

In Re: Ambujam Ammal

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Court : Chennai

Decided On : Oct-03-1952

Reported in : AIR1954Mad326; (1953)IIMLJ50

Judge : Ramaswami, J.

Acts : Madras Suppression of Immoral Traffic Act, 1930 - Sections 4 and 5(1); [Evidence Act, 1872](#) - Sections 133; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 337

Appeal No. : Criminal Revn. Case No. 549 of 1952 and Criminal Revn. Petn. No. 446 of 1952

Appellant : In Re: Ambujam Ammal

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K. Narayanaswamy Mudaliar, Adv.

Judgement :

ORDER

Ramaswami, J.

1. This is a Criminal Revision Case filed against the conviction and sentence of the learned District Magistrate of Tirunelveli in C. C. No. 249 of 1951 and confirmed by the learned Sessions Judge of Tirunelveli in C. A. No. 51 of 1952.

2. The short facts are : On information received, from P. W. 5, the Circle Inspector of Police, Tirunelveli Town (P. W. 7) arranged for a raid of the premises bearing door No. 41, Kanagaraya Mudukku Street, Tirunelveli Town, which was said to be run as a brothel by the accused in this case, on the night of 15-11-1951. The Circle Inspector (P. W. 7) was said to have been accompanied by the Sub-Inspector, Tirunelveli Town, and two Search witnesses, of whom P. W. 4 the village Munsif is one and another a Constable. On reaching the southern end of Kanagaraya Mudukku Street P. W. 7 is said to have met P. W. 2, the trap witness in this case.

This witness was asked by the Circle Inspector to go to the house of the accused and have sexual congress there with the accused and for this he is said to have been given a marked tenrupee note. P. W. 2 states that he went to the house of the accused and found there the accused and another woman Lakshmi Ammal. This P. W. 2 is stated to have known this accused for two years. On being questioned as to why he came there he stated that he wanted to have intercourse with a girl there. The accused is stated to have fixed up the engagement with Lakshmi Ammal for Rs. 10 and taken the marked currency note M. O. 1 and kept it tucked up in her waist. Then the accused is stated to have told P. W. 2 that he should wait for a little while as somebody was inside.

While this P. W. 2 and Ambujam (accused)' and Lakshmi Ammal were sitting there, the Circle Inspector (P. W. 7), the Sub-Inspector. (not examined), the town village Munsif (P. W. 4) and another are stated to have come there. The Circle Inspector asked P. W. 2 where the currency note was and P. W. 2 is stated to have told the Circle Inspector that it was with the accused. The accused was questioned by 'the Circle Inspector and she produced M. O. 1 from her waist. It is stated that at that juncture another girl inmate of the house Lakshmi Kutti is stated to have come out from inside the kitchen portion with P. W.

3. From the upstairs the prohibition Sub-Inspector (D. W. 1) who js also known to P. W. 2 is stated to have come out. P. W. 5 is stated to have also met the Circle Inspector when going out of the accused's house and while the Circle Inspector was coming in from the South Car Street.

The stories of P. Ws. 3 and 5 and D. W. 1 are as follows: P. W. 3 states that on the night in question he went to the house of the accused and paid Rs. 5/- to this accused and had intercourse with Lakshmi Kutti, that when he was with her he heard a noise and came out and was questioned by the Police and saw the Circle Inspector being given by the accused not only a ten-rupee note referred to above but also five one-rupee notes which this witness is slated to have given the accused for the hire of Lakshmi Kutti.

The version of P. W. 5 is that he is a ryot of Sikkalinarasayan village, 1 1/2 miles from Tirunelveli Town, and that on that night when he was coming from his fields he saw the accused with two girls sitting in her bouse and he hired through accused one of the girls whose name he does not mention and whom he does not identify for Rs. 10/- and paid that Rs 10/- to her and that on getting out he met the Circle Inspector and told him what had happened.

The story of D. W. 1 is that on the night he saw P. W. 3 going inside this house with a bag and that he suspected that P. W. 3 was carrying contraband liquor and followed him, that P. W. 3 told him that himself and his wife, whom he showed as Lakshmi Kutti, had come there after a cinema show that he had no contraband with him and that he went upstairs to see if anybody was there and as there was no one there he came down and met the Circle Inspector. This information is completed by the evidence of two other witnesses viz., P. W. 1 and P. W. 6.

P. W. 1 testifies that he resides in Tirunelveli Town and that the house bearing door Nos. 41 and 42 in Kanagaraya Mudukku Street belongs to one Pichaiammal and her daughter, that it has been, left in his possession with a direction that he might let out the house on rent and adjust the rent against a sum of Rs. 150 borrowed by the house-owners from him, that he let out the house to the accused, that he subsequently understood from others that she was running a brothel and he thought of asking her to vacate the house and before he could do so this case was charged. P. W. 6 spoke in examination-in-chief of his knowing that this house was being run as a brothel by this accused and in cross-examination his evidence degenerated into rank hearsay.

