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consider that it would benefit his client. Upon the whole, therefore, we think the prisoner was not prejudiced.

The Court declining to confirm the sentence of death, passed upon Devá Dayál a sentence of transportation for life.

Order accordingly.

NOTE.—See *supra* p. 44, the case of *Reg. v. Daya Anand and another*, in which the Court (West and Nanabhai Haridás, J.J.) held that a similar confession should not have been admitted. In that case, however, it does not appear that the prisoners were professionally represented in the Session Court.—Ed.

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November 23.

[APPELLATE CRIMINAL JURISDICTION.]

REG. v. CHÁND NUR AND PIRBHÁI ÁDAMJI.

The Code of Criminal Procedure, Section 457—Conviction of an offence without a specific charge.

When a person is charged with an offence consisting of parts, a combination of some only of which constitutes a complete minor offence, he may, under Section 457 of the Code of Criminal Procedure, be convicted of the latter without being specifically charged, but only when the graver charge gives notice of all the circumstances going to constitute the minor offence.

Hence, where a man charged with murder was convicted of abetment of it, the High Court annulled the conviction and sentence, and ordered him to be retried on the latter charge.

THE accused Chánd and Pirbhái were both tried by W. H. Newnham, Session Judge of Ahmedabad, on a charge of murder; but while the former was convicted of the offence charged, the latter was found guilty of abetment of murder. Both, however, were sentenced to death.

The material facts of the case are as follows:—

Chánd, at the instigation, it is said, of Pirbhái, put some poison into a mill belonging to one Rájebháí (an enemy of the latter), in consequence of which Rájebháí narrowly escaped death, while his two sons actually died. Mr. G. B. Reid, Magistrate, First Class, committed both those persons on a charge of murder, on which they were tried by Mr. Newnham, who, finding on the evidence that Pirbhái was not present at the commission of the offence, found him guilty to abetment of murder only, without making any amendment

in the original charge. He was of opinion that Section 457 of the Code of Criminal Procedure warranted this being done.

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The appeal was heard by WEST and PARHEV, JJ.

Shantaram, Narayan, for the appellants, commented on the evidence.

Dhirajlal Mathuradas, Government Prosecutor, for the Crown, was called on to support Pirbhái's conviction of abetment of murder, on a charge of murder itself.

WEST, J. (after reviewing the evidence as regards the prisoner Chand and finding him guilty of murder), proceeded thus:—As to the case against Pirbhái, we are of opinion that Section 457 of the Code of Criminal Procedure has been misapplied. That section applies to cases in which the charge is of an offence which consists of several particulars, a combination of some only of which constitutes a complete minor offence. The graver charge in such a case gives to the accused notice of all the circumstances going to constitute the minor one of which he may be convicted. The latter is arrived at by mere subtraction from the former. But when this is not the case, where the circumstances, embodied in the major charge, do not necessarily, and according to the definition of the offence imputed by that charge, constitute the minor offence also, the principle no longer applies, because notice of the former does not necessarily involve notice of all that constitutes the latter. The section is not intended to apply to a collateral offence. It is not open to a court to find a man guilty of the abetment of an offence on a charge of the offence itself. When a man is accused of murder, he may not be conscious that he will have to meet an imputation of collateral circumstances constituting abetment of it, which may be quite distinct from the circumstances constituting the murder itself. When, therefore, the Session Judge says that Section 457 warrants his convicting the accused of the abetment of murder on the original charge of murder itself, without amendment of the charge, he departs from the intention of that section. For

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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 Pirbhai, and direct that he be retried on a charge of the abetment of murder.

Order accordingly.

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[APPELLATE CRIMINAL JURISDICTION.]

Dec. 3.

REG. V. JORA HASJI, BHAJI RUPBANG, AND
BHOOGA 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 to 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 relevant 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