

Padmaraja Shetty and ors.

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SooperKanoon Citation : sooperkanoon.com/795142

Court : Chennai

Decided On : Feb-21-1949

Reported in : AIR1951Mad746

Judge : Subba Rao and ;Panchapakesa Ayyar, JJ.

Acts : [Evidence Act, 1872](#) - Sections 30, 114 and 133; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300 and 302

Appeal No. : Ref. Trial No. 122 and Cri. Appeal Nos. 667 and 696 of 1948 and 27 of 1949

Appellant : Padmaraja Shetty and ors.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : M.K. Nambiar, ;M. Sekhara Menon, ;B. Punyakoti Chetti and ;M. Santosh, Advs.

Judgement :

Subba Rao, J.

1. Accused 1 to 9 are the applts. Accused 1 to 3 were convicted by the Ses J. of South Kanara under Section 302, I. P. C. & under Section 302 read with Section 34 of the Code. Accused 1 was sentenced to death, & the other two accused to transportation for life. Accused 1, 2, 4 & 5 were convicted under Section 201 of the

Code & sentenced to rigorous imprisonment for a term of 3 years each. Accused 3 & 6 to 9 were convicted of the same offence but sentenced to rigorous imprisonment for a term of two years each.

2. For a correct appreciation of the facts & the contentions of the parties the following genealogy may usefully be referred to:

SESHAPPA

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Padmavathi Marudevi Nemiraja Shetty

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| Chandravathi = Ramanna

Semitha (deceased)

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Amirthavathi Padmaraja

3. Accused 2 is a brother of Ramanna Semitha. Accused 3 is the brother-in-law of accused 1. Accused 4 to a are connected with accused 1 & either as tenants of his or of some others under his control & influence.

4. Accused 1 belongs to a well-known Aliyasanthana Jain family in Garadadi called Padthire family. The family house is surrounded by forest tracts with a few other houses belonging mostly to the tenants. Naturally, the family wielded great influence in that locality. Nemiraja Shetty was the manager of the Aliya-santnana family till about 1941. In 1940 he set apart, certain property for the maintenance of Chandravathi & her children. In 1941, for one reason or other, Nemiraja Shetty relinquished his management in favour of Padmaraja Shetty, accused 1. After he

became the Manager, Padmaraja Shetty refused to abide by the arrangement entered into by Nemiraja Shetty with, Chandravathi, with the result that Chandravathi & her husband had to come to the family house of Padthire for their maintenance. Padmaraja Shetty, accused 1 shifted to another house in the neighbourhood. As accused 1 was not maintaining Chandravathi & his family properly, Ramanna Semitha in his turn was putting obstacles in the way of accused 1's management of the properties. Ramanna Semitha had also shifted his wife & child to a nearer village in Belthangadi for convenience of medical treatment & also for the education of his boy. As accused 1 was not providing Chandravathi with necessary funds, Ramanna Semitha removed a quantity of rice stocked in the family house & sold the same on 5-2-1948. This enraged accused 1. Accused 1 along with accused 2 to 8 came to the Padthire house at about 8 p.m. on a Saturday. After accused 1 ascertained from his mother the fact that the rice was removed by Ramanna Semitha he directed his companions to take out to the verandah the remaining stock of the rice. In the meantime the deceased came to the frontentrance of the inner court yard of the house but as it was bolted from inside he called out for opening it. After some heated discussion & exchange of abuses, the prosecution case is, the accused came out of the house from the back door. Accused 1 & 3 shot at the deceased. Accused 1 & 2 beat the deceased with sticks, even after he had fallen down with gunshot injuries & later on accused 1 to 9 together cremated the body in a hurry. Ex. P. 30, the sketch of the scene of offence filed in the case, clearly gives the situation of the house & the topography. It also indicates the places where the accused & the deceased abused each other & also the place where the deceased was shot at.