'The accused has been in that street for six months. Two months ago she occupied her present house. I have not found male visitors there. * * I have not visited the house of accused. I have only heard about her.'

3. The case for the accused is that she is being kept by a Police Constable and that it is he who has taken on rent the house in question, that she has not been running a brothel, that P. W. 2. has taken a loan of Rs. 20/- from her, that there has been ill-feeling about its nonreturn, that P. W. 3 is keeping a girl called Pappa and running a brothel, that he (P. W. 3) is giving false evidence to oblige the Police. that P. W. 4, the village Munsif, is a stock Police witness in cases of this nature and that he knows full well that she is being kept by a constable of Panavadali Station and that the house has been taken by him on rent and that P. W. 6 is a visitor of Pappa's brothel run by P. W. 3 and he is giving evidence to oblige P. W. 3 and that she has been falsely implicated. I have already referred to the evidence given by D. W. 1, the Prohibition Sub-Inspector.

4. On this evidence both the lower courts found that the prosecution has made out beyond reasonable doubt a case under Section 5(1) and Section 8A(1), Suppression of Immoral Traffic Act, 5 of 1930.

5. Section 5 of the Act lays down that any person who keeps or manages or acts or assists in the management of a brothel shall be punishable under the said section. The word 'brothel' is denned in Section 4(a) as meaning any house, room, or place which the occupier or person in charge thereof habitually allows to be used by any other person for the purpose of prostitution. Section 4(e) defines prostitution as promiscuous sexual intercourse for hire, Section 8A deals with punishment for living on the earnings of prostitution. It states that any person not below the age of 18 who knowingly lives, wholly or in part, on the earnings of the prostitution of another person shall be punished etc. etc.

6. Therefore we have got to see whether the requirements of these sections have been fulfilled in this case and secondly, whether the residual evidence of the trap-witness P. W. 2 is that of an accomplice and requires corroboration.

7. In order to fulfil the requirements of Section 5 there must be a house, room or place and secondly the occupier or person in charge thereof must habitually allow it to be used by any other person for the purpose of prostitution. In this case the first condition is fulfilled. But then in regard to the occupier or person in charge thereof, the evidence is not satisfactory. P. W. 1 was undoubtedly letting out the house knowing that it was used for purposes of prostitution. His story that he came to suspect it only before the Police raid cannot be believed. On the other hand the owners of the place who are women knowing the purpose for which it was going to be let have undoubtedly entrusted it to a man of despicable character like P. W. 1. But merely letting rooms to prostitutes or collecting rent from them is no offence -- 'Kamboji Bera v. Emperor' : AIR 1928 Cal 381 . See also -- 'Emperor v. Nandivada Visweswara Rao', 1935 Mad WN 1291 (B). A landlord who has let his house for occupation of a tenant cannot be said to be 'in charge' of the house and cannot be convicted: -- 'Venkat-eswara Rao v. Emperor', 1936 Mad WN 494 (C). The owner of a house doing his best to get rid of the prostitute is not punishable: -- 'Baton Ram v. Emperor', AIR 1934 Lah 619 (D).

It would be different if the lessee sub-letting the rooms to prostitutes collects rent daily by sitting outside and actively associates himself with the business of the brothel. Then a conviction would be proper (Ibid). Therefore P. W. 1 has not committed any offence. We have got to see therefore whether the accused was the occupier or person in charge thereof. In regard to this we have the case of the accused put by her in cross-examination and admitted by P. W. 4, the village Munsif, that she is being kept by a Police Constable of Panavadali Station and that it was that Police Constable who had taken the house on rent and that on the night in question he was sleeping in the verandah of the house and he was questioned by the Circle Inspector.

This Police Constable has not been examined and the reasonable inference to draw is that if he had been examined the case for the accused would have stood substantiated. The lessor P. W. 1 does not produce any receipt or any other thing to show that the house is being let to the accused and not to the Police Constable. It might be pointed out that though the house might have been rented out by the Constable this accused might be considered to be the occupier or person in

charge thereof. But mere occupation or being in charge is not sufficient. It has to be further proved that this place was being habitually allowed to be used by other persons by this accused for the purpose of prostitution.

In order to constitute a brothel the place must be resorted to by persons of both sexes for the purpose of prostitution who are strangers to the occupancy: -- 'Emperor v. Versimal Bahagiomal', 6 Sind LR 224 (E) referred to in -- 'Mt. Rahto v. Emperor', AIR 1925 Lah 146 (F). Otherwise, as for instance) where the brother of the accused and the brother's wife were living in the accused's house and the brother's wife was practising prostitution, held that the house did not constitute a brothel within the section and that the accused was not a brothel-keeper (Ibid).

