

1970

Present: Samerawickrame, J.

H. ARIYARATNE, Appellant and FOOD & PRICE CONTROL
INSPECTOR, GALLE, Respondent

S. C. 1199/68—M. C. Galle, 54557

Evidence—Decoy—Weight of his testimony—Control of Prices Act.

Although a decoy is on a different footing from an accomplice so far as the rule of practice regarding corroboration is concerned, his evidence should however be probod and examined with great care.

APPEAL from a judgment of the Magistrate's Court, Galle.

E. R. S. R. Coomaraswamy, with T. Joganathan, S. C. B. Walgampaya and P. H. Kurukulasuriya, for the accused-appellant.

Shibly Aziz, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 24, 1970. SAMERAWICKRAME, J.—

The appellant was convicted under the Control of Prices Act, for selling a tin of condensed milk for Re. 1.10, a price in excess of the maximum controlled retail price of Rs. 1.05.

The decoy Doxan de Silva stated that he went to the accused's boutique and asked for a tin of condensed milk and tendered a two rupee note and that he was given 90 cents change and the tin of milk. One Gunasekera a Food & Price Control Inspector had been sent along with the decoy and he was standing outside the boutique at the time of the transaction. Food & Price Control Inspector Bamunuvitarane was standing some distance away. He came up when Gunasekera gave him a signal. Bamunuvitarane said, "Mr. Gunasekera could have seen the transaction. He could have heard also. If he was not a deaf man he could have heard the decoy speaking to the accused. The table was just at the entrance to the boutique."

It was put to the decoy that he was given another 5 cents coin and he had put it away. He was questioned as follows :—

" Q. Could you have disposed of this extra five-cent coin without the knowledge of any officer, if you were so inclined ?

A. I could not have done so, because there was an officer watching the transaction. "

The officer who is alleged to have watched the transaction is Gunasekera. Bamunuvitarane himself admitted that he did not see the transaction and therefore he could not speak to it. Gunasekera however was not called as a witness.

It would appear that Gunasekera was a resident of Galle and had been a Price Control inspector there for a period of years. The accused gave evidence and stated that he was aware that Gunasekera was a Price Control Inspector. It is probable that he was aware of this fact. It was admitted by the prosecution witnesses that the boutique had a board displayed which showed that the price of a tin of condensed milk was Re. 1.05. The question therefore naturally arises whether the accused would have charged a customer a sum in excess of the price displayed on his board when a person whom he knew to be a Price Control inspector was standing just outside his boutique and within hearing.

The accused admitted the transaction and claimed that he had sold the tin of milk for the correct price of Re. 1.05. The question at issue therefore was whether the price paid was Re. 1.05 or 1.10. The decoy stated that he and Gunasekera were both searched by Bamunuvitarane before he went into the boutique and that he was searched immediately after the transaction by Bamunuvitarane. Bamunuvitarane, though he spoke of the search prior to the transaction, did not speak of any search by him of the decoy immediately after the transaction. The whole case

therefore rested on the evidence of the decoy alone and received no corroboration from the evidence of Bamunuvitarane. Price Control Inspector Gunasekera who might have been in a position to corroborate the evidence of the decoy was not called as a witness.

The learned magistrate makes no mention of the fact that Gunasekera was not called as a witness and states that the two prosecution witnesses, namely, Bamunuvitarane and the decoy, corroborated one another and were consistent in their testimony. He has misdirected himself in thinking that there was corroboration of the decoy's evidence to be found in the evidence of Bamunuvitarane. I think however that a decoy is on a different footing from an accomplice so far as the rule of practice regarding corroboration is concerned but that his evidence should however be probed and examined with great care—vide *Beddewela v. Albert*¹.

The learned magistrato has disposed of the evidence of the prosecution witnesses with a few lines. He said, "The raid was organised by Mr. Bamunuvitarane, Food and Price Control Inspector. He searched Mr. Doxan de Silva and Gunasekera and asked Doxan de Silva to buy a tin of condensed milk. Doxan de Silva went to the boutique of the accused and bought a tin of condensed milk for Re. 1.10. He tendered a two-rupee note and he was given the balance of ninety cents by the accused. The transaction was watched by Gunasekera. These two witnesses corroborated one another and were consistent in their testimony. I see no reason to disbelieve their evidence." There has not, in this case, been any probing or careful examination of the evidence of the decoy. I set aside the conviction and sentence and acquit the accused-appellant.

Appeal allowed.

