ANDERSON *v.* MUTTUKARUPEN KANGANY.

1899.
April 24.

P. C., Kandy, 11,137.

Master and servant—Ordinance No. 11 of 1865, s. 19—Seducing servants—Evidence of seduction—Evidence of accomplice—Evidence Act, ss. 114 (b) and 133.

T and M, being coolies on N P estate, were led at an unusual hour of the night by their kankani to the head kankani of another estate, who was awaiting their arrival at a cattle shed on N P estate. Here the latter offered T and M higher wages if they would go to Polgahakanda estate. Accordingly they left N P estate without notice or reasonable cause.

Held, that the head kankani's presence and promise of higher wages was sufficient evidence of seduction under the Ordinance No. 11 of 1865, section 19.

WITHERS, J.—An accomplice's evidence is always open to the gravest suspicion, not because he has participated in a crime, but because his expectation of pardon depended on the conviction of the accused.

A person unlawfully seduced from service is not an accomplice of his seducer, because he cannot participate in the offence of seducing himself.

The evidence of a seduced cooly does not require to be confirmed in order to support a conviction for seduction.

THE facts of this case are stated in full in the following judgment of the Supreme Court.

Bawa, for appellant.

24th April, 1899. WITHERS, J.—

The accused in this case has been convicted of knowingly seducing from service two servants bound by contract to serve the complainant, and the question for me to decide is whether the conviction is right or wrong.

The case for the prosecution is as follows : On or about the 31st day of May last year two persons, Thomas and Muttamma, were employed on New Peradeniya estate under the complainant. One Susai was their kankani, and was also at that time in the complainant's employ. This kankani owed a considerable sum of money to his employer on estate account. Some little time before the end of May, Susai had procured a tundu from his employer, but for some reason or another he could find no one to cash it.

He then conceived the idea—not wholly original—of leaving his estate and liabilities and procuring service elsewhere. Wishing to have companions in his flight he advised Thomas and Muttamma to run away with him. To this proposal they at first demurred, but when Susai hinted that if they stayed they would have to pay his debts, and when he held out a promise that they would get better wages at Polgahakanda estate, they gave way.

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Susai had awaked these coolies after their evening meal and proposed that they should run away under cover of the night. On their way through the estate they came upon the accused at a cattle shed, and when Muttamma asked Susai who he was, she was told he was the head kankani of Polgahakanda. Thomas further deposed that the accused then and there told the party—made up of others besides those three—that they would get better wages in the place to which he would take them. They accordingly were taken to Polgahakanda estate, where they worked under France Kankani, who was a leader in the flight from the New Peradeniya, and assumed the name of Migel in Polgahakanda.

Now, if these facts are true, it seems to me that the Magistrate was clearly justified in regarding Susai as the instrument of the accused in knowingly seducing Thomas and Muttamma from the employer's service. These coolies were leaving the estate without notice or reasonable cause. They were leaving at an unusual hour. When they were taken to the accused in the cattle shed there was still time for them to repent and return to their lines, but the accused encouraged them to continue their wrongdoing by his presence and promise of higher wages.

The accused has denied upon affirmation that he met the party on New Peradeniya estate and conducted them to Polgahakanda. He admits no more than this, that Susai came to Polgahakanda and said he had brought coolies to Kadugannawa, and that he (the witness) agreed to take them. There is good reason to suppose that this arrangement with Susai preceded the flight of coolies from New Peradeniya. If it is a fact that the accused was not on New Peradeniya tea estate the night that Thomas and Muttamma left their lines with Susai to go for work on Polgahakanda, then the conviction cannot be supported.

The Magistrate, however, is perfectly satisfied with the evidence of Thomas and Muttamma to which I have referred, and has no doubt whatever that the accused was on New Peradeniya that night and encouraged those two witnesses to leave their master's service. In my opinion his verdict is a legitimate and just one.

It was urged, however, that these two witnesses were accomplices, and that not being corroborated as to the important facts of accused's presence and encouragement on the night of their flight, there was no evidence to sustain the Magistrate's verdict. It was this point in the case which I reserved for consideration. The 133rd section of the Evidence Act enacts as follows :—"An "accomplice shall be a competent witness against an accused "person, and a conviction is not illegal merely because it proceeds "upon the uncorroborated testimony of an accomplice." That conforms to the rule of English Law as I understand it.

It is a rule of English practice, however, for the Judge to advise the jury not to convict on the testimony of an accomplice only, not to convict in fact unless the evidence of the accomplice is confirmed both to the circumstances of the crime and the identity of the prisoner, and it may be that section 114 of the Evidence Act was intended to bring our practice into conformity with the English practice. According to that section, the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars.

Now, an accomplice's evidence was always open to the gravest suspicion, not because he had participated in a crime, but because his expectation of pardon depended on the accused's conviction. But it is not every participation in a crime which stamps a man as an accomplice so that his testimony has to be confirmed.

In *Rex v. Hargrave* (*5 C. P. 170*) it was held after argument by Mr. Justice Patterson that persons abetting by their presence at a prize fight the commission of the offence of manslaughter for which one of the combatants was indicted were not such accomplices as required further evidence to confirm their statements. Again, in *Rex v. Jarvis* (*2 M. & Rob. 40*) it was held that a prisoner who employed another person to harbour the principal felon might be found guilty on the uncorroborated testimony of the person who actually harboured.

But in what sense can a person unlawfully seduced from service be said to be an accomplice with his seducer? He cannot participate in the offence of seducing himself. His offence, if he listens to the seducer, may be that of quitting the service of his employer without leave or reasonable cause before the end of his term or previous warning; but that is his offence in which he may perhaps be said to have been abetted by his seducer. Now, I cannot regard a seduced cooly as such an accomplice of his seducer that his evidence requires confirmation to support a conviction. If a master forbears to prosecute a runaway servant or holds out some special inducement if he will disclose the name of the person who knowingly seduced him from his employ, that would make a servant a very interested witness, and a cautious Magistrate would desire confirmation of his testimony.

But in this case the two coolies were prosecuted and punished for quitting their employer's service, but there was nothing to show that they were to gain any special advantage by disclosing the name of the person who really took them away, and the accused admits that neither witness had any private grudge to satisfy by testifying against him.

The judgment, in my opinion, is right, and must be affirmed.