Brothel-keeper availing himself of the supply of procuress is guilty of abetment. The brothel-keeper facilitates the prostitution and contemplates it: -- 'Emperor v. Vithabai Sukha', : AIR1928 Bom336 (G). The mere fact that the accused is the owner of an undivided half of the house in which her daughter was leading the life of a prostitute does not amount to abetment of the offence under Section 6(1) of the Bengal Act: -- 'Padmamani Dasee v. Emperor' : AIR1932 Cal457 . In this case we have no tangible or satisfactory evidence of this house being used as a brothel before the date of the raid.

I am not saying that the word 'habitually' would connote a long period of time. Residence for about (our days in a brothel would constitute 'living in' a brothel. The whole purpose of the legislation would be frustrated if temporary residence is excluded from the operation of the Act: -- 'Hemangini Dasi v. Emperor', : AIR1926 Cal944 (I). In this case an attempt was made to show that this place was being habitually used as a brothel.

But what does the evidence amount to? P. W. 7 the Circle Inspector frankly states that he came to know that this place is being run as a brothel only on 15-11-1951. There was no previous watch kept on the place to justify the inference that it was being run for sometime at least as a disorderly house. P. W. 6's evidence is a rank hearsay and worth nothing. P. W. 5 speaks to his visiting the brothel for the first and the last time only on the date of the raid and even at that his evidence is found to be untrustworthy. I do not believe for a moment that this petty ryot would have

gone to a prostitute paying Rs. 10/- for the first and the last time on that day.

On the other hand the cross-examination shows that this P. W. 5 is a creature of P. W. 3 who seems to be a rival brothel-keeper who has got to be in the good graces of the Police. P. W. 4, the village Munsif, does not know anything about the prior conduct of the accused or this house and in fact I have already shown how he agrees that Constable of the Panavadali Police Station was lying on the outer verandah that night and that the Circle Inspector talked to him and he has not the courage to deny what was suggested to him viz., that the Police Constable informed the Circle Inspector that the accused was his wife and the house was his.

P. W. 3's evidence is shown to be false by the evidence of the Prohibition Sub-Inspector D. W. 1. It is clear from the evidence of D. W. 1 that this man had come to the house for that night with that Lakshmi Kutti and the suggestion put to him in cross-examination that he is running a brothel and keeping the girl called Pappa seems to have a substratum of truth. The trap-witness of course pretends that he went to the house of this accused for the first and the last time on that day. He agrees however that he knows this accused for the last two years and that he does not owe her Rs. 20/-. On this it follows that out of the two girls who were said to have been with this accused that night Lakshmi Ammal was merely sitting with this accused and as regards the other Lakshmi Kutti the explanation of D. W. 1 is already there.

The only residual evidence supported by the marked currency note is that of P. W. 2. On this evidence it cannot be said that it has been satisfactorily proved by the prosecution that this accused was the occupier or person in charge of this house and that she was habitually hiring out other persons for the purpose of prostitution and which are pre-requisites for convictions under Section 5(1) and Section 8(A) -- 'Manomani Ammal v. Emperor', 1940 Mad WN 529 (J). The mere fact that a person is an inmate of a brothel does not warrant her conviction under Section 5(1) -- 'In re Pappa', AIR 1939 Mad 468 (K).

It requires something more than being a mistress as is proved to be the case in the case of Lakshmi Kutti and Kutti Chettiar and something less than being a public prostitute. Having a stray paramour would not constitute a woman a

prostitute -- 'Emperor v. Lalaya', AIR 1929 Bom 266 (L). In the case of a public prostitute she must be a woman who usually and generally offers her person to sexual intercourse for hire and who openly advertises and acknowledges her occupation by word of mouth, deportment or conduct: -- 'Municipal Committee, Delhi v. Mt. Moti Jan', AIR 1936 Lah 824 (M); -- 'Sunder Lal v. Emperor' : AIR1932 All26 and -- 'Moti Jan v. Municipal Committee, Delhi', AIR 1926 Lah 461 (O).

8. I have just now mentioned that the residual evidence to bring home the offence to this accused is that of the trap-witness P. W. 2. In his case we have got to see whether a trap-witness is an accomplice and secondly whether the evidence of that accomplice requires corroboration and to what extent. The term 'accomplice' is not defined in the statute. The Evidence Act itself is silent on the meaning of the word. The Penal Code does not even refer to it. The Criminal Procedure Code does not pretend to define it; it merely refers to the term 'accomplice' in the marginal note to Section 337, which reads thus: 'Tender of pardon to accomplice.'

9. Therefore we have to look to the case-law on the subject for the definition of the term 'accomplice'. An accomplice is a person who has concurred in the commission of an offence: per Maule J., -- 'In R. v. Mulling' (1848) 3 Cox Cri C 526 (P). The new Oxford Dictionary says that 'accomplice' may be spelt as 'a complice' meaning a partner in crime, an associate in guilt. The term 'accomplice' signifies a guilty associate in crime; or when the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused, he is an accomplice; per Subramania Ayyar J. in -- 'Ramasami Gounden v. Emperor', 27 Mad 271 (Q). This definition is based upon -- 'U. S. v. Neverson', 14 Cen Dig. Col. 1279 (R); and -- 'White v. Com.', 14 Cen Dig. Col. 1280 (S).

