

1948

Present: **Basnayake J**

PEIRIS *et al*, Appellants, and DOLE (Sub-Inspector of Police),
Respondent

S. C. 1,344–1,345—M. C. Negombo, 52,373

Accomplice—Corroboration of evidence—Who is an accomplice—Evidence Ordinance, section 114 (b).

An accomplice is one who is a guilty associate in crime or who sustains such relation to the criminal act that he could be charged jointly with the accused.

APPPEAL from a judgment of the Magistrate of Negombo.

E. B. Wikramanayake, for 1st accused, appellant.

Boyd Jayasuriya, C.C., for the Attorney-General.

Cur. adv. vult.

January 20, 1948. BASNAYAKE J.—

Five persons including the first and second appellants were charged with the theft of a brown bull and a brown cow, the property of one Podiya. After trial the learned Magistrate acquitted the 5th accused and convicted and sentenced each of the first four accused to a term of six months' rigorous imprisonment.

The first and second accused appealed from their conviction and sentence. The latter was unrepresented at the hearing in appeal, counsel appeared for the former.

The facts so far as they are material to this appeal are that the first accused-appellant engaged the lorry of one Sydney Goonesekera for the purpose of transporting cattle from Divulapitiya to Nugegoda. The lorry owner's cleaner accompanied the lorry while his driver drove it. The lorry left the owner's premises at about 5.30 in the evening of the date of the alleged offence and reached an estate called Assennawatte shortly before 10 P.M. At this place eight head of cattle were loaded into the lorry, the four convicted accused taking an active and prominent part in bringing the animals and loading them. Two of the animals were the bull and the cow of Podiya.

Counsel contended that there was no evidence to support the conviction. I have examined the evidence and am satisfied that there is sufficient material therein to justify the learned Magistrate's finding. I do not propose to disturb it.

Counsel urged as a matter of law that one Aloysius Perera, the cleaner of the lorry and on whose evidence the case largely rested, was an

accomplice, and that his evidence should be rejected as unworthy of credit in so far as it has not been corroborated in material particulars.

The expression "accomplice" is not defined in the Evidence Ordinance on which Counsel relies (section 114 (b)) and therefore it must be given its ordinary meaning. According to the New Standard Dictionary an accomplice is one of two or more participating in the commission of a crime whether as principal or accessory. The judicial interpretation of the expression under the corresponding provision of the Indian Evidence Act is in accord with the definition I have stated above. Of the many interpretations of the Indian Courts the meaning given in the case of *Chelumal Rekumal v. Emperor*¹ commends itself to me. It is as follows :—

"An accomplice is one who is a guilty associate in crime or who sustains such relation to the criminal act that he could be charged jointly with the accused. It is, admittedly, not every participation in a crime which makes a party an accomplice in it so as to require his testimony to be confirmed."

The evidence in this case does not disclose that Aloysius Perera was a guilty associate in the crime or that he sustained such a relation to the criminal act that he could be charged jointly with the accused. He played no part in the transaction. What is stated in evidence was what he saw in the course of his duties as cleaner of his master's lorry which he was bound by the terms of his employment to accompany. His evidence, therefore, needs no corroboration. While I am on this point I should like to say a word of caution against the tendency to make the word "accomplice" bear, in my opinion improperly, a larger meaning than is permissible in law. In this connection I think it will not be inappropriate to repeat the words of Chandravarkar J. in *Emperor v. Burn*² :—

"No man ought to be treated as an accomplice on mere suspicion unless he confesses that he had a conscious hand in the crime or he makes admission of the facts showing that he had such hand. If the evidence of a witness falls short of these tests, he is not an accomplice ; and his testimony must be judged on principles applicable to ordinary witnesses."

The appeals of the first and second appellants are dismissed.

Appeals dismissed.