

if they did exercise this right, to pay Cowasjee compensation. For this reason they are of opinion that the case of Cowasjee fails.

Many cases have been called to their Lordships' attention, decided upon the terms of particular contracts, and more or less bearing upon the present; but inasmuch as the decision of this case rests upon the words of this contract, which is of a very peculiar character, their Lordships do not think it necessary or advantageous to pass those cases in review. They think it enough to say that the conclusion they have come to, that no such term as has been contended for is to be imported into this contract, appears to them in conformity with the current of decisions which have been quoted, and more especially with the last case of *Rhodes v. Forwood* decided by the House of Lords⁽¹⁾.

For these reasons their Lordships will humbly advise Her Majesty that the judgment of the High Court of Bombay be affirmed, and that this appeal be dismissed with costs.

Agents for the Appellant :—Messrs. Ramsden and Austin.

Agents for the Respondents :—Messrs. Chauntrell, Pollock, and Mason.

1876.

COWASJEE
NANABHOY
v.
LALLBHOY
VULLBHOY.

[APPELLATE CRIMINAL JURISDICTION.]

REG. v. BUDHU NANKU AND OTHERS.

Evidence—Accomplice—Approver's testimony—Corroboration—Confession of coprisoner.

A conviction based on the testimony of approvers, uncorroborated as to the identity of the accused person, cannot be sustained; and confessions of coprisoners, implicating him, cannot be accepted as sufficient corroboration of such testimony.

THE accused persons were all convicted by W. M. P. Coghlan, Session Judge of Tanna, of the offence of dacoity and sentenced to transportation for life.

The convictions of the appellants, Yesu Dewlata, Rama Ambu, Pandu Ganu, Gangarám Sitarám, Sadu Rámji, Bapu Gopala, and Govind Ganu, were based on the testimony of two approvers who were not corroborated as to the identity of these appellants except by the confessions of other persons tried with them.

The appeal was heard by WESTROPP, C.J., and NA'NA'BHA'I HARIDA'S, J.

(1) *L. R. Ap. Ca.* 236.

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REG.

BUDHU

NANKU. AND
OTHERS.

Mahádev Chimmáji Apte for these appellants contended that the conviction could not be sustained, as they had been identified only by the approvers and fellow-prisoners as having been present at the commission of the crime.

Shámrao Vithál for the Crown.

The Court, after confirming the convictions and sentences of certain of the appellants, disposed of the appeal of Yesu Dewlata, Rama Ambu, Pandu Ganu, Gangáráam Sitarám, Sadu Rámji, Bapu Gopala, and Govind Ganu as follows :—

As regards the others, the Court quashes the convictions and sentences on the ground that the approvers Shripatray and Rámá are not corroborated as to the identity of these latter prisoners. The confessions of co-prisoners implicating them cannot, in our opinion, be accepted as evidence to corroborate the testimony of these approvers : See 3 Russell on Crimes, 4th edition, by Greaves, pages 603, 604, and 605, *Reg. v. Malapa*⁽¹⁾ and *Reg. v. Chatur Purshotam*, decided on the 7th January 1876 by West and Nánábhái Haridás, JJ.

Note.—In the case of *Reg. v. Chatur Purshotam*, WEST and NA'NA'BHAI HARIDA'S, JJ., went into the question of the extent of corroboration required to support the testimony of approvers at great length. On the authority of Lord Ellenborough's ruling in the trial of Colonel Despard, (28 State Trials 346,) the learned Judges held that "not only as to persons spoken of by an accomplice must there be corroborative evidence, but, which is more important still, as to the *corpus delicti* there must be some *prima facie* evidence pointing the same way to make the evidence of an accomplice satisfactory. As has been recognized in many cases, the man who charges another with the commission of a crime, in which he is himself implicated, requires corroboration as to the particular person, but still more as to the existence itself of any crime, or of the particular crime, from the penalty for which he is made free on the understanding that his testimony will be valuable for the prosecution." As to a conviction based on the evidence of a co-prisoner, see Proceedings, 16th October 1876. I. L. R. 1 Mad. 163.

(1) 11 Bom. H. C. Rep. 196.