The Patna case of -- 'Kailash Missir v. Emperor', : AIR1931 Pat105 (T), the Oudh case of -- 'Jagannath v. Emperor', (U) and the Sind case of -- 'Chetumal v. Emperor', AIR 1934 Sind 185 (V) have adopted this definition of accomplice. The word 'accomplice' means a guilty associate or partner in crime or who in some way or other is connected with the offence in question, or who makes admissions of facts showing that he had a conscious hand in the offence: (U);-- 'Emperor v. Burn', 11 Bom LR 1153 (W).

The word accomplice has been held also as so wide enough as to include persons who are known to English law as accessories after the fact: -- 'Ismail v. Emperor', AIR 1947 Lah 220 (X). But every participation in a crime does not make a person an accomplice and it depends upon the nature of the offence and the extent of the complicity of the witness in it. There is one class of witnesses who go by the various names of informants, spies, detectives, decoys, 'agents provocateurs' and trap-witnesses who by general consensus of decisions now do not fall under the category, of accomplices.

10. This position has been arrived at in a long series of decisions the principle's of which I shall summarise below in the next paragraph. It is enough to point out here that the leading cases are those of the Privy Council -- 'Bhuboni Sahu v. The King' and -- 'Mahadeo v. King', AIR 1936 PC 242 (Z) and the Madras cases of 27 Mad 271 (Q); -- 'In re S. A. Sattar Khan', AIR 1939 Mad 283 (Z1); -- 'In re Addanki Venkadu', AIR 1939 Mad 266 (Z2); -- 'Venkatiah v. Emperor', 1937 Mad Cri C 27 (23); -- 'In re M. K. Thiagaraja Bhaga-vathar', AIR 1946 Mad 271 (24); -- 'Vyasa Rao v. The King', 21 Mad LJ 283 (Z5); -- 'Muttukumaraswami v. Emperor', 35 Mad 397 (26); -- 'Emperor v. Nilakanta', 22 Mad LJ 490 (Z7); -- 'In re B. K. Rajagopal', AIR 1944 Mad 117 (28); -- 'A. J. E. G. Caspersz v. The King', AIR 1949 PC 22 (Z9); the Calcutta cases of -- 'Hafizuddi v. Emperor' : AIR 1934 Cal 678 'Narain Chandra v. Emperor' : AIR 1936 Cal 101 'Nurul Amin v. Emperor' : AIR 1939 Cal 335 'Alimuddin v. Queen Empress', 23 Cal 361; and -- 'Dhanapati De v. Emperor', AIR 1946 Cal 156 (Z14); and the Bombay case of -- 'Kamaikhan v. Emperor', AIR 1935 Bom 230; and the Nagpur case of -- 'Ghudo v Emperor', AIR 1945 Nag 143 (Z16) and the Oudh case of (U); and the Lahore case of AIR 1947 Lah 220 (X); and the Patna case of : AIR 1931 Pat 105 (T).

11. The propositions which are deducible from these Indian cases are as pointed out by Mr. Y. H. Rao in his 'The Law of Accomplices and Approvers' (1951) as follows: The principals as defined in Sections 34 to 38 and 149, Penal Code, and abettors as defined in Sections 107 and 108, Penal Code, are the only classes of accomplices contemplated under the Indian law and there can be no direct or indirect concern in or privity to an offence outside the said provisions. An accessory after the fact, pure and simple who is not in any way concerned in the

original offence cannot be classified as an accomplice under the Indian law, whatever be the position under the English law.

There can be valid exceptions to the rule however as in the case of a subsequent possessor of a stolen property who may be an accomplice witness against the thief, even if he is an accessory after the fact within the meaning of the expression, for illustration (a) to Section 114, Evidence Act, permits presumption of theft from subsequent possession. The rule that an accomplice must sustain such a relation to the criminal act that he could be jointly indicted with the accused is subject to various modifications.

It is not necessary that the accomplice (as a witness) should so unreservedly confess to his complicity in the crime charged that in strict legal propriety he brings himself within the grip of the law, and, if he is tried for it, he could be convicted of it out of his own mouth. It is sufficient if, by his admissions of fact or conduct or both in the light of the surrounding circumstances, he lays himself open to grave suspicion that he had a conscious hand in the offence or was at least a consenting party to it, though the same may not be sufficient for his conviction if jointly tried along with the accused.

Nor is it necessary that the accomplice should be capable by law of committing the offence, and, if so capable, should be punishable at law for his or her complicity. Capability by law of committing an offence and liability at law for punishment for an offence are considerations developed by the authors of the Penal Code mostly on grounds of public policy and not as necessarily negating 'mens rea' in respect of acts covered by such considerations. A reasonable suspicion of 'mens rea' in respect of an alleged crime is the test of complicity of the accomplice in it and the measure of the untrustworthiness of a witness shown to be an accomplice is not in the least affected by considerations of the capability by law of committing the offence or the liability at law for punishment thereof, so that a course of relevant conduct prior to the crime alleged may well constitute a witness an accomplice especially in sexual offences.