5. We shall first consider the evidence against accused 1. F. W. 8 is the approver. He is a tenant of accused 1 & also officiates at the ceremonies of Bootastana in the Padithere house. He gives in a detailed manner the circumstances under which the deceased met with his end. It is not necessary to refer to all the facts deposed by him, except the version given by him as regards what happened in the inner court yard & also in the outer court yard. He deposes that all the accused were in the inner court yard, shown as '2' in Ex. P. 30. Accused 1's mother & sister were inside the house. It was then about 8 p.m. Ramanna Semitha arrived at the front door but as it was bolted from inside he called out to open it. Accused 1 said

'You have stayed in our house so long. Due to you there is no rice in the house for food'. The deceased retorted saying that the accused had eaten away the income due to his child all these years. This developed into a violent quarrel. Accused 1 asked them all to come out. He took the gun from the hand of accused 3, & accused 3 took the gun from accused 4, & they all went out through the door in the back side of the inner court yard. Then accused 1 & 3 stood in front of the hay-rick. Accused 1 fired a shot on Ramanna Semitha after flashing a torch light he had with him. Accused 3 also fired a shot at the deceased immediately thereafter, Ramanna Semitha dropped down in a crouching posture. Accused 1 to 4 then began to beat him. When he fell down he cried out for his mother-in-law. As she came out they stopped the beating. The deceased rolled himself & found his way to the outer yard. P. W. 8 saw him bleeding from the wounds on his person. Accused 1 & 3 said it is to be burnt & later on the dead body was cremated.

6. This version of the approver is corroborated on material particulars by other disinterested evidence in the case. P. W. 10 is Padmavathi, the mother of accused 1. She speaks to the exchange of abuses between her son & the deceased. She heard two gun shots immediately they went. She also heard Ramanna Semitha crying out 'Mother-in-law, I am being beaten & killed.' She followed her sister Marudevi & found Ramanna Semitha in a sitting posture in the porch. A suggestion was made in the cross-examination that she was deposing against her own son at the instigation of her daughter who was not on good terms with the accused. She was even reminded by the cross-examining counsel that her son was being charged for murder & if convicted might be sentenced to death. In spite of the warning she stated 'I am telling the truth, what happened to my knowledge, I am not ever deposing against any one. I cannot tell a lie.' The learned Ses J. rightly relied upon this evidence. Accused 1 is her only son. With the knowledge of the consequences if this accused was convicted she deposed to all the facts within her knowledge in an honest & straightforward manner; & it is impossible to believe that this old woman of 70 years would have spoken to facts, false to her knowledge, just to please her daughter. On the other hand, her motherly love should have prompted her to exculpate her son as far as possible. We do not see any reason to reject her evidence. If accepted, it corroborates the evidence of the approver on four material particulars: (1) The accused & the deceased abused

each other; (2) Immediately the accused went out she heard two-shots in succession; (3) The deceased crying out to his mother-in-law; (4) She saw Pamanna Semitha in a sitting posture in the porch, wriggling himself & slipping down the steps into the yard.

7. P. W. 11 is Marudevi, the mother-in-law of the deceased. She also saw the accused in the house on that night & also accused 3 & 4, each having a gun in their hands. She also-stated that accused 1 took the gun from accused 3 before he left with the others. Accused 3 after handing over the gun that he had originally with him, took from accused 4 the gun that he had with him; & accused 1 had a light similar to M. O. 3 in one hand. She heard two gun shots in succession & theory of Ramanna Semitha 'I am beaten & killed, mother-in-law.' She went out with a lantern & saw Ramanna Semitha in a sitting posture & his being beaten by accused 1 & 2 with cane sticks. She saw his head broken & blood all over his person & the intestines coming out. He slipped & fell rolling down the steps into the yard. A short while after that Ramanna got up & walked staggering to the wicket gate leading to the field but at the wicket gate he again fell & rolled down into the drain below. It is said that this witness is an interested witness. It is true that she is the mother-in-law of the deceased; but she is also the maternal aunt of accused 1. There is no particular reason alleged or proved for her giving evidence, foisting a false case on the accused. She also corroborates the approver on the following material particulars: (1) The exchange of hot words between the accused & the deceased; (2) Accused 1 & 2 going out with guns in their hands; (3) The hearing of gun shots in succession; (4) She heard the cry of Ramanna Semitha 'I am beaten & killed, mother-in-law'; (5) Accused 1 having a light similar to M. O. 3 in his hand; (6) Accused 1 & 2 beating the deceased with cane sticks; (7) Her seeing his head broken & blood all over his person.

