

1938

*Present : Soertsz J.*SIRIWARDENE *v.* VANDERSTRAATEN1,031—*P. C. Colombo, 12,998.**Decoy—Evidence of decoy distinguished from that of an accomplice—Uncorroborated testimony—Conviction.*

There is no rule that a conviction cannot be based on the uncorroborated testimony of a decoy. The evidence of a decoy should not be treated on the same footing as that of an accomplice.

Caldera v. Pedric (5 *Times of Ceylon L. R.* 70) and *Almeida v. Adiriyar* (6 *Times of Ceylon L. R.* 123) referred to.

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

P. A. Senaratne, for accused, appellant.

E. H. T. Gunasekera, C.C., for complainant, respondent.

Cur. adv. vult.

February 22, 1938. SOERTSZ J.—

Mr. Senaratne for the accused-appellant attacks the conviction in this case on the ground that it rests upon the uncorroborated testimony of a “decoy” or “spy”, that is to say, in this instance, a person employed by the Police to verify the information they had obtained that the accused was taking non-taxable bets on horse races.

Mr. Senaratne’s contention is that a decoy or spy occupies exactly the same position as an accomplice and that therefore his evidence should not be accepted and acted upon unless it is corroborated by other evidence in material particulars.

I have some difficulty in regard to this proposition that “decoys” or spies must always be treated in the same way as accomplices. It does

not seem quite logical. Technically, a decoy inasmuch as he instigates or aids and abets the commission of an offence is an accomplice but in reality he is not on the same footing as an accomplice. As pointed out by Justice Maule in the case of *Regina v. Mullins*¹, "An accomplice confesses himself a criminal and may have a motive for giving information as it may purchase immunity for his offence. A spy on the other hand may be an honest man; he may think that the course he pursues is absolutely essential for the protection of his own interests, and those of society The Government are, no doubt, justified in employing spies and I do not see that a person so employed deserves to be blamed if he instigates offences *no further than to appear to concur* with the perpetrators. Under such circumstances they are entirely distinguished in fact and in principle from accomplices. In *Rex v. Despard*² Lord Ellenborough said to the Jury, "But there is another class of persons which cannot properly be considered as coming within the definition or as partaking of the criminal contamination of an accomplice, I mean persons entering into communication with the conspirator (or I would add, with an offender) with an original purpose of discovering their secret designs and disclosing them for the benefit of the public".

A decoy or a spy must not therefore, indiscriminately be dubbed an accomplice and his evidence invariably regarded as that of an accomplice. There are several cases in which it has been held here that it is not desirable to act upon the sole evidence of a decoy (*Caldera v. Pedrick*³) that the evidence of decoys should be examined with great care (*Almeida v. Adiriyani*⁴). With these views, if I may say so with respect, I am in agreement especially because the decoys or spies who generally figure in our Courts are of doubtful antecedents. But, I find I cannot associate myself with the view that as a hard and fast rule one must not convict on the uncorroborated testimony of a decoy.

But in this case, the decoy has been corroborated by Waheed. Counsel for the appellant says he was a co-decoy and therefore just as one accomplice cannot corroborate another so one decoy cannot support another. This view I have already considered as a proposition of law. As a matter of fact I am unable to agree that Waheed was himself a decoy. He appears to have been sent to be a spy on the decoy. There is also in this case ample circumstantial corroboration.

I dismiss the appeal.

Affirmed.

¹ 3 *Cox cc.* 526, p. 531.
² 28 *State Trials* 489.

³ 5 *Times of Ceylon L. R.* 70.
⁴ 6 *Times of Ceylon L. R.* 123.