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July 6.

REG. V. CHIMA'.

Evidence—Attempt to murder—Ind. Pen. Code, Sec. 307—Improper Admission of Police Evidence.

A young Bráhmañ widow was confined of a child. The chief constable of police, acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a living newborn child wrapped up in a cloth with a cooking pot turned over it.

The Session Judge convicted the accused of attempt to murder.

The High Court on appeal reversed the conviction, on the ground that the evidence was insufficient to support it.

It was also held in this case that the chief constable's statement, that he "had information that the accused was about to kill the baby," was most improperly admitted as evidence against the accused.

Action of the Police censured.

When a person abets the commission of an offence and is present at the time when it is committed, he should be tried, under Sec. 114 of the Indian Penal Code, for the same offence as the principal.

THE accused, Chimá, was tried and convicted by W. M. P. Coghlan, Session Judge of Tháná, of attempting to commit murder, and sentenced, under Sec. 307 of the Indian Penal Code, to rigorous imprisonment for a period of seven years.

The facts of the case sufficiently appear from the following extracts from the decision of the Session Judge:—

"The circumstances of the case may be given from the deposition of Shekh Amír, chief constable of the Násik town police.

"He has told us that, in consequence of information he had received, he went to search the house of the accused persons (Chimá and her mother, Jánki) about noon on the 5th of March. He had with him constables and five Hindú persons to be witnesses of what might be found in the house.

"The door was shut, and not opened until he had called out for a considerable time; at length it was opened by accused No. 2, Jánki.

"The party went upstairs to the first floor, where they found Chimá, accused No. 1, lying on the floor. After hesitating, she admitted that she had been confined of a child

on the second floor, and that it was then there. The *pancháyat* and two constables went upstairs with Jánki, accused No. 2, and returned with a *lugdá* in a bundle and a copper cooking-pot. The *lugdá* was unrolled, and in it was found a living new-born female child, unwashed since birth, and with its navel-string untrimmed. The chief constable had sent for two women, Ourí and Kási (witnesses Nos. 4 and 5), the former of whom tried to squeeze milk into the infant's mouth, and in doing so found in the mouth a piece of cloth, probably a strip torn off a *lugdá*, rolled up tightly in the infant's mouth. Kási cut the navel-string. The child lived for nearly three weeks and then died, as far as is known, from natural causes. The witness No. 3, Sakhárám, one of the *pancháyat*, who went up to the second floor, deposes to the child being found wrapped up in the *lugdá* before the court, in the copper vessel, which was turned bottom upward.

“As the *lugdá* lies in a heap before the court, it is at least half as large again in bulk as the copper pot. It must, therefore, have required pressure to get the whole *lugdá* into the vessel, especially together with an infant. I am only surprised that the child was taken out of the vessel alive, and can only account for it by supposing that she had only been there for a few minutes.

“The accused, Chimá, admits all these circumstances, but would have it believed that the child was only put in the *lugdá* temporarily, and without intention to kill it, and that the piece of rolled cloth must have accidentally got into the mouth. The learned Pleader, who has gratuitously conducted the defence, would more ingeniously account for the rag by supposing that it had been used to feed the child with, and had accidentally been left in the mouth.

“I cannot adopt this hypothesis as to the rag, which is a long strip of *lugdá*, or agree with the Assessors that the position in which the child was found is consistent with any theory but that it was intended to die in the *lugdá* in the copper vessel.

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“ It is argued that had Chimá, accused No. 1, wished to kill the child she might have done so by a pinch on the throat, and need not have gone to the trouble she did. The answer to this is that the plan she adopted was a much safer one than any other. Had the police not found the child when they did, it would have been quickly dead without any mark of violence on it. It was probably also more agreeable to accused Chimá's feelings, as it were, to let the child die, rather than to kill it by absolute force. It is quite clear to me, beyond a reasonable doubt, that the accused No. 1, Chimá, did her best to kill the child. There is reason for grave suspicion that her mother, Jánki, accused No. 2, abetted the offence; but there is not sufficient proof to warrant a conviction in her case. She pointed out the place where the child was found; but this was after Chimá had said that the child was upstairs. She must, therefore, be acquitted.

“ The chief constable of the city police, Shekh Amir, deserves credit for his arrangements, as shown by the evidence in this case.”