8. The evidence does not stop there. Ex. P. 13 is the confessional statement made by accused 4, Nemi Poojari. He also speaks to the mutual abuses, the shooting by accused 1 & 3, the deceased falling down, & accused 1 & 2 beating him with sticks. He also spoke to the two women coming out. The learned counsel pointed out a discrepancy in the statement. The relevant passage on which the learned counsel relied upon may be extracted:

'Upon hearing that, Padmaraja, Anni Semitha, Babu Bunu & I went to the outer yard through the back door. There Bunu took up one gun from the hay-rick & gave it to Padmaraju. I took up the other gun & gave it to Babu Bunu.'

According to the evidence of the approver & P. W. 11, the guns were taken by accused 1 & 3 from the inner yard itself; whereas this statement reads as if accused 3 took the guns from out of the hay rick after they went out to the outer yard. No doubt, there is a discrepancy. It is in evidence that the guns were placed in the hay rick. The statement also clearly implicates accused 1 & 3 as the persons who fired the guns. The fourth accused might have made a mistake in regard to the point of time when the guns were taken from the hay rick. Further, there is evidence in this case of P. Ws. 5 & 17, before whom accused 1 admitted that he had shot & killed the deceased. P. W- 5 is related to accused 1, accused 1's wife being his niece. He had to pay a sum of Rs. 360 to his niece & therefore went to Ponjila that day. He slept in a 'chavadi' that night. At midnight he saw Padmavathi & the other woman awake, & accused 1 also was there. Accused 1 told him that there was a big quarrel between Ramanna Semitha & himself & that he shot him & the latter died. He told him that incident as he pressed for a receipt for the money paid by him to the accused's wife & he told him that he was in troubled mind on account of the said incident. It was suggested to him in the cross-examination that he was giving This false evidence to escape the liability to pay the debt. The suggestion is far-fetched & cannot be a sufficient reason for p. W. 5 foisting a case of murder on the accused. He gave the evidence in a straightforward manner & there is no reason to reject it. P. W. 17 is alleged to cure people for snake bites. Accused 1 sent for him on the morning of the next day & told him that he should say that the accused had been bitten by a snake. The learned Ses J. accepted his evidence & we also see no reason to disbelieve this evidence.

9. We are satisfied that the evidence of the approver is corroborated in material particulars implicating the accused.

10. At this stage it will be convenient to consider the argument advanced by the learned counsel in regard to the law of corroboration. The law on this point in India is practically the same as that in England. It is so well settled that it will be

unnecessary to consider the various decisions cited before us. It is enough to extract the important principles laid down in the leading case, 'Rex v. Baskerville', 1916-2 KB 658: 86 LJKB 28: (1) the uncorroborated evidence of an accomplice is admissible in law; (2) It has long been the practice at common law for a Judge to warn the Jury of the danger of convicting a person on the uncorroborated testimony of an accomplice or accomplices, but the Judge should point out to the Jury that it is within their legal province to convict upon such unconfirmed evidence; (3) the rule of practice has become virtually equivalent to a rule of law; (4) the confirmation does not mean that there should be independent evidence of that which the accomplice relates, or his testimony would be unnecessary; for if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case; (5) corroboration must be by some evidence other than that of an accomplice, & therefore, one accomplice's evidence is not corroboration of the testimony of another accomplice; (6) corroboration must be independent testimony which implicates him, that is which confirms in some material particular not only the evidence of the crime having been committed but also of the prisoner committing it; (7) corroboration can be of real circumstantial evidence of his connection with the crime.

