ELLIS WORK *ats.* POLICE.

[Appellate Jurisdiction (Jenkins, Acting C.J.) October 23, 1939.]

Evidence of accomplice—informer an accomplice—lack of corroboration—grounds for quashing conviction.

A native, Rupeni, took 12 bottles of beer to a police constable's house and informed the constable that he had purchased it from defendant. Subsequently he took the constable to defendant's premises where a further 40 bottles of home brewed beer were found in the compound. Charges of supplying liquor to a native and selling liquor without a licence were brought on the evidence of the native Rupeni, and the constable.

HELD.—(1) Rupeni was an accomplice so as to require corroboration of his evidence.

(2) Absence of corroboration in such cases may be grounds for quashing a conviction.

[**EDITORIAL NOTE.**—This case is distinguishable on the facts from the case of *Police ats. Leu Hop and Or.* [1939] 3 Fiji L.R.]

Cases referred to :—

R. v. Baskerville [1916] 12 Cr. Ap. 81.

R. v. Charavanmuttu [1930] 22 Cr. Ap. 1.

APPEAL AGAINST CONVICTION. The facts appear from the judgment.

A. D. Patel, for the appellant.

The Attorney-General, *T. T. Russell,* for the respondent.

JENKINS, Acting C.J.—This is an appeal brought under the Appeals Ordinance No. 22 of 1934[1] against convictions by the Magistrate, Nadroga on two counts under the Liquor Ordinance No. 25 of 1932.[2]

(1) Contrary to s. 66[2] that the appellant unlawfully supplied liquor to a native, and

(2) Contrary to s. 44[2] that the appellant unlawfully sold liquor without holding a licence authorising the sale thereof.

The grounds of appeal are :—

(1) That the conviction is erroneous in law inasmuch as it is entirely based on the uncorroborated evidence of an accomplice, and

(2) That the conviction is against the weight of evidence.

The facts shortly were that one Rupeni, a native, on the 4th June, 1939, took 12 bottles of beer to the house of one constable Akuila, stationed at Navua. The constable in giving evidence said :—

> "Rupeni wrote to me asking me if I wanted to drink beer. I replied I did. He brought "it to me at Lawaqa it was packed in a case."

The following day Rupeni went with the constable to the house of the appellant and on searching found 40 bottles of home brewed beer in the

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1 *R p.*
2 *Repealed. Vide Liquor Ordinance,* 1946, *ss.* 70 *and* 46.

defendant's compound, about 50 yards from his dwelling house. Rupeni in giving evidence said :—

"I got the beer from the defendant's place. He gave it to me himself. This was on "31st May. I was alone when I got it. I paid him 7s., balance of 5s. not yet paid, 12s. a "dozen. I got this beer about 8 p.m. Defendant took me to the hut where he kept the beer. "I took the beer to Constable Akuila".

Constable Savenaca in giving evidence said that he also went to the defendant's house and searched and in a little hut in defendant's compound there were 40 bottles there like that in court.

The appellant gave evidence and said "I did not sell or supply beer to Rupeni on the 31st May." He agreed that the bottles found in the hut in the compound were his.

On these facts it is clear that Rupeni is an accomplice. Mr. Patel in dealing with the rule of law concerning the evidence of accomplices cited *Halsbury's Laws of England*, 9th Vol., p. 222, paragraph 309, which reads as follows :—

"There is no doubt that the uncorroborated evidence of an "accomplice is admissible in law and that a jury can convict the "prisoner on it, especially where there is in question the evidence "of a person who is not so much an accomplice as a victim. But "there is a well-established rule of practice, which has become "virtually equivalent to a rule of law, by which judges warn juries "that it is dangerous to convict a prisoner on such evidence when "it is uncorroborated."

and paragraph 311 :—

"Evidence in corroboration of an accomplice's evidence must be "independent testimony which affects the accused by connecting, "or tending to connect, him with the crime. In others words, it "must be evidence which implicates him, that is, which confirms "in some material particular not only the evidence that the crime 'has been committeed, but also that the prisoner committed it. The "nature of the corroboration will necessarily vary according to the "particular circumstances of the offence charged, but it must tend "to show that the story of the accomplice that the accused has "committed the crime is true."

In dealing with the effect of absence of corroboration Mr. Patel cited paragraph 313 :—

"The Court of Criminal Appeal will quash a conviction on the "uncorroborated evidence of an accomplice if there has been no "warning to the jury and in fact no actual corroboroation, espe-"cially if matters which are not corroboration are referred to as "corroboration. The Court of Criminal Appeal will also quash "a conviction on uncorroborated evidence, even if a proper warn-"ing has been given, to the jury, if it thinks that the verdict is "unreasonable or that it cannot be supported having regard to the "evidence."