There may be valid exceptions to the part of the rule requiring in effect a finding of suspected complicity before a witness could, be treated as an accomplice, such as

in a case of rape where consent is a valid plea and, therefore, in the absence of anything independent tending to negative consent, the issue on the accomplice character of the prosecutrix begs the very issue on the guilt of the prisoner. Paradoxical though it may sound, there may be an accomplice to an act which may ultimately be found to be no offence at law. The reasonable and desirable course in such a case would be to proceed on the tentative footing that the prosecutrix was an accomplice.

There may also be valid exceptions to the part of the rule requiring in effect the accomplice to be indictable jointly with the accused for the crime with which the latter is charged, such as in a case of theft, or receipt of stolen property with knowledge, where the law creates such a relation between the original and the subsequent crimes that both the offenders are jointly triable for their separate offences or for both in the alternative. Where the alleged receiver and the thief are not jointly tried, each may be an accomplice witness against the other. The fact that a person is motivated by a lofty object is no reason when he suggests or instigates the commission of an offence to remove him from the category of accomplice though it is so in the case of mere informants, spies or detectives who pretend to concur in the commission of the crime without suggesting or initiating the commission of the crime.

Then where participation of an individual in a crime is not voluntary but is the result of pressure and the element of 'mens rea' is entirely absent, he cannot be classified as an accomplice for he would then be a guilty participant in the crime and this also saves the trapwitness from being classified as accomplice. Finally, the law of accomplice's evidence does not recognise 'practically accomplice' or 'more or less accomplices' and 'that all persons coming within the category of accomplices cannot be treated as being on the same footing' and which expressions are all due to confusion of thought.

In every case the judge has got to decide as a preliminary issue whether a given witness is or is not an accomplice, and if he is an accomplice it is well established that there is no justification to record a conviction on the uncorroborated testimony of an accomplice in the absence of special or exceptional facts of the nature of the

two further illustrations to illustration (b) of Section 114 I. E. A. The extent of the corroboration should be as laid down in --'R, v. Baskerville', (1916) 2 KB 658; even if the given witness is not an accomplice the Judge bearing in mind that these trap-witnesses are not un-often dangerous and unreliable witnesses should scrutinise their evidence with great care and their testimony must succeed or fail on their own inherent strength or inherent infirmities.

12. The well-settled law now based upon a long line of decisions is that the evidence of spy, detective decoy or 'agent provocateur' who sets a trap cannot be clubbed as that of an accomplice requiring corroboration. This position has not been arrived at without judicial protests now and then. The earliest decision is -- 'Queen Empress v. Javecharam', 19 Bom 363 (Z18). It was held there that the act of a detective in supplying marked money for detection of a crime cannot be treated as that of an accomplice; but the action of a spy and informer in suggesting and initiating a criminal offence is itself an offence, the act not being excused or justified by any exception in the I. P. C.

This decision was considered and sharply differed from in -- Emperor v. Chatutbhuji Sahu', 38 Cal 96 (Z 19). In that case an Excise Deputy Collector deputed 'B' to purchase cocaine from the accused and B purchased it with money supplied by the Excise Sub-Inspector and handed the same over to the Deputy Collector. The accused was tried for illicit sale of cocaine. B in his evidence deposed to the purchase of cocaine from the accused under instructions from the Excise Deputy Collector, who stated that he gave such instructions and received the cocaine from him. The accused was convicted upon the uncorroborated testimony of 'B'. Held, that 'B' was not an accomplice and the conviction was good.

13. The learned Judges Holmwood and Doss JJ. reviewed the following English decisions. In -- 'Rex v. Despard', (1803) 28 H.S. T. 346 (Z20), where the accused was tried for high treason, Lord Ellenborough in his summing up to the jury said

'But there is another class of persons which cannot properly be considered as coming within the description or as partaking of the criminal contamination of an accomplice; I mean persons entering into communication with the conspirators with an original purpose of discovering their secret designs and disclosing them for

the benefit of the public. The existence of Such original purpose on their part is best evinced by a conduct which precludes them from ever wavering in or swerving from the discharge of their duty, if they might otherwise be disposed so to do.'

In -- 'Reg v. Dowling', (1848) 3 Cox CC 509 (Z21), in which the accused was tried on a charge of treasonable conspiracy, the Central Criminal Court held that a person who enters into a conspiracy for the sole purpose of detecting and betraying It does not require confirmation as an accomplice, although his evidence should be received by the jury with caution. In his summing up to the jury, Erie, J., adverting to the particular witness, said that,

'although he had been designated as spy or a traitor and an accomplice, if his object in entering into the confederacy was not to deceive or entrap any one, but to serve his country, he was entitled to praise instead of censure. If he only lent himself to the scheme for the purpose of convicting the guilty, he was a good witness, and his testimony did not require confirmation as that, of an accomplice would do : he was not an accomplice, for he did not enter the conspiracy with the mind of a co-conspirator, but with the intention of betraying it to the police. with whom he was in communication.'