11. In India the same principles have been embodied in the statutory form. Section 133, Evidence Act reads as follows:

'An accomplice shall be a competent witness against an accused person; & a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.'

Illustration (b) of Section 114, Evidence Act reads as follows: 'An accomplice is unworthy of credit, unless he is corroborated in material particulars'. Section 30, Evidence Act, also may be noticed. It states:

'When more persons than one are being tried jointly for the same offence, & a confession made by one such person affecting himself & some other of such persons is proved, the Ct may take into consideration such confession as against such other person as well as against the person who makes such confession.'

In 'Muthukumaraswami Pillai v. Emperor', 35 Mad 397: 13 Cr LJ 352 a Bench of five Judges of this Ct had to construe the sections & the learned Judges held by a majority that the evidence of an accomplice need not be corroborated in material particulars before it can be acted upon & that it is open to the Ct to convict upon the uncorroborated testimony of an accomplice if the Ct is satisfied that the evidence is true. Benson J. expressed his opinion in the following terms:

'In my opinion there is nothing in the illustration (b) to Section 114 which overrides, or renders nugatory, the plain & explicit declaration contained in Section 133, or which requires us to hold that the evidence of an accomplice must always, & in all circumstances, be regarded as unworthy of credit unless it is corroborated in material particulars, or which requires us to hold that it is not open to the Ct to act on such evidence, even when the Ct believes it to be perfectly true.'

In dealing with Section 114, Wallis J. observed that the said section laid down only presumptions & the Ct is not compelled to raise them but is to consider whether in all the circumstances of the particular case they should be raised. The dissenting view was expressed by Abdur Rahim J. The learned Judge thought that it was well established law that, except in circumstances of any special nature, it was the duty of the Ct to raise the presumption that accomplices' evidence is unworthy of credit as against the accused persons unless it was Corroborated in material particulars. This judgment expressed the well known principle of the English law that an accomplice's evidence is legal evidence, but it does not lay emphasis on the rule of practice which the later decisions noted. In 'Venkataramanna v. Emperor', 1933 MWN 173, Sundaram Chetty & Pakenham Walsh JJ. held that the evidence of an accomplice must as a rule be considered untrustworthy & should be corroborated in material particulars by independent & untainted evidence. They relied upon the following passage from the judgment in 'Rex v. Mohesh Biswas', 19 WR 16 Cr; 10 Beng LR 455 :

'The corroboration which is needed in order to make Soorat Ali's testimony against the prisoners trustworthy should be corroboration derived from evidence which is independent of accomplices which is not vitiated by the accomplice character of the witness.... & further should be such as to support that portion of the

accomplice's testimony which makes out that the prisoner was present at the time when the crime was committed & participated in the acts of commission.'

12. The Madras H. C. again considered the law on the subject in the well known 'Thyagaraja Bhagavathar's case, ILR 1946 Mad 389: AIR 1946 Mad 271: 47 C.L.J. 785). Though this judgment was revsd by the Judicial Committee on the scope of Section 411 A, Cr. P. C., the observations of the learned Judges in regard to the scope of corroborative evidence are left untouched. At p. 396, the learned Judges state the law as follows:

'Section 133, Evidence Act, states that an accomplice shall be a competent witness against an accused person & a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Under the English common law the same rule applies, but both in England & in India, it has become a rule of practice, & to use the language of the P. C. in 'Mahadeo v. The King', 44 MLW 253 :AIR 1936 PC 242: 37 Cr LJ 914 it to now virtually a rule of law, that corroboration is required. It is also an accepted rule that one accomplice cannot corroborate another; but Section 30, Evidence Act, says that when more persons than one are being tried jointly for the same offence, & a confession made by one affecting himself & some of the others is proved, the Ct, may take into consideration 'the confession as against the others as well as against the person who makes the confession. There is no corresponding provision in English law. In the recent case of 'Rajagopal In re', ILR 1944 Mad 308 : AIR 1944 Mad 117: 45 Cr.LJ 373 , an P. B. of this Ct had to consider the effect of this section & it accepted as correct the interpretation to be found in Woodroffe & Ameer Ali's Law of Evidence, Edn. 9 at p. 312.'

