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lands could not be said to be that of permanent tenants. Section 217, as it stood prior to the amendment, gave to the holders of lands in alienated villages into which a survey settlement had been introduced, the rights, and imposed upon them the responsibilities, of occupants in unalienated villages. The rights of an occupant in an unalienated village are defined in section 68, and by the proviso to that section, which was introduced in 1901, and was therefore in force at the time when the survey settlement with which we are dealing was introduced, the survey settlement could not affect the terms of the agreement which had been entered into between the inamdar and his tenants. On either view the appellant was entitled to succeed with regard to these three survey numbers also. I agree, therefore, that the appeal should be allowed and the cross-objections dismissed.

Appeal allowed : cross-objections dismissed.

Y. V. D.

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

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PAPA KAMALKHAN (ORIGINAL ACCUSED NO. 1), APPELLANT *v.* EMPEROR.*

Indian Evidence Act (I of 1872), sections 114 and 133—Accomplice—Necessity for corroboration—Person paying bribe by improper pressure—Degree of corroboration necessary—Slight corroboration sufficient—Offence of bribery—Indian Penal Code (Act XLV of 1860), section 161.

Per Beaumont C. J. The rule of the Court which requires corroboration of the evidence of an accomplice as against each accused, if it applies at all, applies with very little force to a case in which the accused is charged with extorting a bribe from other persons. The objections which usually arise to the evidence of an accomplice do not really apply where the alleged accomplice, that is, the person who pays the bribe, is not a willing participant in the offence, but is really a victim of that offence.

* Criminal Appeal No. 11 of 1935.

Per N. J. Wadia J. In cases of bribery the persons who pay the bribe and those who act as intermediaries are the only persons who can ordinarily be expected to give evidence about it. It is not possible to expect absolutely independent evidence about the payment of a bribe, and a distinction has to be made between persons who have voluntarily paid a bribe to a public servant in order to secure some advantage for themselves, and persons, who have been compelled by improper pressure put upon them by a public servant to pay a bribe. In the latter case, where the payment of the bribe has not been voluntary, very slight corroboration would be sufficient to make the evidence of such persons admissible against the receiver of the bribe.

CRIMINAL APPEAL from an order of conviction and sentence passed by C. C. Hulkoti, Sessions Judge, Satara, in Sessions Case No. 50 of 1934.

Accomplice evidence.

Papa Kamalkhan (accused No. 1) was, at the time of the offence, acting as Sub-Inspector at Vita in the Satara District. The case for the prosecution was that on the night of November 16, 1933, an offence of house-breaking and theft occurred in the house of one Ganu Kadam in the village of Kalambi. The theft was discovered on the next day by Ganu's son, Hambira, who gave information to the Police Patil of the village. The Police Patil after recording Hambira's statement reported the matter to accused No. 1.

One Krishna who was known to be in embarrassed circumstances was suddenly found to be making a large number of payments. Hambira's relative, Govinda, mentioned this fact to the accused and suggested that Krishna might have been responsible for the theft in Ganu's house. One Aba Ramoshi who had similar suspicions was questioned by the accused who asked him to make an inquiry. Accordingly Aba made inquiry with one Bapu Saheb, Patil of Vazar, who being an influential man in the locality was asked to try and find out from Krishna whether he was responsible for the theft in Ganu's house. Bapu Saheb elicited from Krishna that

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his son Dadu and nephew Namu had committed the offence in Ganu's house and had stolen a brass pot and an earthen pot containing money. This information was conveyed first to Aba Ramoshi who in turn gave it to the accused who sent for Bapu Saheb.

On February 17, 1934, the Sub-Inspector went to Khambala accompanied by Aba Ramoshi, Bapu Saheb and four constables including accused Nos. 2 to 4. From there Bapu Saheb was sent to Vazar to fetch two of Krishna's relatives, Bandu and Bhau, and the Sub-Inspector and his constables went to Kalambi and brought Krishna, Dadu, Namu, Govinda, Hambira and Ganu to Khambala. All these persons having been brought to Khambala, Bapu Saheb told Krishna that the Sub-Inspector was demanding Rs. 1,000 and if the amount was paid, it would be all right, otherwise, they would get into trouble. Dadu and Namu accompanied by Bapu Saheb and Bandu, therefore, went to Kalambi and brought money. The money was brought in a bundle which was carried by Namu and it was kept in a motor bus waiting at a short distance from the village. Accused Nos. 2 and 4 and Bapu then went to the accused No. 1 at the Chavdi and told him that the Rs. 1,000 which had been promised by Dadu and Namu had been brought. The constables asked the accused what was to be done with the money, and the accused told him that he knew what to do with it, and that they should go and wait in the motor bus. Thereafter the accused went to the bus and accompanied by Bapu Saheb, Bandu and the constables, he left for Vita.