In -- '(1848) 3 Cox Cri C 526 (P)', the Central Criminal Court held that a person employed by Government to mix with conspirators and pretend to aid their designs for the purpose of betraying them does not require corroboration as an accomplice, Maule J., in his direction to the jury, distinguished between two classes of witnesses. As to one class he said,

'they were persons who understanding, as they say, that there were dangerous designs entertained by certain Chartist societies; joined the meetings, and pretended to sympathise with the views of the conspirators, in order that they might communicate their designs to Government. They joined the scheme for the purpose of defeating it, and may be called spies.'

As to the other class he said

'on the other hand, they were really Chartists concurring fully in the criminal designs of the rest for a certain time, until getting alarmed) or from some other cause, they turned upon their former associates, and gave information against them. These persons may be truly called accomplices. Now as to spies, I know of no rule of law which declares that their evidence requires confirmation, nor any rule of practice which says that juries ought not to believe them.'

Later on, the learned Judge thus stated the reason for this distinction.

'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 the society; and if he does so, if he believes that there is no other method of counteracting the dangerous designs of wicked men, I can see no impropriety in his taking upon himself the character of an informer. 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 by pretending to concur with the perpetrators.'

This case was followed by the Court of Criminal Appeal (Lord Alverstone L. C. J. and Bigham and Walton JJ.) in -- 'Rex v. Bickley'. (1909) 2 Cri App Rep 53 (Z22); where the prisoner was convicted under 24 and 25 Vict. c. 100, Section 59 of having unlawfully supplied a noxious thing to a woman with intent to procure her miscarriage. The woman, who was not pregnant, acted under police instructions in order to trap the prisoner. It was contended on appeal that there was misdirection as no warning had been given to the jury that they should regard the evidence of the woman to whom the drugs had been supplied as that of an accomplice. The Court held that

'the fact that the woman was a police spy in no way invalidated her evidence, nor must her evidence be regarded as that of an accomplice.'

And proceeded to affirm that

'as the law stands at present, it seems established that a police spy does not need corroboration.'

14. The learned Judges also referred to a series of American decisions holding that one who as a spy or detective associates with criminals solely for the purpose of discovering and making known their crimes and who acts throughout with this purpose and without any criminal intent is not an accomplice and that it is immaterial that he encourages or aids the commission of the crime.

The rule laid down in (1803) 28 HST 346 (Z20) has been followed in a long and uniform current of decisions in America where it has been held that one who as a spy or a detective associates with criminals solely for the purpose of discovering and making known their crimes, and who acts through-out with this purpose, and without any criminal intent, is not an accomplice, and it is immaterial that he encourages or aids in the commission of the crime. See -- 'State v. Me Kean', 36 Iowa 343 (Z23); -- 'State v. Brownlee', 84 Iowa 473 (Z24); -- 'Wright v. State', 7 Tex. Ct, App. 574 (Z25); -- 'People v. Bolanger', 71 Col 17 (Z26); -- 'People v. Parrel', 30 Col 316 (Z27);-- 'Commonwealth v. Downing',- 4 Gray 29 (Z28); -- 'Commonwealth v. Baker', 155 Mass 89 (Z29); -- 'State v. Baden', 37 Minn 212 (Z30); -- 'People v. Noelke', 94 NY 137 (Z31);-- 'Campbell v. Commonwealth', 84 Penn 187 (Z32); -- 'O'Grady v. People', 42 Col 312 (Z33); and -- 'Grimm v. United States', (1895) 156 US 604 (Z34).

15. The learned Judges laid the following two ratio in regard to the assessment of evidence in such cases.

'Though the testimony of a spy does not stand in need of corroboration, in order to be acted upon, it is entirely for the Judge of fact to decide in each particular case what weight he will attach to this kind of evidence, the question depending upon the character of each individual witness. It may sometimes be difficult to draw the line of discrimination between an accomplice and a pretended confederate, such as a detective spy or decoy; but we think, that the line may be drawn in this way; -- If the witness has made himself an agent for the prosecution, before associating with the wrong-doers or before the actual perpetration of the offence, he is not an accomplice; but he may be an accomplice if he extends no aid to the prosecution

until after the offence has been committed.'

16. In 'In re Koganti Appayya', AIR 1938 Mad 893 (Z35) it was held that

'the motive of the person who instigates the commission of a crime is not the only determining factor to conclude whether the instigator is an accomplice or not. In other words, even if the object of the person who instigates another to commit a crime is to catch him in the act of committing the crime, instigation by him nevertheless amounts to abetment of the offence, and the abettor must be regarded as an accomplice when the object of the instigation is to make the offender commit the offence, and the person who was instigated actually commits the offence.