It is clear from this passage that the law in India is the same as in England except to the extent that it is modified by Section 30, Evidence Act. The F. B. case reported in 'Rajagopal In re', ILR 1944 Mad 308: AIR 1944 Mad 117: 45 Cr LJ 373 does not lay down any novel proposition but only endorses the principles of law that have been accepted & followed in this Ct. The learned Judges state that though legally the approver's evidence is admissible under the Evidence Act & if accepted is sufficient to support a conviction, it should not be accepted unless the

case is a very exceptional one. On the other point the learned Judges held that the confession of a co-accused can be accepted as corroboration of the approver's evidence. This conclusion was arrived at on a consideration of s, 30, Evidence Act, & the passage summarised in Woodroffe & Ameer Ali's Law of Evidence, Edn 9, p. 312-We do not think that the learned Judges meant to lay down that the confessional statement has a higher sanctity than the evidence of an accomplice. They should be understood to have-only meant that in view of the statutory provision a Ct can legally use the confession to corroborate the approver's evidence; & in that particular case they have used & relied upon that confession to corroborate the approver's evidence on material particulars. It does not follow from that judgment that as a point of law, a confession of a co-accused must be accepted as corroborative evidence of the approver's evidence. It does not affect the rule of practice that the Cts should be loath to accept tainted evidence as a corroboration of an approver's evidence. The confession of a co-accused cannot in our view afford better or more reliable evidence than that of an accomplice. If an accomplice's evidence is tainted evidence, the confession of a co-accused also is tainted evidence. Section 30, Evidence Act, does not compel a Ct to accept the confession of a co-accused as corroboration of the approver's evidence. It only empowers the Ct to take into consideration such confession as against the person jointly tried with him or against the person who makes such a confession. Though an accomplice's evidence is legal evidence & is not excluded by any of the provisions of the Evidence Act it has been held that as a rule of practice such evidence should not be accepted as corroborative evidence. The same principle should apply even in the case of a confessional statement.

13 The value of a co-accused's confession as corroborative evidence has been considered by the Lahore H. C. in the decision reported in 'Sharif v. Emperor', AIR1944 Lah 472 : 46 Cri LJ 152. The learned Judges observed :

'In the first place it has been held time after time that the evidence of one approver cannot be corroborated by that of another approver. There must be independent corroboration, & in the second place the confession of a co-accused, while it must be taken into consideration, is invariably considered to carry little weight & itself to require corroboration. It has occasionally been said of such evidence that it is

weaker than the evidence of an approver. That being so, the evidence of an approver, corroborated by a confession of a co-accused, must be considered to be inferior to the evidence of one approver corroborated by the evidence of another,'

We respectfully agree with these observations. If this principle is accepted Section 30, Evidence Act, does not become nugatory. There will be very many circumstances when the co-accused's confession could be & should be taken into consideration by a Ct in finding out the guilt of the accused. In 'Emperor v. Laxman Jairam', : AIR1937 Bom31 some of such circumstances have been narrated. The relevant passage may usefully be extracted:

'But in my view the confession is not strictly evidence against a co-accused, & I am clearly of opinion that a conviction based solely on the confession of a co-accused would be bad in law. There are many occasions on which the Ct is undoubtedly assisted by taking into consideration the confession of a co-accused. There may be the direct evidence of a single witness which the Ct would be more ready to accept if supported by the confession of a co-accused. Or, in a case depending on circumstantial evidence, where the question to be decided is what is the proper inference to be drawn from all the circumstances proved, the confession of the co-accused is one of the circumstances which may help the Ct in drawing a correct inference.'