The accused was, along with three others, afterwards charged with having committed offences under sections 411, 161 and 218, Indian Penal Code, for having received and retained stolen property, for having received a bribe and for having as a public servant framed an incorrect record with intent to save certain persons from punishment. The

trial ended in the conviction of accused No. 1 and in the acquittal of accused Nos. 2 to 4.

The accused No. 1 appealed.

K. N. Dharap, for the appellant.

B. G. Rao, Assistant Government Pleader, for the Crown.

N. J. WADIA J. [After setting out the facts of the case His Lordship proceeded :] The fact that theft had been committed by Dadu and Namu, and that the amount of Rs. 1,000 was actually produced by them on the 17th February is not now disputed. There is a good deal of evidence which proves the production of the amount by Dadu and Namu. But as this fact is no longer disputed, it is not necessary to deal with it. The only question we have to consider is whether the case for the prosecution that the amount produced by Dadu and Namu was misappropriated by the accused has been proved. The only direct evidence to show that the amount was received by the accused and taken away by him to his house is the evidence of Bapu Saheb Patil. It is argued that Bapu Saheb is an accomplice, and that his evidence alone would not therefore be sufficient to support the conviction of the accused, and that corroboration of it is necessary. In the lower Court the statements made by accused Nos. 2, 3 and 4 in the prosecution against Dadu and Namu, were admitted in evidence. No objection appears to have been taken at the time to the admission of these statements. It has been argued before us that these statements were inadmissible in evidence, and the contention must, I think, be upheld. These statements could not have been admitted either under section 32 or 33 of the Indian Evidence Act, and the learned Assistant Government Pleader has not been able to refer us to any other section of the Indian Evidence Act under which such statements could have been admitted. In this appeal, therefore, we have not taken those statements into consideration at all. Eliminating that evidence, the

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statement of Bapu Saheb is, as I have said, the only direct evidence to show that accused No. 1 actually received the Rs. 1,000 produced by Dadu and Namu. Bapu Saheb says that accused No. 1 had told him, before he spoke to Dadu and Namu, that Krishna had told Bapu Saheb all about the theft, and that Bapu Saheb should ask Krishna where the money was. He says that when he spoke to Krishna about it, Krishna said that he had only Rs. 1,000 left out of the proceeds of the offence of theft, and that he was willing to give these Rs. 1,000 to the Sub-Inspector provided that Bapu Saheb saw that Dadu and Namu got out of the trouble. On his telling this to the Sub-Inspector the latter is said to have told him to get the cash first, and then they might see what to do. After Dadu and Namu had produced the money, Bapu Saheb says that two of the constables, accused Nos. 2 and 4, went to the Sub-Inspector, and told him what had happened, and that the money had been secured and placed in the bus, that accused No. 1 then made a farce of slapping Krishna, and took Hambira and Ganu to task for the complaint they had lodged and the needless trouble they had given, and that afterwards accused No. 1 and the four constables, and Bandu Avate and Bapu Saheb himself got into the bus, and drove to accused No. 1's house. Bandu Avate got out on the way. They got down at the house of accused No. 1 and accused No. 3 took the bundle containing the money into the house of accused No. 1. The next morning accused No. 1 said to him "If I were to produce the money before the District Superintendent of Police I would get some promotion, but . . ." He left the sentence incomplete. From his words Bapu Saheb thought that he did not intend to produce the money. We have to see what corroboration there is for the statement of Bapu Saheb that accused No. 1 actually took the money. It is true that Bapu Saheb must be treated as an accomplice, and so must Krishna, Dadu and Namu. But in cases of bribery the persons who pay the bribe and those

