the plan filed with the plaint. The plaintiff came into Court with the allegation that he was owner in his own right of this portion, and that he was entitled to an injunction to prevent the defendants from interfering with his re-building the wall *A B*, which had recently fallen down. The finding of the District Judge is that the plaintiff, who is a non-proprietor in the village, was in possession of portion *A* as tenant of the defendants on payment of the customary rent, in other words, that he was in possession of the portion in dispute as a non-proprietor and was liable to pay certain customary dues. Upon this finding the plaintiff's suit as laid certainly fails, inasmuch as he has been unable to establish his alleged ownership of the site apart from his position of non-proprietor in the village. His proper remedy was to sue for possession of the site in dispute, as the defendants undoubtedly took possession of it sometime before the suit was filed; and the suit for an injunction, as brought by the plaintiff, was clearly a mistaken form of relief and has been rightly dismissed.

The appeal fails and is dismissed with costs.

R. M./R.K.

Appeal dismissed.

A. I. R. 1916 Lahore 339

RATTIGAN AND CHEVIS, JJ.

Ghulam Rasul and *another*—Convicts—Appellants.

v.

Emperor—Opposite Party.

Criminal Appeal No. 63 of 1916, decided on 28th April, 1916, from the Order of Addl. Sub-Judge, Multan, dated 6th December, 1915.

(a) Evidence Act (1 of 1872), Ss. 30, 114 and 133—Approver's evidence—Value of—Uncorroborated in material particulars—When dangerous to accept stated.

Court should not ordinarily depart from the well-recognized practice of accepting the evidence of an approver as against an accused person only when it is corroborated in material particulars by other independent evidence. It is the more necessary to follow this rule where the accused belong to a low class and it is matter of no difficulty for the approver to include the name of any person of that class among the offenders even though he had no connection with the offence and it might be difficult for him to establish his innocence. [P. 340, C. 2.]

(b) Evidence Act (1 of 1872), Ss. 30, 114 and 133—Approver's evidence uncorroborated in particulars—Court has power to accept in exceptional cases—Reasons must be given.

In exceptional cases Courts might, for reasons stated, act upon the evidence of an approver as a whole, though uncorroborated in particular details by independent evidence. 17 P. R. 1915 Cr.; ref. to. [P. 340, C. 2.]

Beechey and *Muhammad Iqbal*—for Appellants.

Govt. Advocate and *Khalinda Ram*—for the Crown.

Judgment.—At about 9 or 10 P.M., on the 7th August, 1915, a singularly bold dacoity was committed by a large gang of men at the small village, or *basti*, called Kotla Bhattian in the Shujabad Tahsil of the Multan District. The village is composed almost entirely of fairly well to do Hindus, the principal man being one Jathu Mal P. W. No 1. According to the evidence, the dacoits appeared very suddenly upon the scene, fired two shots, attacked all those who opposed them tore off ornaments from women, broke into houses, and laid hands on all the valuables they could get hold of and also burnt *bahis* and documents, and eventually made off. None of the gang were previously known to any of the Kotla Bhattian residents and consequently were not recognised. Information was promptly given, not only to the local *thana* which is twelve miles from the scene, but also to the Revenue Assistant of Multan who happened to be encamped at a place called Kureshiwala a few miles off. The Police at once took up the investigation and made careful enquiries from all persons who were likely to know anything about the movements of the gang and also called in trackers to follow up such tracks as they might find. The investigation proved a difficult one, and though the Police from time to time made important discoveries, especially in consequence of statements made by a grazier named Piran who had come across the gang a day preceding the dacoity, nothing very definite was found out until the arrest, on the 15th August, of Allah Bakhsh *alias* Pakki, a goldsmith of Betkech. This man, who is one of the leaders of the gang, appears to have made many disclosures and as a consequence various arrests followed in due course. On the 21st August one Imam Bakhsh was produced before the

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Police and was stated to have taken a principal part in the dacoity. On the 22nd August he informed the Sub-Inspector that he was prepared to give evidence as an approver if a free pardon was tendered to him. This was done and on the 29th August a lengthy statement of his was recorded by the Deputy Commissioner. Imam Bakhsh is the principal witness in the case and according to the Sessions Judge, gave his evidence clearly and without hesitation throughout.

