1947 *Present :* **Dias J.**

LYRIS SILVA, Appellant, *and* KARUNARATNE (Price Control Inspector), Respondent.

366—M. C. Badulla-Haldummulla, 3,587.

Evidence—Decoy—Need for corroboration of his evidence.

A decoy or *agent provocateur* is not always an accomplice in the sense in which that word is usually used. Where a decoy acts like an ordinary customer and does not tempt the accused to commit the offence, it is not necessary that his evidence should be corroborated by independent evidence. His evidence should, however, be examined with caution.

APPEAL against a conviction from the Magistrate's Court, Badulla-Haldummulla.

H. V. Perera, K.C. (with him *G. P. J. Kurukulasuriya*), for the accused, appellant.

No appearance for the respondent.

Cur. adv. vult.

[1] *(1935) 37 N. L. R. 248.*

June 19, 1947. DIAS J.—

The appellant was charged under the appropriate Defence Regulation with selling a pound of bread to a decoy for thirty-five cents when the controlled price was twenty-five cents. He was convicted and sentenced to pay a fine of Rs. 750 and in default to undergo one month's rigorous imprisonment.

The evidence is that on the day in question Price Control Inspector Karunaratne induced his colleague Price Control Inspector Wijeykoon to act as a decoy. He was searched by the former officer and given a rupee note the number of which had been noted. Wijeykoon then went to the bakery of Danoris Silva and asked for a pound loaf. The decoy says that the accused gave him the loaf, took the rupee note and returned him sixty-five cents change—six ten-cent coins and one five-cent coin. The decoy says that he had asked the accused for the price of the bread and he was told that it was thirty-five cents. There is no corroboration of this statement of the decoy by any of the other witnesses. The rest of the raiding party then came up and found the loaf and the sixty-five cents in the decoy's possession and the rupee note in the drawer.

The defence admits the sale but denies that the change given to the decoy was sixty-five cents but seventy-five cents—seven ten-cent coins and one five-cent coin. It is suggested that it was a simple matter for the decoy to have secreted the extra ten-cent coin between the time of the sale and the arrival of the raiding party ; and that as the accused had no cause to suspect the decoy's *bona fides*, his attention would not necessarily be fixed on what the customer was doing with the change. This was put to Wijekoon who denied the allegation.

The first question for decision is whether Wijekoon is an accomplice, and secondly, if he is an accomplice, whether his evidence on the material points as to whether he was given seventy-five cents or sixty-five cents has been corroborated by independent evidence.

There is a chain of authority on this point. The generally held view was that a decoy who abets a person to commit an offence is an accomplice. In the case of *Siriwardene v. Vandersraaven*[1] however, Soertsz J. pointed out that every decoy or spy must not indiscriminately be dubbed an accomplice and his evidence invariably regarded as that of an accomplice, and that there was no hard and fast rule that one must not convict on the uncorroborated testimony of a decoy. In that case, however, the decoy was, in fact, corroborated by another independent witness who was not a decoy, as well as by circumstantial evidence. In the same law report in *Kern v. Wickremasinghe*[2] Hearne J. said that it was unsafe to convict on the uncorroborated testimony of two decoys. The learned Judge followed the decision in *Wijesuriya v. Lye*[3]. In *Beddewella v. Albert*[4] Soertsz J. held that an informer is on a different footing from an accomplice so far as the rule regarding corroboration is concerned, although his evidence should be probed and examined with great care.

The fact of the matter is that whether a person is or is not an accomplice is not a question of law but one of fact for decision in each case. In

[1] *(1938) 39 N. L. R. 527.*
[2] *(1938) 39 N. L. R. 571.*
[3] *(1931) 33 N. L. R. 148.*
[4] *(1940) 42 N. L. R. 136.*

the case of *R v. Tissera*[1] which is the decision of a bench of three Judges, Maartensz J. said "The Solicitor-General stated that this question was reserved with a view of obtaining a ruling as to the circumstances in which a witness who denies complicity is to be deemed an accomplice. We are of opinion that a general rule or rules cannot be laid down as it is not a question of law but of fact." In *R. v. Peiris Appuhamy*[2] the Court of Criminal Appeal held that the question whether a person is an accomplice is for the jury to decide, and it was the duty of the Judge to direct the jury as to what association with the crime would constitute a person an accomplice.

While the decoy or an *agent provocateur* is a person whom the Courts rightly regard with suspicion and distaste, he is not always an accomplice of the accused in the sense in which that word is usually understood. Where a decoy acts like an ordinary customer, and, without tempting the accused to commit the offence, or abetting or instigating its commission, the accused commits the offence, I fail to see how such a person can be called an accomplice, although being interested in the conviction of the accused or the reward he hopes to obtain, his evidence should be accepted with care and caution.

I am of opinion that in this case the witness Wijeykoon cannot be regarded as an accomplice of the appellant. While his evidence does not need corroboration, nevertheless, it must be probed and accepted with great caution.

It is submitted that the Magistrate has only written a short judgment and has not really dealt with the main points in regard to the credibility of the witness. All the facts urged before me must have been argued before the Magistrate, and he has dealt with them, with the exception of the point that the decoy said that he asked the accused for the price of the loaf and he was told that it was thirty-five cents. The only persons who could have heard that conversation were the appellant and those in the bakery and the decoy, as the other prosecution witnesses were at some distance.

In the circumstances, it is impossible for me to hold that the conviction is wrong. The appeal is dismissed.

Appeal dismissed.

[1] *(1935) 37 N. L. R. at p. 236.*

[2] *(1942) 43 N. L. R. 412.*