who act as intermediaries are the only persons who can ordinarily be expected to give evidence about it. It is not possible to expect absolutely independent evidence about the payment of a bribe, and a distinction has to be made between persons who have voluntarily paid a bribe to a public servant in order to secure some advantage for themselves, and persons, such as Krishna, Dadu, and Namu in this case, who have been compelled by improper pressure put upon them by a public servant to pay a bribe. In cases of this kind, where the payment of the bribe has not been voluntary, very slight corroboration would, in my opinion, be sufficient to make the evidence of such persons admissible against the receiver of the bribe. As regards Bapu Saheb, it is true that he was not himself one of the persons concerned in the original offence of theft, and cannot, therefore, be said to have acted under compulsion. His evidence might perhaps be considered as needing somewhat stronger corroboration than the evidence of Krishna, Dadu and Namu. But even with regard to his evidence, I am of opinion that considering the position in which he stood as against the accused Sub-Inspector, it must be taken that he was acting under a certain amount of compulsion. He was police patil of a village which was in the accused's jurisdiction, and had been told by the accused to help in the detection of the offence, and in persuading Dadu and Namu to produce the stolen property. It has been suggested on behalf of the accused that Bapu Saheb himself must have taken the whole or part of the money which was produced. The learned Sessions Judge and the assessors were not prepared to accept this suggestion, and I am not myself prepared to hold that the part which Bapu Saheb played in this case suggests that he himself took any share of the bribe. I would, therefore, consider that even a slight amount of corroboration would be sufficient to justify us in accepting Bapu Saheb's evidence against the accused, and there is, in my opinion, such corroboration. That corroborative

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evidence need not necessarily be with regard to the whole story given out by Bapu Saheb. It would be sufficient if it corroborated parts of that story. With regard to the demanding of the money by the accused, we have the evidence of Krishna, Dadu and Namu, and that evidence goes further than merely showing that accused No. 1 asked merely for the production of the stolen property. If the evidence of Dadu and Namu is to be believed, the accused must have demanded the money as a bribe, and not as stolen property which was to be produced and reported in the ordinary course to his superiors. Namu has said in his evidence that accused No. 1 called him out and said to him, "If you pay me Rs. 1,000 I will see that you are free from the trouble". This statement could only mean that accused No. 1 had demanded the money from Dadu and Namu as a bribe for hushing up the offence. With regard to the receipt of money by the accused, although we have no direct corroboration of Bapu Saheb's statement that the accused had been informed that the bag containing Rs. 1,000 was in the bus, and that this bag was actually taken into the accused's house, we have certain evidence which suggests very strongly that the accused must have taken the money. Bandu Avate, who had also got into the bus by which the accused returned from Khambala to Vita, has stated that the bag containing the money had been placed by Namu in the bus, and that after some time accused No. 1, accompanied by two constables, got into the bus and drove away. It is, therefore, proved by this witness that the bag containing the money was in the bus by which accused No. 1 went from Khambala to his house, and it is difficult to believe that accused No. 1 could have been unaware of the fact that the money was in the bus. The suggestion made on behalf of the accused is that the money must have been taken by Bapu Saheb and by the three constables, and not by the accused. It is difficult on this theory to explain the accused's conduct. The evidence

shows that the accused was aware of the fact that Krishna, Dadu and Namu were prepared to own up the offence and to produce the property. It was after they had expressed their willingness to do so that the accused sent them with Bapu Saheb and the constables to their own village to bring the money. It is suggested that when Dadu, Namu, and the constables and Bapu Saheb returned from Kalambi, the accused was informed by the constables and by Bapu Saheb that Dadu and Namu refused to admit the offence, and would not produce any property. It is difficult to believe that the accused could ever have accepted such an explanation, knowing as he did that Dadu and Namu had already confessed the offence to him and expressed their willingness to produce the money. It is also difficult to believe that such a false story could have been given out to the accused by his own subordinates in the presence of Dadu and Namu, who had produced the money apparently in order to induce the accused to hush up the offence. The accused's subsequent conduct with regard to the incidents of February 17 is also difficult to reconcile with the suggestion that he had committed no offence. He had, admittedly on his own showing, done a good deal of investigation in connection with this offence on the 17th. He had camped in Khambala for the whole night and had questioned several persons including Dadu and Namu. Yet he deliberately made a false or grossly inaccurate entry in the station diary that nothing of importance had been found. One would have expected in the normal course that even if he had not been able to recover the stolen property which he had gone out to recover, he would have left detailed notes in the station diary for the guidance of his successor with regard to what had happened on the night of the 17th. The entry which he made on the 18th is, in my opinion, difficult to reconcile with the theory of his innocence. It is equally difficult to reconcile the conduct of accused Nos. 2 to 4 and of Bapu Saheb Patil with the theory put forward

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by the accused. On that theory we have to hold that the accused's own subordinates, and Bapu Saheb, a village patil working under him, deliberately took the bribe under the very nose of their superior officer and without letting him know of it or giving him a share in it. The Rs. 1,000 which were produced by Dadu and Namu were all in silver. The evidence is that the bundle containing the rupees was carried by Namu to the bus. The bundle would not be a small or inconspicuous one. Yet it is suggested that this bundle was kept in the very bus in which accused No. 1 travelled from Khambala to Vita. It is hardly likely that such a bundle would escape accused's notice, or that accused Nos. 2 to 4 and Bapu Saheb could ever imagine that it would escape his notice. I may mention that this suggestion that the money must have been misappropriated by the constables and by Bapu Saheb was not put forward in the Sessions Court except at a very late stage.