Thirty-five persons were committed to the Sessions Court for trial in connection with this dacoity and all of them have been convicted by the learned Judge and sentenced, some to transportation for life and others to varying terms of imprisonment. The assessors (who were all three Hindus) appear to have taken a very intelligent interest in the proceedings and in their opinon, of the thirty-five persons charged twenty-five were guilty, eight were not proved guilty and in the case of two others their guilt was doubtful.

Of the persons convicted six, namely Palia accused No. 6, Ghulam Rasul Qasab accused No. 8, Allah Bakhsh Qasab accused No. 9, Dalla accused No. 20, Pathana accused No. 27 and Rasul Bakhsh accused No. 38, have not appealed. Of the others Allah Bakhsh accused No. 5, Fateh accused No. 7, Ilahi Bakhsh accused No. 10, Diwaya Khoja accused No. 15, Diwaya Mochi accused No. 16, Lukman accused No. 17. Qabul accused No. 18, Budha accused No. 21, Hussain accused No. 22, Allah Bakhsh accused No. 23, Salihon accused No, 24 Muhammad Din accused No. 34, and Kadir Bakhsh accused No. 37 have appealed through their Counsel Mr. Beechey. Massu accused No. 13, Ghulam Rasul accused No. 14, Ali accused No. 29, Allah Bakhsh Biloch accused No. 32, Dosa accused No. 33, and Muhammad Ali accused No. 36 have appealed through their Counsel Mr. Muhammad Iqbal, while Nura accused No 1, Rustam Mohna accused No. 12 Ghulam Rasul barber accused No. 19, Ramzu Bhangar accused No. 25, Sardar Bhangar accused No. 26, Moghal accused No. 28, Karima Mochi accused No. 30, Juma Biloch accused No. 31 and Phullu Biloch accused No. 42 have appealed through the jail authorities.

The record is very lengthy, the trial having occupied the Additional Sessions Judge from the 18th October continuously till the 24th November, 105 witnesses for the prosecution and 75 witnesses for the defence having been examined and cross-examined. The case has also been argued at great length before us and we have carefully considered all the evidence on the record, checking it, where necessary and in the interest of the appellants, by reference to the Police diaries. It is not denied that the dacoity actually occurred, or that the complainant and his friends were robbed of much valuable property, or that nine residents of the village were injured more or less severly. As a matter of fact one of the the latter Prabh Dyal was very dangerously wounded in the body by a shot from a gun and had a narrow escape from death.

The sole point which we have to decide is, whether all or any of the appellants participated in the crime. According to the approver they were all concerned in its commission and the Additional Sessions Judge has practically accepted the statement of the approver as in itself sufficient to convict everybody incriminated by him. In our opinion, this is not a case where we should depart from the well-recognised practice of accepting an approver's evidence as against particular person only when it is corroborated in material particulars as regards the individuals concerned. There are exceptional cases (such for example as the Delhi conspiracy case) *Balmokand* v. *Emperor* (1) where a Court has for reasons given by it acted upon the evidence of an approver as a whole though uncorroborated in particular details by independent evidence. Such cases, however, are rare and the general rule that corroboration is necessary should be followed, especially in a case such as the present where it would be a matter of no difficulty for the approver to include the name of any person of the class to which the appellants belong even though such a person had no connection whatever with the offence and it might be very difficult for the latter to establish his innocence. For these reasons

(1) (1915) 17 P. R. 1915=28 I. C. 738.