The learned counsel for the accused contended that there was no corroborative evidence in this case implicating accused 1 in the commission of the crime. He laid emphasis upon the fact that no independent witness deposed to the fact that accused 1 shot at the deceased. He relied upon the possibility of some other accused taking the gun from the hand of accused 1 & shooting at the deceased. If the argument of the learned advocate is to be accepted it would make the evidence of an approver unnecessary. The approver's evidence can be corroborated not only by direct evidence but also by circumstantial evidence. In this case if the evidence of P. W. 10 & P. W. 11 is believed we can reasonably infer that accused 1 shot at the deceased. Further, there is the evidence of P. W. 5 who deposed that accused 1 admitted before him that he shot the deceased & he later died. Even 'Baskerville's case', 1916-2 KB 658: 86 LJKB 28 relied on by the

learned counsel does not support him. In that case the evidence relied upon for corroboration is only circumstantial evidence, &, even if accepted, it was not such as to exclude all the possibilities of the accused being innocent of the offence with which he was charged. If the evidence in this case is believed, it proves that the accused shot at the deceased & beat him with sticks, along with accused 2. The deceased was seen with wounds on the head & the stomach by P. W. 11. P. W. 11 says his head was broken & there was blood all over his person. His intestines had come out.

14. As a result of the wounds he died & he was urgently cremated. On these facts, we have no hesitation in holding that accused 1 is guilty of murder.

15. So far as accused 3 is concerned, in our view he cannot be convicted for murder unless there was a common intention between accused 2 & 3 to commit, murder. The Judicial Committee gave an authoritative decision on the interpretation of Section 34, I. P. C. in the decision reported in 'Mahbub Shah v. Emperor'. It is not necessary to consider that decision at length except to extract the principle which is found at P. 120:

'It is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, & to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.'

Later on, after pointing out the distinction between 'common intention & same intention', the Judicial Committee gave the important caution that the inference of common intention within the meaning of the term in Section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case. No doubt, this judgment was interpreted by Chandrasekhara Ayyar & Kuppuswami Ayyar JJ, in the decision reported in 'In re Nachi-muthu Goundan', AIR 1947 Mad 259 : 48 Cri LJ 123, as not to rule out the possibility of a common intention developing in the course of the events, though it might not have been

present to start with. In this case the evidence-points out that there was no intention to commit murder at all, till accused 1 was enraged after the exchange of abusive words between him & the deceased. The evidence only discloses that the intention was to remove the grain still remaining in Padthire house. Indeed, the witnesses speak to the fact that accused 1 asked accused 2 to 5 to take out to the verandah the remaining stock of rice, presumably for removing it to the Punjila house. It is no doubt true that the accused secured two guns, & it is obvious on the evidence that they were secured more as a precaution against any possible emergencies than to use them against any particular person. After the exchange of hot words between the accused & the deceased accused 1 took the gun from accused 3, went out & shot at the deceased. According to the evidence, accused 3 took the gun from the hand of accused 4 & followed him & shot at the deceased. Can it be said on the facts that they had a common intention to do so? For aught we know, accused 1 did not even know that accused 3 was following him with a gun in his hand. It is not suggested that accused 3 handed over the gun to accused 1 & persuaded him to shoot the deceased. Accused 1 of his own accord took away the gun from the hands of accused 3. As there was no pre-arranged plan & the circumstances disclose that accused 1 rushed to the hay rick to shoot at the deceased taking the gun from the hands of accused 3 on the spur of the moment & he had not even the knowledge of accused 3 having, a gun, it is impossible to hold that there was any common intention between the two accused, to commit murder. On the evidence, it is not possible to convict accused 3 for murder as it is not proved that the bullet from his gun hit the deceased. He did not take part in the subsequent beating of the deceased. On the aforesaid facts, we are of opinion that the accused is guilty only of an attempt to commit murder.