Even though such a person may not be regarded as an accomplice in the strict legal sense of the word, nevertheless the evidence of such person or persons should be viewed with caution. Where, therefore, the substantial charge against the accused is conspiracy to sell counter-feiting materials (to persons employed by the C. I. D. for detection of offences) the witnesses set on detection come under the category of accomplices and their evidence cannot therefore be accepted or acted upon in the absence of material corroboration.'

17. The Nagpur cases of -- 'Mohanlal Moolchand v. Emperor', (Z36) and -- 'Govinda Balaji v. Emperor', AIR 1936 Nag 245 (Z37) are on the same lines as 38 Cal 96 (Z19). Similarly are the Oudh case --'Bhuneshwari Pershad v. Emperor', (Z38) and the Lahore case of --'Mangat Rai v. Emperor', AIR 1928 Lah 647 (Z39). Even in Madras Panchapakesa Ayyar J. has struck the same note in -- 'In re M. S. Mohiddin' : AIR1952 Mad561 , wherein he has held that where traps are set not to initiate crimes e.g. to tempt a man to take a bribe when he never solicited directly or indirectly but to expose crimes and criminals, a trap is wholly laudable and admirable and adopted by every country without the least criticism of any honest man and that the officers taking part in the trap and the witnesses to the trap would in no sense be accomplices.

The Mysore High Court has followed these decisions in -- 'Basheeruddin Ahmed v. Govt. of Mysore', AIR 1952 Mys 42 (Z41); citing with approval passages from

Russell on Crimes and Misdemeanours, Vol 2 p. 2136 (1923 Edn.); Halsbury's Laws of England, Vol. 9 p. 222, and Taylor on Evidence, Vol. I, 1920 edn. p. 97.0 fully supporting this view point of trap-witnesses not being accomplices.

18. The Orissa decision of -- 'King v. S. N. Sing Rai' : AIR1951 Ori297 points out that the evidence of a spy does not stand in need of corroboration either as a principle of law or as a fundamental rule of practice necessary for safe administration of justice. It is always for the Judge to decide whether it is safe to rely and act upon a decoy witness. Each case depends upon its own merits. His partiality for the prosecution is a factor which can hardly be ignored. The character, position in life, and the social standing of the witness would go a great way in helping the judge to appreciate his evidence.

19. In such cases it has also to be borne in mind that for instance, to frame a false charge of gambling or soliciting is very easy to frame. So, as pointed out in -- 'Harilal Gordhan v. Emperor', : AIR1937 Bom385 (Z43), in a great many such cases the Police agents are as a rule unreliable witnesses. It is always in their interest to secure a conviction in the hope of getting a reward. Therefore, such evidence ought to be received with great caution and should be closely Scrutinised. But to hold that such evidence ought not to be admitted in courts of law would be to deprive the authorities of their weapon in securing the observation of enactments like the Excise or Suppression of Immoral Traffic Act etc. Therefore) the evidence of such witnesses should not be disbelieved only because of their role but should be tested and should succeed or fail by reason of their own inherent strength or weakness: -- 'In re Ramprasad', (Z44).

20. In this connection owing to the increasing uses of these decoy witnesses owing to the multiplicity of special enactments, which are coming into force connected with controls and rationing, Magistrates and Judges are becoming more restive and tend to brush aside such evidence as 'ipso facto' worthless. In fact in a recent decision -- 'Brannan v. Peek', 1948 1 KB 68 (Z45), Lord Goddard C. J. made severe observations disapproving the practice of police officers themselves committing offences in order to obtain evidence of offences by other persons. The learned C. J. remarked

'If the Police authorities have reason to believe that offences are being committed in a public house that is to say taking bets, it is right that they should cause watch to be kept by detective officers, but it is not right that they should instruct, allow or permit a detective officer or constable in plain clothes to commit an offence so that they can say that another person in that house committed in offence.'

But unfortunately as pointed out above owing to the increasing nature of the special enactments and the Impossibility of procuring evidence in any other way and the paramount necessity of putting down offences of this kind, the use of trap-witnesses has become widespread and indispensable and courts have got to do their duty by not brushing that evidence aside as 'ipso facto' tainted and worthless but submit it to close scrutiny, separate the truth from the falsehood and base its conviction upon reliable testimony.

21. So far as this country is concerned the employment of spies, 'agents provocateurs' and trap-witnesses is in accordance with the best traditions of Hindu and Muslim statecraft. I have dealt elsewhere at length with this aspect of administration of justice in pre-British India. (Magisterial and Police Guide, Vol. 1). It is enough to point out here that our historical literature is replete with references to the employment of such agents. Both the Epics of Ramayana and Mahabharata give extensive directions for the employment of such agents in the detection of offences and the promotion of justice.

Then coming to the age of law-givers, Dharma Sastra, Artha Sastra and Sukra-Niti devote separate chapters in regard to the employment of such secret agents. In the dramatic literature of the Gupta period the spy or the police agent is one of the important characters on the stage. The South Indian Kings and the Vizayanagar Emperors extensively made use, of such an agency in the maintenance of law and order and for the booking of offenders. These traditions, strengthened by the foreign experiences of the Muslims, continued in the administration of Sultanates of Delhi and Deccan and of the Moghuls.

