REG. v. GANU bin DHAROJI, *et al.* 1869

Sept. 22.

Accomplice—Corroboration—Practice.

Held, that where the evidence of an accomplice is uncorroborated, the correct practice requires Session Judges not merely to tell the jury that it is *unusual* to convict on such evidence, but that he should also tell them that it is *unsafe*, and *contrary both to prudence and practice* to do so; yet that his omission to state this does not amount to an error in law.

Reg v. *Imam*, 3 Bom. H. C. Rep., Cr. Ca. 57 commented on.

The prisoners were tried before F. Lloyd, Session Judge of Puna, and a jury, on a charge of murder, and, having been convicted, were sentenced to transportation for life.

From the convictions and sentences the prisoners appealed to the High Court.

On the 8th of September 1869 the appeal was argued before Gibbs and Melvill, JJ.

Macpherson (with him *Ganesh Hari Patvardhan*) for the accused.

Dhirajlal Mathuradas (Government Prosecutor) in support of the conviction.

Cur. adv. vult.

On the 22nd of September 1869 the judgment of the Court was delivered by

Gibbs J:—It has been urged upon us by the learned counsel for the appellants that the Session Judge did not impress upon the jury in sufficiently strong terms that they ought not to convict on the uncorroborated evidence of an accomplice, and that his omission to do this constitutes an error in law.

The portion of the Session Judge's charge which is referred to, is as follows:—

"Now the direct evidence is that of the witness Maroti, who comes before this Court as a pardoned accomplice, and therefore as an infamous witness; the evidence of such a man must, under any circumstances, be received with the greatest caution; and though his evidence as an accomplice, if you

1869

Reg. v. Ganu bin Dharoji et al.

feel satisfied that it is worthy of perfect credence, would be sufficient to sustain the charge, and your verdict founded thereon would be legal, it is the duty of a Judge, to warn a jury that it is unusual to convict on such evidence, without corroboration in material points."

It is contended that it was not sufficient to tell the jury that it is *unusual* to convict on the uncorroborated evidence of an accomplice, and that they should have been directed not to convict, or at least told that it is unsafe, and contrary both to prudence and practice, to convict on such evidence. In support of this view the case of *Regina* v. *Imam valad Baban* (*a*) has been cited, in which the judgment of the Court (COUCH, C. J., and WARDEN, J.,) contains the following passage:—

"In *Reg.* v. *Stubbs* (*b*), Jervis Chief Justice, 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 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.

"This may now be taken to be the established practice in England, and it would certainly be unsafe to depart from it in India."

(*a*) 3 Bom. H. C. Rep., Cr. Ca. 57.
(*b*) 25 Law J. Mag. Ca. 16; S. C. Dear. Cr. Ca. 555.

This judgement certainly supports the proposition that the Session Judge ought in the present case to have gone further than he did in simply telling the jury that it was unusual to convict on the unsupported testimony of an accomplice; but it does not follow that his omission to do so amounted to an error in law. On the contrary, on referring to the case of *Regina* v. *Stubbs* we find that the Judges, while stating what they considered to be the proper practice, unanimously decided that an omission to follow such practice did not constitute an error in law. The Court was sitting as a Court of Criminal Appeal, with Power to entertain an appeal on the ground of an error in law only; and the ground of appeal was that there had been a misdirecrion by the chairman of a Court of Quarter Sessions. Thus the circumstances of the case were in every respect similar to those of the Preseent case. Jervis, C. J., said; "We cannot interfere, though we may regret the result that has been arrived at. for it is contrary to the ordinary Pracaice. Willer, J., said:" This is not a question of law, but of practice, and questions of law only can be reserved for our opinion."

Thus the case of *Regina* v. *Stubbs* so far from supporting the contention of the learned counsel for the appellant in this case, is, on the contrary, directly opposed to it.

We must hold that not error in law has been shown in this case. We may mention that we have consulted the learned Chief Justice as to the effect of his judgement in the case of *Regina* v. *Imam*, and that he is of opinion that it is not opposed to the decision wich we now Pronounce.

Petition rejected.