

1874.

BHIMRA'V
JIVA'JI
and others
v.
BHIMRA'V
GOVIND.

WEST, J. :—This is plainly a case of what the English law regards as an implied contract, and, therefore, according to the ruling of 10 Bom. H. C. R. 21, one within the cognizance of the Small Cause Court. No special appeal lies in such a case, and we must reject the one now made. But the lower courts had not jurisdiction of the cause, there being a Small Cause Court at Dharwar, to which the cognizance of the case properly belonged; and, in the exercise of the Court's extraordinary jurisdiction, we will annul the proceedings of the Subordinate Judge, and of the District Judge in the original suit and the regular appeal.

Costs on appellants.

[APPELLATE CRIMINAL JURISDICTION.]

July 15.

REG. v. MALA'PA' BIN KAPANA' and others.

Indian Evidence Act, 1872, Secs. 30, 114, 133, and 157—Evidence of accomplice—Corroboration—Confession.

The evidence requisite for the corroboration of the testimony of an accomplice must proceed from an independent and reliable source, and previous statements made by the accomplice himself, though consistent with the evidence given by him at the trial, are insufficient for such corroboration.

The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others.

THIS was an appeal against the convictions and sentences under Sections 302 and 396 of the Indian Penal Code. The four prisoners were tried along with one Parápá by S. Tagore, Joint Session Judge at Kaládgi, for murder and dacoity, and were convicted of both those offences. Parápá was convicted of dacoity only, but did not appeal.

The appeal was heard by NA'NA'BHA'I HARIDA'S and LARPENT, JJ.

Macpherson (with him *Ghanashám Nilkanth*) for the appellants :—The Session Judge has based the conviction of the accused upon the testimony of the approver, Murgíá, and upon the statement of a fellow-prisoner, Parápá. He has used the statements made by Murgíá to his parents and the police to corroborate his evidence at the trial. This he cannot do :

Reg. v. Mohesh Bisvas and others (a). Nor can he admit the statement of Parápá to corroborate Murgíá : *Reg. v. Banwári Lall and others (b)*.

Leith (with him *Dhirajlál Mathurádás*, Government Pleader,) for the Crown.

NA'NA'BHA'I HARIDA'S, J. (in delivering the judgment of the Court), said :—We are unable to uphold the conviction in this case. It rests principally upon certain statements made by Murgíá, an accomplice in the murder of Rachápá, which is the offence charged. The Acting Joint Session Judge, at the outset of his judgment, remarks that by Section 133 of the Indian Evidence Act an accomplice is a competent witness, and, noticing Section 114 and Illustration (b), proceeds to observe that these, read together, empower the Court to reject the testimony of such a witness, unless corroborated in material particulars. So far we have no reason to differ from the Joint Session Judge; but we are unable to agree with him in his view either of the nature of the corroboration required, or of the value of the evidence adduced for that purpose in this case.

Section 157 of the Evidence Act, no doubt, provides that any former statements made by a witness at or about the time when the fact in issue took place, or before any competent authority, may be proved to corroborate his testimony; and accordingly the Session Judge has made use of Murgíá's statements, made on different occasions to his parents and to police officers, shortly after the murder. But such corroboration, we think, hardly suffices. It can scarcely be said to answer the purpose for which juries are advised by Judges to require the evidence of an accomplice to be confirmed. From the position in which he stands it is considered unsafe to act upon his evidence alone. Hence the rule requiring confirmation of it as to the prisoners by some independent reliable evidence. But his statement, whether made at the trial or before the trial, and in whatever shape it comes

1874. before the Court, is still only the statement of an accomplice, and does not at all improve in value by repetition.

REG.
v.
MALA'PA' BIN
KAPANA'
and others.

The force of any corroboration by means of previous consistent statements must evidently depend upon the truth of the proposition that he who is consistent deserves to be believed. If that proposition be not universally true, what becomes of the virtue of previous consistent statements? One may persistently adhere to falsehood once uttered, if there is a motive for it; and should the value of such a corroboration ever come to be rated higher than it now is, nothing would be easier than for designing and unscrupulous persons to procure the conviction of any innocent men, who might be obnoxious to them, by first committing offences, and afterwards making statements, to different people and at different times and places, implicating those innocent men.

But it is also contended that the confession of Parápá, the fellow-prisoner of the accused, affords further corroboration. We cannot accede to this contention. Under Section 30 of the Evidence Act we may, no doubt, take into consideration Parápá's confession as against the accused; but we do not think we can use it to corroborate the evidence of Murgíá, because it cannot be put upon a higher footing than Parápá's evidence would be, if he also were admitted to give evidence as an accomplice. In such a case the evidence of one accomplice could not be taken to corroborate the evidence of the other; but the evidence of either would require corroboration before it could be acted on.

This is one ground upon which we reverse the convictions and sentences passed upon the accused persons; but there is yet another ground in the case upon which also we base our decision. Even if we were inclined, which we are not, to act upon the uncorroborated testimony of an accomplice, we could not place the slightest reliance upon the various statements of Murgíá, which abound with material discrepancies. With those discrepancies before us, we should not have believed Murgíá, even if he had not been an accomplice. In arriving at the conclusion to reverse the conviction

tions of the accused we have taken into consideration the feud existing in the village.

We may, in conclusion, observe that Murgíá might well have been convicted of murder on his own confession, and we do not see that there was any ground for making him an approver. One person has thus escaped. We may also observe that Parápá having pleaded guilty, might also have been convicted of murder, regard being had to Section 237 of the Code of Criminal Procedure. But his case not being before us, we need say no more about it.

We accordingly reverse the convictions and sentences passed upon the accused who have appealed to us.

Convictions and sentences reversed.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 307 of 1873.

July 22.

CHITKO RAGHUNA'TH RA'JA'DIKSH *Appellant.*

JA'NAKI, widow of Raghunáth Rájádiksh,

and others *Respondents.*

Hindu Law—Conditional adoption.

Where a Hindu widow in whom had vested by inheritance the whole of her husband's property, moveable and immoveable, agreed to accept a boy in adoption on an express agreement by his father that during her lifetime she should be entitled to such property, subject, however, to the boy's maintenance and education, and upon the faith of such agreement adopted the boy, it appearing that she would not have done so at all if it had not been for such agreement :

Held that the agreement was binding upon the adopted son, and that the son's proprietary right was subject to the interest thereby created in favour of his adoptive mother. *Held* also that under the Hindu law the power exercised by a father in giving his son in adoption is not only co-extensive with the power of a guardian, but is more like the power of an absolute proprietor.

THIS was a special appeal from the decision of H. J. Parsons, Assistant Judge of Ratnágiri, reversing the decree of the Subordinate Judge of Málwan.

The plaintiff sued, on attaining majority, his adoptive mother for possession of certain moveable and immoveable property. He joined two persons in possession of a portion of this property as parties to the suit.

1874.

MALA'PA' BIN
KAPANA'
and others.