1874.

Reg. v. Chand Nur and Pirbhai Adamji.

although, under special circumstances, abetment is to be deemed equivalent to the principal offence, yet it is plain that a charge of the latter, simply as such, gives no intimation of a trial to be held on the former. We must, therefore, annul the conviction and sentence passed upon Pirbhái, and direct that he be retried on a charge of the abetment of murder.

Order accordingly.

[APPELATE CRMINAL JURISDICTION.]

Dec. 3.

REG. v. JORA HASJI, BHAIJI RUPSANG, AND BHOGHA PIRA.

Statements made by prisoners during Police custody—Section 27 of the Indian Evidence Act I. of 1872.

Under Sec. 27 of the Indian Evidence Act nor every statement made by a person accused of any offence while in the custody of a Police Officer, connected with the production or finding of property, is admissible. Those statements only which lead immediately property, and, in so far as they do lead to such discovery, are properly admissible. Whatever be the nature of the fact discovered, that fact must, in all cases, be itself relavant to the case, and the connection between it and the statements made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence and thus mediately, but not necessarily or directly, connected with the fact discovered, are not admissible. That a witness says that a plan was prepared in his presence is not a sufficient reason for admitting the plan in evidence, unless the witness also says that to his own knowledge the plan is correct.

THE three accused were tried and convicted of the murder of one Lallu, and sentenced to death by W. H. Newnham, Session Judge of Ahmedabad.

The facts of the case are briefly these:—

Lallu disappeared from his village at the beginning of September last. On a search being made, a quantity of human bones and two cloths were found in a field within the limits of the village of Baithal, and the three accused were sent for by a chief constable on suspicion. The accused Bhogá produced a bill-book and a knife from a field; the accused

Jorá produced a stick; and the two showed the scene of murder together, which was also pointed out the next day by the accused Bháiji.

Each of the three accused made a statement exculpating himself but criminating his two fellow-prisoners. The Sessions Judge held those statements admissible against all, and relying upon them, as well as the other evidence in the case, convicted the accused. [The rest of the facts appear in the judgment.]

The appeal was heard by WEST and PINHEY, JJ.

Nagindas Tulsidas for the appellants. The Judge was wrong in taking into consideration the statement of each of the prisoners against the others.

Dhirajlal Mathuradas, Government Pleader, for the Crown.

WEST, J.—The thre prisoners have been convicted by the Session Judge of Ahmedabad of the murder of one Lallu and sentenced to death.

In the investigation of the case before the Court of Session some defects have occurred, which we think it necessary to notice at the outset, although it is not needful to say in each instance to whom those defects are properly ascribable.

In the first place, there is no evidence that the bones sent by the Chief Constable for examination by the Civil Surgeon are the bones that were examined by him. It appears that the Surgeon, on taking up his office, found that certain bones had been sent, and were awaiting examination; but the link connecting them with those sent by the Chief Constable is wanting; and we are thus obliged to throw out of our consideration this very important piece of evidence. The person who received the bones at the hospital, and, in fact, every person through whose hands they passed, from the time they left the hands of the Chief Constable, down to the time they reached those of the Surgeon, should have been examined without a single break.

We also find that a good deal of evidence has been admitted against the accused to prove what occurred at the

1874.
Reg.
v.
Jora Hasji and others.

hedge where the bones were found, and elsewhere in the fields where the murder was said to have been committed, which ought legally to have been excluded. As a general rule, the law renders statements made by people while in the custody of the police inadmissible. But to that rule is appended a qualifying exception. Section 27 of the Indian Evidence Act has enacted that "when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." Under cover of this provision we find introduced into this case the discovery of a bill book, a knife, and a stick, in order to open the door to admit statements made by the accused when they must have been in the custody of the police.

It is of the highest importance that the law on this point should be accurately known by the courts below as well as the professional gentlemen who practise there. It is not all statements connected with the production or finding of property which are admissible; those only which lead immediately to the discovery of property, and so far as they do lead to such discovery are properly admissible. Whatever be the nature of the fact discovered, that fact must, in all cases, be itself relevant to the case, and the connection between it and the statement made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and so mediately, but not necessarily or directly, connected with the fact discovered, are not to be admitted, as this would rather be an evasion than a fulfilment of the law, which is designed to guard prisoners accused of offences against unfair practices on the part of the police.

