

1931

*Present: Akbar J.*PEIRIS *v.* SENEVIRATNE.820—*P. C. Colombo, 30,447.*

Evidence—Corroboration of accomplice's evidence—Material particular—Nature of corroboration required—Betting on Horse-racing (Taxation) Ordinance, No. 9 of 1930.

The corroboration of the evidence of an accomplice cannot be supplied by another accomplice.

Such corroboration must be in some material particular tending to show that the accused committed the offence and may be given by direct or circumstantial evidence.

A PPEAL from a conviction by the Police Magistrate of Colombo.

H. V. Perera, for accused, appellant.

Deraniyagala, Acting C. C., for Crown, respondent.

November 23, 1931. AKBAR J.—

The accused was charged with receiving two bets on a horse-race on August 6, 1931, in contravention of section 3, sub-section (3), of Ordinance No. 9 of 1930, and he was sentenced to pay a fine of Rs. 1,000 or in default six months' rigorous imprisonment. Under this Ordinance there is a

provision against receiving or negotiating a bet on a horse-race other than a "taxable bet" as defined by the Ordinance. The appeal is on the facts. It appears that on the day in question, two Inspectors of the C. I. D. sent two decoys with marked money to trap the accused in the act of contravening the Ordinance. The two decoys were given in addition to marked money two slips of paper each with the names of three horses to run in the races that day and they were instructed to make what is known as "all on" bets, i.e., a system by which if any horse won its race, the winnings calculated proportionately to the bet from payments made on the race-course were to be put on the second horse, and so on. Each of the decoys was given Re. 1.25 and the procedure ordinarily, it appears, would be for the person taking the bet to accept the money, keep the duplicate himself and hand the other copy with a number or some other identifying mark to the person making the bet. According to the evidence for the prosecution the two Inspectors with Police Sergeant Simon (who introduced the two decoys to the Inspectors) and P. C. Banda came in a car with the two decoys and stopped the car at the junction of Malay street and De Mel road. The two decoys went to the medical hall of the accused about 10 or 15 fathoms from where the car was stopped. It appears that the accused is an Ayurvedic physician who has a medical hall, and that he in addition is an astrologer, and it was suggested for the prosecution that he was also the keeper of a "bucket shop". About 10 or 15 minutes later, the two informants came out of the hall and gave the signal to the police, when the police raided the accused's medical hall. They found the marked money in the drawer of the accused but the duplicates which the decoys stated they had handed over to the accused were nowhere to be found by the police. The two copies of the slips which the decoys had with them were handed by them to the police, namely, documents marked P 1 and P 2. P 1 bears a number 5 written in pencil and underlined and there is also an inverted V in pencil. P 2 bears number 8 within a circle and a mark X. The Inspectors also found a bundle of papers on the desk of the accused, namely, newspapers containing acceptances and scratchings for the next day's race, a Turf Club programme for the day's racing, and slips of paper containing various calculations, and also a slip written in Sinhalese containing the names of the horses to run in the August races. As a matter of fact there were several slips of paper containing calculations. There were also newspapers containing entries for the Indian races and an exercise book marked P 22. The accused in his evidence denied that he had received any bets and that he was given the slips. He admitted the payment of the Rs. 2.50, but he said that it was payment for two bottles of medicinal oil which he said the two decoys had asked for. As several of his patients were waiting, he accepted the money and asked the decoys to wait for the oil, but the raid took place before he could give the oil to the decoys. The case was thus narrowed down to a very small compass. As pointed out by my Lord the Chief Justice in *S. C. No. 553, P. C. Colombo, No. 27,646* (see *S. C. M. of October 8, 1931*), the two informants or decoys were accomplices under section 3, sub-section (3), of the Ordinance and therefore as explained by the Chief Justice the evidence of such accomplices had to be corroborated.