16. So far as accused 2 is concerned, if there was no common intention to commit murder, the only remaining evidence against him is that he beat the deceased with a cane stick. He is a brother of the deceased. P. W. 8 says that he gave along with the other accused, three or four blows with a stick. P. W. 11 said that accused 2 beat the deceased with a cane stick. On the evidence it is impossible to say that this accused had the intention to kill his brother. It cannot even be said that he had knowledge that the deceased had received a gun shot wound at the time when he used the gun. P. W. 11 said that the deceased's head was broken. In the

circumstances, in our view, this accused can be convicted only under Section 325, I. P. C. for having caused grievous hurt to the deceased.

17. There remains the charge under Section 201, I. P. C. against all the accused for causing the evidence of the commission of the offence to disappear. P. W. 8, the approver, describes the part taken by accused 1 to 8. Accused 4 in his confessional statement implicates all these accused as having taken part in disposing of the dead body. P. Ws. 12, 13, 14 & 16 corroborate the evidence of the approver. P. Ws. 12 & 13 took part in preparing the fire wood to burn the body. P. W. 14 prepared the pyre to cremate the deceased. P. W. 16 carried the body to the pyre. All these witnesses are admittedly accomplices who, if their evidence is true, are also liable to be convicted under Section 201 along with the other accused. The question, therefore, is whether this tainted evidence can be accepted to corroborate the evidence of the approver. The principle that the tainted evidence of an accomplice should not be accepted as corroborative evidence of the approver has been accepted & followed in innumerable cases. One of such decisions is that of the Judicial Committee reported in 'Mahadeo v. King', 1936 MWN 889 : AIR 1936 PC 242 : 37 Cri LJ 914. At page 891 their Lordships observe:

'It is well settled that the evidence of an accessory, which Suknraj plainly was on his own showing, must be corroborated in some material particular not only bearing upon the facts of the crime but upon the accused's implication in it, & further that evidence of one accomplice is not available as corroboration of another: 'The King v. Baskerville', 1916 2 KB 658: 86 LJKB 28. This rule as to corroboration, as was pointed out in the case just cited, long a rule of practice, is now virtually a rule of law.....'

Following this principle we are not prepared to accept the evidence of the accomplices as corroboration of the approver's evidence. In the circumstances of the case, we are also not prepared to accept the confessional statement of accused 4 as corroborating the approver's evidence. There is no other evidence against accused 2, 3 & 5 to 9. We therefore hold that the charge under Section 201, I. P. C. is not made out against accused 2, 3, & 5 to 9. We set aside the

conviction of the said accused under Section 201, I. P. C. The same cannot be said of accused 1 & 4. There is enough circumstantial evidence in the case to bring home the guilt to accused 1. In regard to accused 4, his confessional statement Ex. P. 13 can certainly be relied upon to corroborate the approver's evidence. We therefore convict accused 1 & 4 under Section 201, I. P. C.

18. As regards the sentences, the facts already narrated disclose that there was no premeditation to commit murder. The deceased was shot by accused 1 on the spur of the moment in view of the acrimonious exchange of words that passed between them. All the accused gathered for the purpose of removing away the grain &, unfortunately & unexpectedly, this incident took place. We, therefore, consider that the ends of justice would be met if accused 1 is awarded the lesser penalty of law. The death sentence imposed on him is set aside & instead he is sentenced to transportation for life. We also sentence him under Section 201, I. P. C. to three years rigorous imprisonment, but the two sentences shall run concurrently.

19. Accused 2 was sentenced by the Ses J. to transportation for life. We set aside the conviction for murder & convict him under Section 325, I. P. C., & sentence him to five years rigorous imprisonment.

20. We convict accused 3 under Section 307, I. P. C. & sentence him to seven years rigorous imprisonment. We sentence accused 4 to two years rigorous imprisonment. The conviction & sentences on the accused 2, 3 & 5 to 9 under Section 201, I. P. C. are set aside. Accused 5 to 9 are acquitted.

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