

1940

*Present : Moseley J.*

POULIER *v.* AHAMED BARI.

851—*M. C. Galle, 23,870.*

*Decoy—Corroboration of evidence—Material particular connecting the accused  
—Corroboration need not be by direct evidence.*

A decoy is an accomplice and, as such, his evidence requires corroboration in some material particular connecting the accused with the commission of the offence. Corroboration need not be by direct evidence.

**A** PPEAL from a conviction of the Magistrate of Galle.

*P. Thiagarajah*, for accused, appellant.

*Nihal Gunasekera, C.C.*, for complainant, respondent.

*Cur. adv. vult.*

February 21, 1940. MOSELEY J.—

The appellant was charged with two others on four counts of having received bets on horse races, other than taxable bets, in contravention of section 3 (3) of Chapter 36 of the laws of Ceylon. The two other accused were acquitted; the appellant was convicted on the first two counts and fined on each count Rs. 150 in default one month's rigorous imprisonment, that is to say, Rs. 300 in default two months' rigorous imprisonment in all.

On the day in question Inspector Poulier sent two decoys, Abeyratne and Abeytunga, each armed with a betting slip in duplicate and a marked one-rupee note, to a shop at the Dye Works, Lighthouse street. The decoys were instructed to place bets, as indicated on the slips on races to be run in India.

The decoy Ariyaratne deposed that he went to the premises as instructed where he saw the appellants seated at a table. He gave the two slips (P 7 and P 7a), that is, original and duplicate, and the rupee note to the appellant who scribbled something, retained one slip, and returned the other to the witness. The latter appears to have spent some minutes in the shop and then left to give a pre-arranged signal to the raiding party. He returned with the party and pointed out the appellant as the person who had accepted his bet.

Inspector Poulier says that when he entered the shop with the raiding party he saw the appellant writing on betting slips with a purple pencil. As the Police entered the appellant gathered up some money which was on the table and threw some slips behind him. Eighty-nine slips were found of which about 60 were on the table and were marked with numbers. These were produced in one bundle P 4 and are marked in most cases with purple pencil. Amongst these was P 7 which bears the mark 290/9 in purple pencil. P 7 (a) which also bears the number 290 and 9 in purple pencil was handed to the Inspector by Abeyratne who told him that he had received it back from the appellant. Neither of the marked rupee notes was found. This may be accounted for by the statement of Abeyratne that after he had handed the appellant the note with which he had been provided, the latter gave change of a Rs. 5 note to each of two people.

The learned Magistrate regarded the decoy Abeytunga as an unsatisfactory witness and in consequence acquitted all the accused on counts (3) and (4) and the second and third accused on counts (1) and (2). Abeyratne, however, impressed him favourably. Counsel for the appellant argued that, since the two decoys contradicted each other, the evidence of neither should be accepted. That contention does not seem to me to be particularly sound and, in my view, the Magistrate was entitled, if he saw fit, to accept his evidence. Nevertheless, he was in the position of an accomplice and as such his evidence requires corroboration in some material particular connecting the appellant with the commission of the offence. That corroboration need not however be by direct evidence.

Counsel for the appellant brought to my notice the case of *Peiris v. Seniviratne*<sup>1</sup>, in which the facts are remarkably similar to those of the case before me. There is one marked difference. In that case the

<sup>1</sup> 1 C. L. W. p. 113



marked money was found, but the duplicate slips were not. That was regarded by Akbar J. as "a very significant fact". Indeed the failure to find the duplicate slips became particularly significant when the accused gave evidence that the marked money was given in payment for goods to be supplied. Akbar J. held that there was insufficient corroboration on material particulars of the evidence given by the accomplices and quashed the conviction.

In the present case Counsel for the appellant has urged that the failure to find the marked money is fatal to the case for the prosecution. With that view I am unable to agree. In the first place a reasonable explanation for its disappearance has been given. Secondly, assuming that the money did not in fact pass from the decoy to the appellant the finding of the slip P 7, with similar markings to those on P 7 (a) is ample corroboration of the evidence of the decoy that he placed a bet with the appellant.

In my view the prosecution proved its case against the appellant beyond all doubt.

I dismiss the appeal.

*Affirmed.*

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