

Present : **Wijayatilake, J., and Ratwatte, J.**

**W. WICKREMADASA**, Defendant Appellant *and* **THE FOOD and PRICE CONTROLLER**, Applicant Respondent.

S.C. 99/74—M.C. Polonnaruwa—15932

*Evidence—Decoy—Probative value of the evidence of a decoy.*

Held : 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 probed and examined with great care.

**A**PPEAL, against conviction.

*Mrs. M. Muttetuwegama* with *V. E. Selvarajah* for the 2nd Accused—Appellant.

*J. Perera*, State Counsel for the State.

February 21, 1975. WIJAYATILAKE, J.—

Mrs. Muttetuwegama, learned Counsel for the 2nd accused-appellant, submits that on the evidence led in this case the prosecution has failed to establish the charge against the accused beyond reasonable doubt even taking the prosecution evidence at its best. Inter alia she has submitted that the prosecution has failed to produce the diary, in which the Price Control Inspector had noted the number of the five rupee note, which had been handed over to the decoy and which according to the decoy had been given to the cashier, the 2nd accused. It is significant that soon after the decoy had made the payment to the cashier, according to him, he had given a signal to Gurasinghe and immediately Gurasinghe and the Price Control Inspector had come up to the cashier and the cashier had shown the drawer in which there was plenty of cash, but they had failed to recover the note in question. Furthermore, the cashier had with him a bundle of rupee five notes.

The question does arise, if the Price Control Inspector had noted the number of the particular note given to the decoy and this particular note had been given to the cashier by the decoy and the cashier in turn had failed to show it to them, why the diary in which the number of this note was recorded by the Price Control Inspector was not produced. In our opinion this is a serious omission on the part of the prosecution.

Mrs. Muttetuwegama has drawn our attention to the judgment of Samerawickrema, J. in the case of *Ariyaratne vs. Food and Price Control Inspector*, Galle 74 N.L.R. 19 in which he held :

“ 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 probed and examined with great care ”.

Adopting this principle we have sought to examine the evidence and we are inclined to agree with the learned Counsel for the 2nd accused-appellant that the failure to produce the diary, in which the number of the note was recorded, throws a reasonable doubt in regard to the version for the prosecution. We would accordingly give the benefit of such doubt to the 2nd accused-appellant and quash the conviction and sentence passed against him and acquit him.

We find that the 1st accused has not appealed. Be that as it may, in all the circumstances, we think this is a case where we should act in revision with regard to him and we would accordingly, acting in revision, set aside the order made by the learned Magistrate against him and acquit him.

RATWATTE J.—I agree.

*Accused acquitted.*

---