The learned Police Magistrate says that the two decoys corroborated one another in every respect. But the law applicable to two accomplices is the same as the law applicable to one. As Mr. Justice de Sampayo stated in the case of *Silva v. Wickramasuriya*¹, the law on the subject was reviewed by the English Court of Appeal in *King v. Baskerville*², in which Lord Reading C.J. held that there must be corroboration of an accomplice's evidence in some material particular tending to show that the accused committed the offence and that it must be by some evidence other than that of an accomplice and therefore one accomplice's evidence was not corroboration of that of another; and that the corroboration need not be direct evidence but may be circumstantial evidence of the connection of the accused with the crime, such as the discovery in a case of theft of any part of the stolen property in the accused's house or in a place indicated by the accomplice. These are the usual principles which have always been followed in criminal cases and therefore the mere fact that two accomplices gave evidence instead of one makes no difference. The finding of the marked money was corroboration to some extent, but the presence of the marked money is explained by the accused when he stated that it was payment for oil to be supplied. As a matter of fact, when the police raided there were several persons there and it is a very significant fact that the duplicate slips were not found anywhere in the hall. The first decoy, however, in the evidence he gave before the Magistrate stated that the duplicate was handed by the accused to a man on his right hand, and that when the police raided, this man on the accused's right hand disappeared through the back door. Similarly, the second decoy stated that the accused handed his duplicate slip to a man who was sitting next to him and that as the C. I. D. officers came in the man who had been sitting by the accused went away by the passage to the back. The decoys thus hoped to explain the disappearance of the duplicates, which should have been in the possession of the accused. But it is strange that neither of the Inspectors mentioned this incident in their evidence and it was only the decoys who referred to the disappearance of the stranger apparently for the first time before the Magistrate. If the decoys are speaking the truth, one would have expected them to have called the attention of the Inspectors to the stranger disappearing with the incriminating slips by the back door. They seem to have been silent at the time of the raid. If they had mentioned this fact, if it was a fact, the many police officers present there might have given chase and arrested this stranger. This is not the only difficulty. According to the decoys, after the first decoy had made a bet (the slip being No. 5) there were two other bets taken by strangers there and that was why the second decoy had his slip marked 8. I cannot understand why the Inspectors were not told of this fact by the decoys at the time of the raid and if they were told about it why they did not search these two other persons, who could have been charged under the same sub-section independently for contravention of the section. The sergeant is said to have found another slip marked P 23 which is a cancelled slip, containing the names of three horses, but this slip was found by the sergeant on the floor and might have been dropped by one of

¹ 20 N. L. R. 165.

² (1916) 2 L. R., K. B. 658.

the persons present there, who according to the suggestion of the accused may have been a confederate with the two decoys for the purpose of implicating the accused in a false case. If the suggestion for the prosecution is true, namely, that slip P 23 was evidence of another bet made by one of the persons present there, it is all the more strange why the police did not search everyone present there. Thus it will be seen that no duplicates were found in the possession of the accused. Moreover, there is some evidence by the accused to prove that he had incurred the enmity of certain persons owing to a recent election in the ward in connection with the State Council. The Police Magistrate, in his judgment, after stating that the two decoys corroborated each other in every respect states that Inspector Peiris took from the drawer of the table at which the accused was sitting "all the paraphernalia of the manager of a betting establishment". This remark of the learned Police Magistrate shows I think that he has not examined the documents that have been produced in this case. The Turf Club programme and the newspaper copies containing entries and scratchings are not necessarily evidence that the accused was running a betting establishment. It may well be that he himself made bets on the race-course, or in other words that he was a punter himself; and the calculations may have been in respect of the accused's second vocation of an astrologer. I do not think that the various documents found are evidence that the accused was the manager of a betting establishment excepting perhaps the exercise book marked P 22, which the accused explained was the property of a clerk of his who had left his service about two months earlier. But even if it is his book it in no way in my opinion corroborates the case for the prosecution. Two sheets of the exercise book are marked with various items for April 12, 14, 18, and 21, 1931, and July (no date). Only one of these items, viz., the one in July, contains the English letter B written in Sinhalese and the word "paid" against a sum of Rs. 8.50. It is suggested that this entry corroborates the case for the prosecution because the English letter B in Sinhalese stands for the word "bet". The Sinhalese word, however, is "ottuwa" and even supposing the letter B stands for "bet" the amount is only Rs. 8.50. Is it suggested that this sum of Rs. 8.50 represents all the winnings of a successful better? Even then this book refers to items previous to August, 1931, and is not corroboration of the charges against the accused in respect of acts of betting in August, 1931. In my opinion it is entirely unsafe to consider that the items in the book and the mysterious letter B are sufficient corroboration on material particulars of the evidence given by the accomplices. The second Inspector mentions a police constable Karunatileke as being with the persons near the accused when the police raided accused's premises. As the first Inspector did not mention this constable's name as one of the raiding party, I cannot understand why he was not called to corroborate the prosecution case. There remains one other fact to mention, viz., No. 5 in pencil and No. 8 also in pencil appear on the two slips which the decoy handed over, but they may well have been inserted by the decoys for the purpose of implicating the accused. In my opinion the evidence falls short of what is required for a conviction in a case of this kind. I set aside the convictions and acquit the accused.

Set aside.