

1938

Present: Hearne J.

KERN *et al.* v. WICKREMESINGHE.

774-5—P. C. Colombo, 10,451.

*Decoy—Evidence of two decoys—Conviction on uncorroborated testimony.*

It is not safe to convict on the uncorroborated testimony of two decoys even if they agree.

*Wijesuriya v. Lye* (33 N. L. R. 149) followed.

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

*J. R. Jayawardana*, for accused, appellants.

*E. M. T. Gunasekera*, C.C., for complainant, respondent.

*Cur. adv. vult.*

February 1, 1938. HEARNE J.—

The two appellants were convicted of offences in contravention of section 3 (3) of Ordinance No. 9 of 1930. The chief witnesses in the case were two decoys. "It has been laid down again and again that it is unsafe to convict on the uncorroborated evidence of a decoy"—*Wijesuriya v. Lye*<sup>1</sup>, but there is nothing in the judgment of the Magistrate to indicate that he appreciated this. He merely says that it would be wise not to act without corroboration because he was satisfied "the decoys were not speaking the truth in all particulars" and because during the adjournment of the case "they had compared notes in order to agree". He does not appear to have been alive to the danger of acting without corroboration on the evidence of two decoys even if they do agree. They are persons who provoke or instigate the commission of a crime with the object of enabling the police to secure a conviction and as a rule they make it their business to agree.

The facts of this case are very similar to those in a reported case—*Pieris v. Seneviratne*<sup>2</sup>. In that case and this two decoys were given in addition to marked money two betting slips and the procedure was the same—the

<sup>1</sup> (1931) 33 N. L. R. 148 at 149.

<sup>2</sup> (1931) 33 N. L. R. 157.

person taking the bet was to accept the money, keep the duplicate slip and hand the other with an identifying mark to the person making the bet. In both cases the marked money was found with the accused, the original slips with certain marks on them were found with the decoys, while the duplicate slips were not found with the accused. But the most important point of similarity is that in each case at least one of the decoys stated that another person had made away with the slips retained by the accused. In *Pieris v. Seneviratne* (*supra*) the decoys do not appear to have acquainted the Inspector with what they "had seen". In the present case one of the decoys says, "I told the Inspector a gentleman had walked towards the sea with the chits", but the Inspector took no action. He certainly made no mention of it in his evidence.

In the case to which I have referred Akbar J. placed no reliance on the fact that the slips in the possession of the decoys had certain marks upon them, for as he correctly remarked "the marks may well have been inserted by the decoys for the purpose of implicating the accused". In regard to the finding of the marked money Akbar J. says, "This was corroboration to some extent but the presence of the marked money is explained by the accused when he says that it was payment for oil to be supplied".

Now in this case the accused explained the presence of the marked money by saying that the decoys had asked for change. The Magistrate rejected the explanation for the reason that it was belated and in all probability untrue. He, therefore, accepted the evidence of the finding of the marked money as corroboration of the decoys and convicted the appellants.

There is much to be said for the view taken by the Magistrate. If it was true that the accused had changed the money of the decoys one would have expected them to have informed the Inspector and invited him to search the decoys for change on their persons. But on a consideration of all the facts I am of the opinion that it would be dangerous to hold that the mere finding of marked money in a case of this nature would supply the element of independent corroboration. If it were so held it might be possible to contrive the conviction of an innocent person by stratagem—a decoy might surreptitiously introduce marked money into a shop keeper's till, or pay an existing debt with marked money, and then, summoning the police, disclose the fact that he had a betting slip with marks on it in his possession. Apart from this the disappearance of the duplicate slips is a mysterious feature of the case and the doubt it raises has by no means been resolved by the evidence of Francis Perera, one of the decoys, that he had informed the Inspector "a gentleman had taken the chits", the inconsistent evidence of Andrew Perera, the other decoy, that the Inspector "took from (second) accused the chit I had given him and said it was the chit he had sent by me", and the strict silence the Inspector maintained in regard to both these alleged incidents.

I allow the appeals.

*Set aside.*