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we cannot maintain the convictions which rest merely upon the uncorroborated statements of the approver, and it was obviously upon this principle that the assessors also proceeded. We accordingly accept the appeals of Ilahi Bakhsh (accused No. 10), Nura (accused No. 11), Diwaya Khoja (accused No. 15), Sardar (accused No. 26), Ali (accused No. 29), Juma (accused No. 31), Dosa (accused No. 33) and Muhammad Ali (accused No. 36), and acquit them.

We now proceed to deal with the case of each of the remaining appellants.

[After dealing separately with the case of each of the remaining twenty-one appellants, their Lordships concluded as follows :—]

In conclusion we have only to add that this case was one of no little difficulty and that the Additional Sessions Judge has dealt with the mass of evidence upon the record with great care and thoroughness, while his clear and systematically arranged judgment has been of the greatest assistance to us. We are also much indebted to the learned Government Advocate and Messrs. Beechey and Muhammad Iqbal, for the valuable help they rendered us during the hearing of the appeals in this Court.

* * * *

R.M./R.K.

Appeal of some accused accepted.

A. I. R. 1916 Lahore 341

CHEVIS AND LE ROSSIGNOL, JJ.

Must. Jannat and *others*—Defendants—Appellants.

v.

Abdulla—Plaintiff and others—Defendants—Respondents.

Second Appeal No. 619 of 1910, decided on 22nd June, 1915, from the Decree of Divnl. Judge, Ludhiana, dated 16th May, 1910.

(a) Custom (Punjab)—Succession—*Bhatti Rajputs of Mauza* Kum, Thasil Pind Dadan Khan.

In matters of succession, *Bhatti Rajputs of Mauza* Kum, Tahsil Pind Dadan Khan, are governed by agricultural custom and not by Muhammadan Law. [P. 342, C. 1.]

(b) Custom (Punjab)—Succession—Assent of father to mutation held not binding upon son and members of family.

Where in a suit for declaration that a certain mutation shall not affect the plaintiff's reversionary rights, it appeared that the plaintiff's father gave his assent to the mutation not because the parties had been observing Muhammadan Law in the past, but because he wished it to be followed in the future :

Held, that this assent could not be held to be a *bonafide* assent so as to be binding upon the other members of the family. [P. 343, C. 1.]

Tek Chand—for Appellants.

Fazl-i-Hussain—for Respondents.

Judgment.—The pedigree table given in the body of the judgment of the lower Appellate Court is lacking in some respects, so we append to this judgment a complete and corrected pedigree table of the parties concerned with this case.

The dispute in this case concerns the property of Ismail, son of Ahmad Din, who died on the 30th June, 1907. By the mutation which followed on his death his widow *Must.* Jannat secured three shares, his sisters *Must.* Khadija and *Must.* Ruqia secured between them 20 shares whilst one share was allotted to Muhammad, uncle of Ismail.

The present suit is brought by Abdulla for a declaration that this mutation, which would seem to be based on Muhammadan Law and contravenes the provisions of agricultural custom, shall not affect his reversionary rights. The first Court dismissed the suit on two grounds ; *first*, because the plaintiff's father had assented to the mutation, and *secondly*, because the family of the parties is governed by Muhammadan Law. The District Judge on appeal reversed this decree, found that the parties had in the past observed not Muhammadan Law but custom at any rate in the matter of succession, and decided that the consent of the plaintiff's father did not bind his son so as to preclude him from maintaining this suit.

The defendants have come to this Court in further appeal and on their behalf four main contentions are sustained.

First, it is urged that this property was obtained by Ahmad Din by gift from Ala-ud-din and that consequently even if the parties follow custom, the plaintiff is not entitled to the decree he seeks because after *Must.* Jannat, widow of Ismail, *Must.* Khadija and *Must.* Ruqia, sisters of Ismail, will be entitled to the succession as daughters of the original donee Ahmad Din. In support of this proposition the learned Counsel for the appellants cites *Gurdit Singh* v. *Must. Prem Kuar* (1).

(1) (1909) 84 P. R. 1909=3 I. C. 604.

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