

that, therefore no appeal lay from the 2nd Class Magistrate's order.

The order of the 1st Class Magistrate is annulled, and that of the 2nd Class Magistrate restored.

*Order of the 1st Class Magistrate annulled.*

1885.

QUEEN-  
EMPRESS  
v.  
RAYA  
LAKHMA.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Birdwood and Mr. Justice Jardine.*

QUEEN-EMPRESS v. DOSA' JIVA'.\*

*Evidence Act (1 of 1872), Sec. 30—Confession by one of several persons tried jointly for the same offence—Corroboration.*

1885.

December 17.

A conviction of a person who is tried jointly with other persons for the same offence cannot proceed merely upon the uncorroborated confession of one of such other persons.

Where the accused was convicted of house-breaking by night with intent to commit theft, and the only evidence against him was the confession of a fellow-prisoner, and the fact that he pointed out the stolen property some months after the commission of the offence,

*Held*, that the mere production of the stolen property by the accused was not a sufficient corroboration of the confession of the other prisoner.

THIS was an application for revision of a sentence passed upon the accused by J. W. Walker, Session Judge of Ahmedabad.

The accused, Dosá Jivá, Hati Dosá, and two others were charged under section 457 of the Indian Penal Code (XLV of 1860), with house-breaking by night with intent to commit theft. The complainant alleged that on the night of the 19th May, 1885, his house had been broken into in his absence, and property of considerable value had been stolen. He reported the matter to the police on the following day. The houses of the accused were searched, but nothing was found. Nothing more was alleged to have transpired till 5th July, 1885, when, on certain information given by the accused, Hati Dosá, all the accused were arrested. Hati made a confession before the 2nd Class Magistrate of Sánand, implicating himself and all the four accused. And Dosá Jivá pointed out the stolen property which had been buried under ground in front of his house.

\*No. 304 of 1885.

1885.

QUEEN-  
EMPRESS  
v.  
DOSÁ JIVÁ.

The accused were tried by A. Shewan, Assistant Sessions Judge of Ahmedábád, with the aid of assessors, and convicted and sentenced each to suffer rigorous imprisonment for eighteen months and to pay a fine of Rs. 50, or, in default, to undergo further rigorous imprisonment for three months. The Sessions Court, on appeal, confirmed the conviction and sentence on two of the accused, Dosá Jivá and Hati Dosá.

Dosá Jivá now applied to the High Court under section 439 of the Criminal Procedure Code (X of 1882).

*Ganpat Sadáshive Ráv* for the accused:—The conviction is based solely on the uncorroborated confession of an accomplice. Hati's confession was obtained by threats and false promises of pardon. The complainant says to Hati: "If you tell me all about the theft, I will save you," and then Hati confesses. The confession is, therefore, irrelevant under section 24 of the Evidence Act. It is made under the influence of a promise proceeding from a person in authority.

[JARDINE, J.:—Do you contend that the complainant is a 'person in authority'?)

The Evidence Act does not define who is a 'person in authority'. But under the English law a prosecutor is held to be such. In *Reg. v. Navroji Dádábhái*<sup>(1)</sup> it was held that a similar inducement held out to the accused by a travelling auditor of the G. I. P. Railway Company, who had the power either to institute or drop all proceedings against the accused, proceeded from a person in authority. Hati's confession is, moreover, not taken on oath, nor tested by cross-examination, nor supported by such corroboration as the law requires. The corroborative evidence must come from an independent reliable source, and must show that the accused was *particeps criminis*, that he was present at the commission of the offence, and took part in it. The mere production of the stolen property in the present case does not show that the accused was concerned in the offence of house-breaking. It is quite consistent with innocence, regard being had to the conduct of the police.

(1) 9 Bom. H. C. Rep., 355.

JAKDINE, J.:—We are of opinion that the confession of the other prisoner, Hati, admitted under section 30 of the Indian Evidence Act I of 1872 against the appellant Dosá, is not sufficiently corroborated by the circumstance that Dosá, some months after the commission of the offence, pointed out the stolen property, this act being in itself ambiguous, and not inconsistent with the theory of innocence. The confession of Hati is not entitled to even as much consideration as the testimony of an accomplice examined on oath and subject to cross-examination. In the present case, the confession is not corroborated by any independent evidence to show that the appellant was one of the house-breakers. For these reasons we reverse the conviction and sentence.

1885

QUEEN-  
EMPERESS  
v.  
DOSÁ JIVÁ.

*Conviction and sentence reversed.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice  
Nánábhái Haridás.*

NA'RA'YAN VITHE PARAB AND OTHERS, (ORIGINAL DEFENDANTS),  
APPELLANTS, v. KRISHNA'JI SADA'SHIV, (ORIGINAL PLAINTIFF);  
RESPONDENT.\*

1885.

December 2

*Jurisdiction—Máns, suit for right to—Perpetual injunction against invasion of these máns—Right to worship—Mere dignities, right to—Small gifts by presents of rice, cocoanuts, vidd and venison attached to such máns how far considered as emoluments.*

The plaintiffs and the defendants as members of a family of Ganvkárs claimed to be entitled to certain máns, consisting of the right to be the first to worship the deity on certain occasions and to receive gifts of rice, cocoanut and vidd and venison made by the priest on certain religious ceremonies and other occasions. The plaintiff, being obstructed by the defendants in the enjoyment of the máns, sought to obtain a perpetual injunction against the defendants. The Court of first instance dismissed the plaintiff's claim as being one for mere dignities unaccompanied with emoluments, and, as such, not cognizable by a Civil Court. The plaintiff thereupon appealed, and the lower Appellate Court reversed the lower Court's decree, and granted a perpetual injunction against the defendants, prohibiting them from interference with the plaintiff's enjoyment. On appeal by the defendants to the High Court,

*Held*, restoring the decree of the Court of first instance, that the plaintiff's suit was not maintainable. The máns were mere dignities to which no profits or

\*Second Appeal, No. 697 of 1883.