There is, therefore, corroboration of Bapu Saheb's evidence with regard to the actual receipt of this money by accused No. 1 in the statement of Bandu that the bundle containing the money was in the bus by which accused No. 1 left to go to his house, in the statement made by Namu that accused No. 1 demanded the money as a bribe, and in the conduct both of the accused himself and of the constables and of Bapu Saheb. Taking this evidence as a whole, there is, in my opinion, no room for doubt that the money was demanded and received by accused No. 1 himself as a bribe. His conviction, therefore, under all the three sections is justified. The sentence awarded by the Sessions Judge in default of payment of fine is in excess of that allowed by section 65 of the Indian Penal Code. That sentence will have to be reduced to one of nine months' rigorous imprisonment. Subject to this modification, the convictions and sentences passed against the accused will be confirmed, and the appeal dismissed.

BEAUMONT C. J. I agree. In my opinion, the rule of the Court which requires corroboration of the evidence of an accomplice as against each accused, if it applies at all, applies with very little force to a case like the present, in which the accused is charged with extorting a bribe from other persons. The objections which usually arise to the evidence of an accomplice do not really apply where the alleged accomplice, that is, the person who pays the bribe, is not a willing participant in the offence, but is really a victim of that offence. However, in the present case, I quite agree that there is ample corroboration of the direct evidence of bribery in the conduct of accused No. 1. I ignore the evidence given in the theft case, which, in my opinion, cannot be admitted as evidence in this case against the accused. But on the evidence properly admissible there can be no question that accused No. 1 arranged the meeting of February 17, and that that meeting was intended to lead to the production of property which had been stolen by Dadu and Namu, and there can be no question on the evidence that it was accused No. 1 who sent the party consisting largely of his own constables to recover the stolen property, and the Rs. 1,000 was in fact recovered by the constables and the rest of the party from Dadu and Namu. If we are to assume that accused No. 1 is innocent, then it follows that he was in effect robbed of the Rs. 1,000 by his own constables, who took the money back with them in the motor-bus in which the accused Sub-Inspector was actually travelling. Apart from the extreme improbability of that story, with which my learned brother has dealt, the conduct of accused No. 1 is quite inexplicable upon that basis. He made no further effort to recover any stolen property, he must have accepted the bare word of his constables and the rest of the party that the stolen property which had been promised to be handed over had not been handed over, and when he returned to his police-station, instead of making a report to his successor as to the circumstances of the case,

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he merely reported that nothing had occurred at this meeting, and took no efforts to enable his successor to proceed with the case. Such conduct is absolutely inexplicable, to my mind, except on the basis that in fact the Rs. 1,000 were recovered and were in the possession of accused No. 1. If that is so, there is no question but that he kept them for himself, and did not account for them. I agree, therefore, that the appeal must be dismissed.

Appeal dismissed.

Y. V. D.

PRIVY COUNCIL.

J.C.*

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April 12

HARI, APPELLANT v. THE KING-EMPEROR, RESPONDENT.

[On Appeal from the Court of the Judicial Commissioner of Sind.]

Criminal Procedure Code (Act V of 1898), sections 423, 526—Transfer of cases.

It is only in exceptional circumstances that an order should be made transferring the trial of a criminal case from a Court in which the trial would be heard before a jury to a Court in which the trial would be heard before a Court without a jury as it is likely to have a serious effect on the rights of the accused who ought to, generally, retain the privilege he enjoyed of trial by jury.

Such an order might reasonably be made where there is no Judge who was not already associated with the trial in the former Court and no other Court in the Province where the trial could be heard with a jury.

APPEAL (No. 17 of 1935) by special leave from part of an order of the Court of the Judicial Commissioner of Sind (July 25, 1934) transferring the re-trial of the appellant from the said Court to the Court of Sessions, Hyderabad.

The facts appear from the judgment of the Judicial Committee.

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Parikh, for the appellant.

Dunne, K.C., and *Wallach*, for the respondent.

April 12

The judgment of their Lordships was delivered by LORD ATKIN. This is an appeal in a criminal case which has undergone some vicissitudes in the Courts in India.

**Present:* Lord Atkin, Lord Macmillan, Lord Wright, Sir Lancelot Sanderson, and Sir Shadi Lal.