Present : Jayewardene A.J.

1923.

THE KING *v.* PERERA.

70—D. C. (Crim.) Colombo, 6,804.

Evidence of accomplice—Need for corroboration of the fact that accused committed the crime—Evidence to corroborate that crime was committed, not enough.

It is unsafe to convict on the testimony of an accomplice which is not corroborated.

"Corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused commited the crime is true, not merely that the crime has been committed, but that it has been committed by the accused."

"The corroboration need not be direct evidence that the accused committed the crime ; it is sufficient if it is merely circumstantial evidence of his connection with the crime."

THE facts are set out in the judgment.

Elliott, K.C. (with him *H. V. Perera*), for appellant.

M. W. H. de Silva, C.C., for the Crown.

September 13, 1923. JAYEWARDENE A.J.—

The accused in this case appeals against his conviction for forgery of a certificate of rubber production, for aiding and abetting one Hendrick to use it as a genuine document, and of cheating one Thomas Perera into the belief that it was a genuine certificate issued by the Rubber Controller ; offences punishable under sections 457, 459, 400, and 102 of the Penal Code. The appeal is pressed on the ground that the conviction is based on the uncorroborated testimony of an accomplice. The conviction is no doubt based on the evidence of Hendrick who has been convicted of using, as genuine, the certificate in question, and of cheating in regard to

it. Hendrick is in the fullest sense of the term an accomplice of the accused. Under our law a conviction is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice. (Section 133 of the Evidence Ordinance, 1895). At the same time, the Court is told that it may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. (Section 114, illustration (*b*) of the Evidence Ordinance.) The combined effect of these two provisions is to make our law the same as the English law on the subject, that is, that it is unsafe to convict on the testimony of an accomplice which is not corroborated, and in cases of trial by jury it is the duty of the Judge to warn the jury that they should not convict on the evidence of an accomplice, unless it is corroborated in some material particular by independent evidence (*The King v. Loku Nona*[1]).

There had been much difference of opinion among Judges as to the nature of the corroboration required in such cases, and in view of the conflicting opinions on the point, the principles were authoritatively laid down by the Court of Criminal Appeal in England in the case of *The King v. Baskerville*[2]. After reviewing the numerous decisions on the subject, the Court (*per* Lord Reading C.J.) said—

> " We hold that evidence in corroboration must be independent testimony, which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular, not only the evidence that the crime has been committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same, whether the case falls within the rule of practice at common law, or within that class of offences for which corroboration is required by statute. The language of the statute implicates the accused," compendiously incorporates the test applicable at common law in the rule of practice. The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged. It would be in high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused.
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> " The corroboration need not be direct evidence that the accused committed the crime ; it is sufficient if it is merely circumstantial evidence of his connection with the crime."

[1] *(1907) 11 N. L. R. 4.*

[2] *(1916) 2 K. B. 658 at 667.*

1923.

JAYEWARDENE A.J.

The King v. Perera

The question whether in this case the learned District Judge was justified in holding that the evidence of the accomplice has been corroborated must be tested in the light of these principles (*The King v. Wanigesekera*[1]).

Hendrick, the accomplice, produced the forged certificate or coupon, P 1, to Thomas Perera who agreed to purchase 269 lb. of rubber on it. The certificate is a clever, but a clear forgery. Thomas Perera sent it to the Rubber Controller's Office, where it was discovered to be a forgery. Hendrick was taken before the Head Clerk of the Rubber Controller's Department, where he stated that the certificate was given to him by the accused. He also produced a writing in Sinhalese, P 3, containing the name of the estate, its situation, the name of the owner, and an "On H M.S." envelope addressed to the firm of Messrs. K. P. Peiris & Co., of which accused and W. A. Soysa, owners of the rubber estate, Nahalwatura, referred to in P 1, were members. These facts by themselves do not afford sufficient corroboration of the evidence of Hendrick. But the details given in the forged certificate, when taken in connection with certain other admitted circumstances, furnish, in my opinion, the necessary corroboration. The certificate issued to W. A. Soysa by the Rubber Controller's Department bears No. 874, see P 7. The forged certificate bears the same number. The quantity which Soysa was authorized to export or sell was 540 lb. a month; the same quantity appears in P 1. It would appear that a certificate or coupon bearing No. 874 issued to Soysa in January last was sent down with his rubber to the accused's firm in March. This certificate was lost, and the firm was holding the rubber in stock, as it could not be sold without the coupon. The accused applied for a duplicate copy of the coupon on April 17, but his application was refused. He applied again on April 19 (see P 8) stating that the coupon issued to Soysa had been unavoidably lost, and that he was holding the rubber in stock. This application, too, was refused, but the Controller said that it might be possible to issue one later, after the lapse of sufficient time, if the original had not been used. (See endorsement on P 8.) About April 26, the forged coupon, P 1, was delivered to Thomas Perera by Hendrick. It has also been proved that the accused and Hendrick have known each other very well for the last 12 years. It is difficult to understand how Hendrick could have got the number of the certificate and the quantity of the rubber Soysa was authorized to sell, unless Soysa or the accused gave them to him. It is not suggested that Soysa had any hand in the transaction. It is also significant that the sale to Thomas Perera was not of the bare coupon, but that Hendrick agreed to deliver to him a quantity of rubber, about 267 lb., which had to be supplied on a contract. The accused had rubber which he had to sell for Soysa, but which he could not sell as the genuine coupon had either

[1] *(1917) 4 C. W. R. 361.*

been stolen or sold. It was for the accused to find a purchaser for Soysa's rubber. Hendrick's statement that P 3 was written by the accused in his presence also stands uncontradicted. He was not cross-examined with regard to its genuineness. In fact, to judge from the cross-examination of the Head Clerk regarding P 3, it would seem that the accused does not deny that he wrote P 3 and handed it to Hendrick. As Lord Reading said in the case above referred to, corroboration need not be direct, it is sufficient if it is merely circumstantial evidence of accused's connection with the crime. Accused's friendship with Hendrick, his handling P 3 to him, and the details found in the forged certificate furnish circumstantial evidence of the accused's connection with the crime. The learned District Judge was justified in treating these elements as affording sufficient corroboration of the evidence of the accomplice. In the circumstances the conviction is right, and the appeal must be dismissed. The offence is a serious one, and I see no reason to interfere with the sentence of nine months' rigorous imprisonment imposed on the accused.

Appeal dismissed.