

Criminal Procedure; and there is nothing in the Code to show that it was intended that the jury should be sworn.

1867.  
April 3.  
Crim. Appeal.

It cannot be said that there is no evidence whatever in the case; but we entirely concur with the remarks made by the Session Judge as to the value to be attached to such evidence; and, if it may be of any service to the petitioners, we have no hesitation in saying that we entirely concur with the Session Judge in his observations as to the conviction of the prisoners by the jury.

*Petition rejected.*

REG. v. IMA'M valad BA'BAN, BA'LA' valad  
BA'BAN, and JOTI' bin MAHA'DEV.

*Accomplice—Corroboration—Practice.*

*Held* that the English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice, which is, that when he speaks as to two or more persons having been concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the identity of the prisoners; and that any prisoner as to whom his testimony is not supported should be acquitted.

THE prisoners were convicted of murder by R. F. Mactier, Session Judge of Sâtará; and sentenced to death, subject to the confirmation of the High Court, under Sec. 380 of the Code of Criminal Procedure.

April 15.  
Crim. Appeal.

The case was heard by COUCH, C.J., and WARDEN, J.

*Bhairavanáth Mangesh* (with him *Shántárám Náráyan*), for the prisoners, contended that as against Imám the evidence was very weak; and that there was no evidence implicating the prisoners Bálá and Jotí, except the statements of the approver, witness No. 9, Mahádev, and of No. 7, Ganu. The evidence of the last was not at all trustworthy, more especially because he stated before the Court of Session that Bálá beat the deceased with a stick, while in his examination before the Magistrate he did not even mention his name as one of the party who attacked the deceased; and also because he stated before the Magistrate that he recognised the prisoners, at the time and place of the murder, by their voice, and he

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improved this statement before the Court of Session, by saying that he recognised the prisoners by their voices and faces. His evidence, therefore, is untrustworthy; and the statement of Mahádev, being uncorroborated, would not be sufficient for the conviction of Bálá or Jotí.

*Dhirajlál Mathurádás*, Government Pleader, for the prosecution, contended that Mahádev's statement with regard to the prisoner Imám was fully corroborated; and that, with reference to the others, it was not necessary that the approver's statement should be corroborated in every point. It was sufficient if the approver was corroborated in some points.

Couch, C.J. :—In this case the whole question turns upon the amount of corroboration necessary to support the testimony of an accomplice. With respect to the prisoner Imám, the testimony of the approver is amply corroborated by witnesses as well as by circumstances; but with respect to the prisoners Bálá and Jotí, his testimony is not supported, except by the evidence of Gañu, which cannot be relied upon: as there are material discrepancies between his statement before the Magistrate and before the Court of Session. The result is that Mahádev's evidence stands uncorroborated as regards Bálá as well as Jotí.

In *Reg. v. Stubbs (a)*, *Jervis*, C. J., says: "My practice in a case like the present is to tell the jury, that, in my opinion, where an accomplice speaks as to three prisoners, and is confirmed only as to two of them, it is safer to require confirmation as to all three, as nothing is more easy than for an accomplice to put the third man in his own place; and that prudence and practice, therefore, require confirmation as to all the prisoners." And *Parke*, B., says: "Throughout the whole of my experience I have uniformly laid down the rule to be as stated by the Chief Justice. It is competent to the jury to find prisoners guilty upon the unsupported evidence of an accomplice; but Judges have always told juries to require confirmation before they do so. Some Judges think,

(a) 25 Law J., Mag. Ca. 16; S.C., 1 Jur., N. S., 1115.

that if there is confirmation as to one prisoner, that is sufficient. My practice is different, and I tell juries not to find prisoners guilty, unless the accomplice's evidence is confirmed, not only as to facts, but also as to identity." *Wightman* and *Cresswell*, JJ., concurred.

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This may now be taken to be the established practice in England; and it would certainly be unsafe to depart from it in India. Applying the rule to the present case, neither the conviction of Bálá nor of Jotí can be upheld.

We regret very much that the Judge did not notice the discrepancies in the evidence of so important a witness as Gañu. He ought to have asked him to explain the apparent discrepancies between his statement before the Magistrate and before himself.

We, therefore, reject the petition of Imám, and confirm the sentence of death as against him; but with regard to Bálá and Jotí the convictions and sentences must be reversed.

#### REG. v. REMEDIOS and others.

*Tender of Pardon—Magistrate—Crim. Proc. Code, Sec. 209—Bombay Act No. III. of 1866—Gaming.*

On a reference by a Session Judge, where certain persons were found guilty of gaming, by a Full Power Magistrate, solely on the evidence of a person supposed to have been concerned in the offence, whom the Magistrate had pardoned:—

*Held* that a Magistrate has no power to tender a pardon in a case which he tries himself; but only, under Sec. 209 of the Crim. Proc. Code, in the case of an offence triable by the Court of Session:

THIS case was referred for the orders of the Court by R. H. Pinhey, Session Judge of the Konkan, with the following remarks:—

June 12.  
Referred Case.

"The accused, Francis Remedios and seven others, were entered as having been charged: Nos. 1 to 8 with the offence of gaming in a common gaming-house in the town of Tháná, and No. 7 with the offence of keeping a gaming-house. Nos. 1, 2, 3, 4, 6, and 7 were convicted, and sentenced: Nos. 1, 2, 3, 4, and 6 to pay each a fine of Rs. 20, and in default to undergo one week's rigorous imprisonment [Bom. Act III.