For instance, a man says: "You will find a stick at such and such a place. I killed Rámá with it." A policeman

in such a case, may be allowed to say he went to the place indicated, and found the stick; but any statement as to the confession of murder would be inadmissible. If, instead of "you will find," the prisoner has said, "I pleased a sword or knife in such a spot," when it was found, that, too, though it involves an admission of a particular act on the prisoner's part, is admissible, because it is the information which has directly led to the discoverd, and is thus distinctly and independently of any other statement connected with it. But if, besides this, the prisoner has said what induced him to put the knife or sword where it has been found, that part of his statement, as it has not furthered, much less caused, the discovery, is not admissible. The words in Section 27 of the Evidence Act "whether it amounts to a confession or not" are to be read as qualifying the word "information" in the immediately preceding context, not the words "so much"; and the effect is that, although ordinarily a confession of an accused while in custody would be wholly excluded, yet if, in the course of such a confession, information leading to the discovery of a relevant fact has been given, so much of the information as distinctly led to this result may be deposed to, though as a whole, the statement would constitute a confession which the preceding sections are intended to exclude.

In this case, as in many others, the production of articles, supposed to have been made use of in committing the murder by the prisoners, is adduced as strong evidence against them. The conduct of a prisoner in relation to any relevant fact is good evidence according to Section 8 of the Indian Evidence Act; but according to Explanation 1, "The word 'conduct' if this section does not include statements unless those statements accompany and explain acts other than statements." It is on such a statement that the significance of the act, which it accompanies, in many cases wholly depends; as for instance when a Police officer says to a prisoner "I must search your house for the stolen property," to which the prisoner replies: "I will give you at once all the valuables I have in the house," and then

1874.

Reg. v. Jora Hasji and others.

gives him certain articles, not stolen property after which stolen jewels are found concealed under his hearth. But if, under cover of an explanation said to have been given by a prisoner of an act in itself ambiguous, or not so obviously connected with a fact in issue as to be relevant, it is sought to introduce a confession of a prisoner to the police, or made while in custody of the police, the Evidence Act does not warrant its admission. The rules of exclusion and the exception to them being definitely laid down, the exception is not to be extended to cases not properly falling within it. The giving up by a cultivator of a bill-book, or the pointing out of a place where *bajri* appears to have been trampled, is however, in itself an unambiguous act. It is in general also insignificant. It needs no explation, and a confession accompanying it does not explain it, but is a collateral matter, whose exclusion, where it is excluded, is not prevented by its being connected with matters that are not excluded.

We shall notice one other point of law which arises in the case. A plan of fields, which the Chief Constable says, he saw made before him, is admitted To say that it was prepared in his presence and bears his signature is not a sufficient reason for admitting the plan. The witness did not depose that to his knowledge the plan was a correct one, and if he could not say this, the person who made the measurements and prepared the plan should himself have been called. We have not taken this plan into our consideration in disposing of this case, and it has not proved to be of any importance, but we mention the matter in order that our opinion regarding its non-admissibility in evidence may be known.

The remaining evidence in the case consists chiefly of statements made by the accused. Before weighing them we will remark that if a man makes statements, he is responsible for them, even though they should not in fact be true. If he chooses, under preasure, if there be any preasure, not to appeal to the protection of the Magistrate, but to make to the Magistrate confessions which in fact are

untrue, he voluntarily incurs the risk of their being taken to be true against him. Here the accused had full opportunity to speak as they wished before the Magistrate. He has certified that their statements were voluntarily made. If the statements are not true, the prisoners themselves are to blame.

1874.
Reg.
v.
Jora Hasji and others.

The Court then discussed the rest of the evidence, and confirmed the convictions, though it declined to confirm the sentence of death, and passed sentences of transportation for life.

....

[APPELLATE CRIMINAL JURISDICTION]

December 3.

REG. *v.* FATÁ ADÁJI AND TWO OTHERS.

Dying Declartion.

The declaration of a dying person, albeit made on solemn affirmation before a Magistrate, who was not, however, the committing Magistrate, and signed by him, is not admissible in evidence without legal proof that the deceased made such a declaration.

THE three accused were convicted of murder by W. H. Newnham, Session Judge of Ahmedabad. The first accused, Fatá, was sentenced to death, and the other two sentenced to transportation for life.

The facts of the case, in so far as they are material to the purposes of this report, are briefly as follows:—

The deceased Jethá, along with others, was sleeping near a cart laden with mangoes. On hearing a noise he awoke, and rousing his friends, pursued six men who, it appeared, were making off with some of the fruit. Finding themselves hotly pursued, three of these men—who are the present applicants—turned to bay, and, as the prosecution alleges, the first accused, at the suggestion of the second, shot an arrow at the deceased, and the third accused, also at the suggestion of the second, ran towards him with a sword. On removal from the scene of the assault to Kapadvanj, the deceased is said to have made to a Second Class Magistrate, a declaration before his death, denouncing the accused as his assailants.