being an accessory before the fact a substantive felony." Erle, C. J., in delivering judgment in that case, said:—"We consider the conviction may be sustained as a substantive absolute felony. Suppose the accessory is captured before the principal; under the Statute (11 and 12 Vic., C. 46) he may at once be tried and convicted. If afterwards the principal is taken, tried, and acquitted, has the accessory a right to be discharged? We are of opinion that he has no such right. His sentence may have expired; is any wrong done him? We think not. Whether he is tried before or at the same time as the principal, he may be guilty as an accessory, although the principal be acquitted, it being by no means certain that, although acquitted, the principal is not really guilty." The offence of abetment under the Indian Penal Code is a substantive offence. Its punishment, when the culprit has been present at the commission of the principal offence, is the same as for that offence; and the trial of it is not, in any way, dependent on the conviction of the person charged with the principal offence. By the Indian as well as the recent English procedure, an abettor may be convicted before the principal is arrested. The principal may then be tried and acquitted, but in this case the abettor has not suffered any wrong. A rational doubt may arise as to the identity or guilt of the principal through the legal exclusion as to him of particular portions of the evidence, and yet there may be no possible doubt as to the guilt of the abettor, in whose case the rules of exclusion do not happen to operate. It would be a perversion of the rules of evidence if because the operation of a rule is to exclude evidence against a principal, *A*, it should operate to the acquittal of an abettor, *B*, who may have fully confessed, as Malhár did in this case, and may, without doubt, be guilty. The mere circumstance that *B* is tried along with *A*, instead of at a different trial, cannot alter the real force of the case against him.

1875

REG. v. MARUTI DA'DA' AND OTHERS.

Taking the law to be as we have stated it, the acquittal of Máruti—as to which we agree with the Session Judge—does not necessarily involve the acquittal of Constancio and Malhár; nor again does it necessarily involve our upholding the Session Judge's decision with respect to Náráyan and Sitábái.

We direct that the convictions of Náráyan and Sitábái be restored, with the amendment of their extending only to abetment of theft in a dwelling, the prisoners not having been present at the commission of the theft, and also the sentences passed on them respectively by the Magistrate, First Class.

*Order accordingly.*

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## [APPELLATE CIVIL JURISDICTION.]

*Application for the exercise of the Court's Extraordinary Jurisdiction.*

*No.* 48 *of* 1875.

1875
*Oct.* 12.

UMIA'SHANKAR LAKHMIRA'M (APPLICANT) *v.* CHHOT'ALA L VAJERA'M (OPPONENT).

*Limitation Act* (*IX. of* 1871), *Schedule II., Nos.* 166, 167.

An Act of Limitation, being restrictive of the ordinary right to take legal proceedings, must, where its language is ambiguous, be construed strictly, *i.e.*, in favour of the right to proceed.

*A* as purchaser of a decree against *B* applied for execution thereof, and having caused five fields of *B* to be sold in execution, purchased four of them at the court sale, and one from an execution-purchaser. On the 10th July 1871, however, the High Court, in a Miscellaneous Special Appeal by *B* held *A's* application for execution to have been time-barred, and reversed the orders of the two lower courts. *A* having been put in possession of the fields under the orders of the lower courts, *B*, on a reversal of those orders by the High Court, applied, on the 9th July 1874, to have the fields restored to him together with mesne profits accruing during the time of his dispossession. The first court awarded the fields to *B* with mesne profits; but the District Judge, on appeal, held *B's* application barred under Act IX. of 1871 Schedule II., No. 166:

*Held* by the High Court that the exception in No. 166 of the Limitation Act IX. of 1871 is not restricted to any particular species of appeal, that *B's* application fell within No. 167 and not within No. 166 of the Limitation Act of 1871, and, therefore, was not barred.

THIS was an application for the exercise of the High Court's extraordinary jurisdiction, praying for a reversal of the order of