22. It is enough if we extract here the information given in the Artha Sastra and the Tamil sacred Kural which are considered to be the most reliable expositions of Hindu statecraft. The following is the extract from the early history of Bengal by F.

J: Monahan, I. C. S.:

'For the prevention and detection of crime extensive use is made of spies, who in some cases act as 'agents provocateurs'. The collector-general (Samahartar) it is said, should employ throughout the country spies disguised as holy men (siddha) ascetics (tapasa) friars (Pravrajita), vagabonds, bards, jugglers (kuhaka), mystics (pracchandaka), astrologers (kartantika), fortune-tellers (Nai-mittika), Soothsayers (mauhurtika), physicians, lunatics, the dumb, the deaf, idiots, the blind, traders, artists, artisans, musicians, dancers, vintners, confectioners, and Sellers of cooked food. These men should make inquiry as to the character of villagers and 'adhyakasa', (i.e., private persons and officials of different departments).

If a person, is suspected of evil conduct, a suitable spy should be told off to shadow him. If the person suspected be a judge or commissioner (pradestr), the spy should say to him: 'My friend, so-and-so, has had a charge or claim brought against him. Please get him out of trouble, and accept a sum of money.' If the other agrees to the proposal, he may be denounced for corruption and banished. Or a spy may say to a 'gramakuta' (village head) or 'adhyaksa': 'This wealthy man of bad character has got into trouble. Let us take advantage of it to deprive him of his wealth.' If the official so approached agrees to the proposal, he may be denounced for extortion and banished.

A spy pretending to be implicated in a case, may tempt people with money to give false evidence. If they yield to the temptation they may be banished as false witnesses.

A person suspected of enamouring women by means of charms and spells may be offered money by a secret agent to gain the affections of some woman with whom the agent professes to be in love; if the former agrees, he may be denounced as a sorcerer and banished.

Similarly, a man suspected of poisoning may be offered money by a spy to poison some one, and, on his accepting, be banished as a poisoner.

Where a man is suspected of making false coin by reason of his purchases of metals and alkalis, and implements such as bellows, pincers, and stamps, and of his clothes and hands being soiled with ashes and smoke, a spy may enter his service as an apprentice and then denounce him, and he may be expelled.

For the special purpose of entrapping young men inclined to commit robbery and adultery, spies are to be employed who profess to be able, by means of a spell to escape capture, to disappear from view, to open closed doors, or to enamour women. They will entice the young men to a village and there, after pretending to open doors of houses and cause the guards to fall asleep by means of incantations, introduce the young men to women personating other men's wives.

Then the youths may be instructed in the art of incantation, and encouraged to test their power by plundering houses of articles previously marked. They may be arrested, either in the act of plundering, or afterwards while selling or mortgaging the marked property, or when they have been intoxicated with drugged liquor. When they have been arrested, information may be obtained from them about their past lives and their associates.

By similar devices, detectives, posing as experienced thieves, shall associate with thieves and cause them to be arrested.'

23. The following verses from the sacred Kural show the extensive use of these agents :

'Espionage and the invaluable science of sovereignty these two are rightly looked upon as the eyes of the sovereign (581).

He is a spy who passes for an ascetic or a devotee, enters all places, learns all secrets and never betrays himself whatever is done to him (586).

Confirm the truth of what is given by one spy by that which is given by another (588).

Let them be so handled that one spy does not know another; consider that as truth which three spies agree in saying (589).

Never reward the spy to the knowledge of others; if you do so, he will betray the secret to others (590).'

24. To sum up the foregoing evidence. We find that the requirements of Sections 5(1) and 8A (1), Suppression of Immoral Traffic Act, have not been made out by the evidence of any of these witnesses excepting the trap-witness P. W. 2 and the evidence of that witness is not that of an accomplice and does not require corroboration and can be made the basis of the conviction provided it is thoroughly reliable. On the other hand, in this case the evidence of that trap-witness shows that little reliance can be placed on him because he is found to be a creature of P. W. 3 and his version as to how he came to meet the Circle Inspector and lend himself to unravel the offence is incredible and his evidence is contradicted by that of D. W. 1.

In regard to the recovery of the marked currency note, there are two versions, viz., that of P. W. 2 that he gave the money to the accused for the purpose of hiring Lakshmi Animal and the version of the accused that the money was part payment towards a loan due from this P. W. 2, coupled with the fact that beyond giving the money nothing further has happened. Therefore; the evidence of this trap-witness subjected to scrutiny, is not found to be so reliable as can. be made the basis of a conviction.

25. In the result, the conviction and sentence of the learned District Magistrate of Tirunelveli and confirmed by the learned Sessions Judge of Tirunelveli are set aside and the accused is acquitted.

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