The trial was conducted by the aid of three Assessors, who differed from the Session Judge in his opinion regarding Chimá's guilt.

Against the conviction and sentence of the Session Judge, Chimá appealed to the High Court, and the appeal was heard before GIBBS and WEST, JJ., on the 6th of July 1871.

Dhirajlál Mathurádas in support of the conviction.

WEST, J. :—The evidence in this case is quite insufficient to sustain the serious charge upon which the prisoner Chimá has been convicted. It is in evidence that the police found the inner door of the house closed and fastened when they arrived, and Chimá had just been delivered of the child. The door was not opened for about twenty minutes. Under these circumstances, the view taken by the Assessors seems the most rational one, namely, that in their consternation at the irruption of a number of strange men, and under the influence of sudden dread and surprise, Chimá and her

mother wrapped the infant up in a cloth and turned a pot over it, simply by way of concealing it from view. The piece of cloth found in the mouth may not improbably have been introduced merely as a gag to prevent the child's cries from revealing its presence, and without any homicidal intent. Had there really been such an intent, it might easily have been given effect to, and it must not be too readily assumed against the strong impulses of nature even in the case of a Bráhmañ widow towards her illegitimate child. The Session Judge has complimented the chief constable of the city police at Násik on the efficiency of his arrangements in this case. But it does not appear that there was really any necessity for these arrangements at all. His interference, if it was not purely officious, might, at any rate, have easily been made superfluous by a private intimation to Chimá that her condition was known, and that anything unusual in the result would be looked on with suspicion. She does not appear to have in any way concealed her pregnancy, and the irruption of a band of men while she might be in the very crisis of childbirth was calculated to do much more harm than good. It was, indeed, quite unjustifiable, seeing that Chimá did not by her incontinence, discreditable as that no doubt was, forfeit the right of a human being and a British subject to veil her weakness and her shame in the seclusion of her private apartment. The chief constable's statement that he "had information on the 5th that the accused were about to kill the baby" was most improperly admitted as evidence against the accused. It turned out on further inquiry to be no information at all, but a mere police inference, drawn partly from a fact lending no real support to it, and partly from a fact which was quite imaginary—probably invented in court on the spur of the moment. The Court, therefore, cannot agree with the Session Judge in commending the chief constable's interference in such a manner and on such a ground. The Session Judge altered the charge from one of attempt at murder against both the accused into one of attempt as against Chimá, and of abetment of murder as against Jánki. But if Jánki was

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1871. present facilitating the commission of Chimá's offence, her
 REG. offence, according to Sec. 114 of the Indian Penal Code, was
 v. identical with Chimá's, and as there could be no extenuating
 CHIMÁ. circumstance in her favour that would not operate in her
 daughter's favour also, the charge against her should not
 have been reduced to one of a less serious character without
 any alteration of that against the daughter. The Court
 reverses the conviction and sentence passed against Chimá,
 and directs that she be discharged.

Conviction and sentence reversed.

Aug. 31.

REG. V. KÁ'SHINÁ'TH BACHÁ'JI BĀ'GUL.

*Defamation—Ind. Pen. Code, Sec. 499, Exceptions 8 and 10—Letter
 written to protect Religious Interests of Writer—Good Faith.*

A letter written by a Bráhmaṇ to the Bráhmaṇ community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Bráhmaṇ community, if written in good faith, falls within Exceptions 8 and 10 of Sec. 499 of the Indian Penal Code.

THE Acting Assistant Session Judge of Tháná, George Ayerst, convicted the accused, Káshináth Bacháji Bāgul, of defamation (under Sec. 499 of the Indian Penal Code), and sentenced him to pay a fine of Rs. 200, or in default of payment three months' simple imprisonment. Káshináth paid the fine.

The alleged defamation was contained in a letter which the accused, with several other persons, signed on the 8th of January 1871, and sent to the heads of the Bráhmaṇ community at Birvádi, in the Mahád táluká. The following extracts from the translation of the letter sufficiently show its import and the circumstances under which it was written :—

“TO ALL THE BRA'HMANS OF KASBE BIRVA'DI.

“Moro Vishvanáth Bāgul, Káshináth Bacháji Bāgul, and others, beg to inform you that we received your letter dated Poush Shudh, addressed to Moro Vishvanáth. The reply to it, and the other circumstances, are as follows :—