The learned Attorney-General agrees that this paragraph 313 applies to this case. He agrees that there is no corroboration of the evidence

of the accomplice Rupeni, but in arguing in support of the conviction he cites the same volume of *Halsbury's Laws*, paragraph 401 which reads as follows :—

> " to establish that a verdict is unreasonable or cannot be sup-
> " ported having regard to the evidence, it is not sufficient merely
> " to show that the evidence given at the trial only amounted to a
> " weak case against the appellant, or that the judge of the court
> " of trial had some doubt about the sufficiency of the case and has
> " given a certificate on that ground, though that is a material
> " factor in the case. If there was evidence to support the con-
> " viction it will not be quashed even though the members of the
> " Court of Criminal Appeal themselves feel some doubt about it.
> " The verdict must be such that no reasonable jury could properly
> " find upon the evidence given. The Court of Criminal Appeal
> " will not usurp the functions of the jury."

The learned Attorney-General referred to the case of *Rex v. Baskerville* [1916] 12 Cr. App. Rep. 81, and in the judgment of the Lord Chief Justice, Lord Reading, quoted the following passage :—

> " In *Reg. v. Birkett* [1839] 8 C. & P. 732, the prisoner was
> " indicted for receiving stolen sheep. The evidence consisted of
> " the statement of an accomplice, and to confirm it, it was proved
> " that a quantity of mutton corresponding in size with the sheep
> " stolen was found in the prisoner's house. Patterson J. said : If
> " the confirmation had merely gone to the extent of confirming
> " the accomplice as to matters connected with himself only, it
> " would not have been sufficient, . . . but here we have a
> " good deal more ; we have a quantity of mutton found in the
> " house in which the prisoner resides, and that I think is such a
> " confirmation of the accomplice's evidence as I must leave to the
> " jury."

In the case before us bottles of liquor were found in the house of the appellant. That, however, the learned Attorney-General does not argue is corroboration, but Mr. Patel argues that it might have been considered by the Magistrate to have been corroboration. A further point in the evidence to which Mr. Patel refers is that concerning the way in which the matter came to the notice of the police. According to the evidence Rupeni bought the beer from the appellant and then took it to the police. There is no explanatory evidence on this point and it undoubtedly makes the whole matter one of some suspicion. It throws doubt on the story of the accomplice Rupeni. What was his motive for taking the liquor to the police ? There is a suggestion in the evidence given by the appellant. Under cross-examination he said :—

> " I cannot tell why he should swear on oath against me in Court, we have had a row, he
> " has been there quite often since the row, to drink grog ".

In the case of *Rex v. Charavanmuttu* [1930] 22 Cr. App. Ref. 1, Lord Hewart, Lord Chief Justice, at the end of his judgment said :—

> " We have come to the conclusion that, in these circumstances,
> " the conviction ought not to stand. There was in substance no
> " corroboration, and there was some ground for the suspicion that
> " someone was aiming at the accused as the result of a conspiracy

"to trump up a charge against him. More it is not necessary to "add. There are some aspects of the case which might call for "observation, but it is enough to say that we have come to the "conclusion that this verdict was an unsatisfactory one."

I have come to a similar conclusion in this case. There is in substance no corroboration and there is some ground for suspicion that this is a trumped up charge. The appeal accordingly is allowed and the conviction quashed.

CHANG WAH BEU *ats*. POLICE.

[Appellate Jurisdiction (Corrie, C.J.) January, 6, 1940.]

Liquor Ordinance 1932—*s.* 44[1]—*evidence disproving licence called by Court after close of case for prosecution—whether an irregularity.*

At the close of the case for the prosecution in a summary trial for an offence under the liquor Ordinance 1932 counsel for the defence submitted that there was no case to answer as the prosecution had failed to prove that the defendant had no licence to sell liquor. The District Commissioner decided to call evidence himself and his clerk gave the necessary evidence.

HELD.—The course taken by the District Commissioner was not irregular.

[**EDITORIAL NOTE.**—*Vide Ah Ben ats. Police* [1940] 3 Fiji L.R. as to onus of proof.]

Cases referred to :—

(1) *R. v. Harris* [1927] 2 K.B. 587 ; 96 L.J.K.B. 1069 ; 137 L.T. 535 ; 43 T.L.R. 774 ; 28 Cox. C.C. 432 ; 2 Cr. Ap. 86.

(2) *R. v. Crippen* [1911] 1 K.B. 149 ; 80 L.J.K.B. 290 ; 103 L.T. 704 ; 27 T.L.R. 69 ; 22 Cox. C.C. 289 ; 5 Cr. Ap. 255 ; 14 Dig. 291.

(3) *Hargreaves v. Hilliam* [1894] 58 J.P. 655 ; 33 Dig. 344.

APPEAL against conviction. The facts appear from the judgment.
R. Townsend, for the appellant.
The Attorney-General, *E. E. Jenkins*, for the respondent.

CORRIE, C.J.—This is an appeal against a conviction of the appellant by the Commissioner's Court Lautoka for having on the 6th March, 1940 at Lautoka, sold liquor without a licence, contrary to s. 44 of Ordinance 25 of 1932.

The first ground of appeal is that the conviction was against the weight of evidence, the appellant alleging that while there was evidence of an attempted delivery, there was no reliable evidence of a sale.

As to this I am satisfied that there was evidence before the Commissioner which, if believed by him, was sufficient to prove an actual sale of liquor by the appellant.

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1 *Rep. Vide now Liquor Ordinance*, 1946, s. 46.