

POLICE v. SIONE LIOSA.

(Criminal Appeal : Higginson J. Nuku'alofa, 6th June, 1950)

Criminal charge — Evidence of Accomplice — Need for Corroboration — Nature of Corroboration — Accomplice can not corroborate accomplice — order of calling Defence Witnesses.

The accused was charged with stealing a cow valued at £20. At the time of the alleged theft the accused was serving a prison sentence. Evidence of at least two of the witnesses directly implicated the accused, but these two were accomplices. The Magistrate was not satisfied that there was any corroboration of the evidence of the accomplices and acquitted the accused.

The Police appealed.

HELD. The only evidence implicating the accused was that of an accomplice and this evidence was not corroborated. The accused must therefore be discharged.

The facts appear in the judgment.

Hama appeared for the Appellant (Police).

Finau appeared for the Respondent (Accused).

C. A. V.

HIGGINSON J.. The evidence of Fakasi'i'eiki completely involves the accused in this theft but Fakasi'i'eiki being an accomplice his evidence requires corroboration. Such corroboration does not require confirmation by independent evidence of everything the accomplice relates, as his evidence would be unnecessary if that were so. What is required is some independent testimony which affects the accused by tending to connect him with the crime; that is, evidence, direct or circumstantial, which implicates the accused, which confirms in some material particular not only the evidence given by the accomplice that the crime has been committed, but also the evidence that the accused committed it. The accused's own evidence may afford the necessary corroboration, as may also the conduct of the accused in the circumstances of the particular case.

The evidence of an accomplice can not be corroborated by the evidence of another accomplice.

In the present case there is ample evidence to prove that the crime was committed. That the cow was killed at Hu'atolitoli. That shortly before the cow was killed a man was seen riding a brown horse near where the cow had been tethered. That this horse was later seen at Hu'atolitoli and Tevita Moheloa (the owner of the cow) says that judging what he knew of this man's face this man was the accused and Tevita was in a position to know the accused as he said "I used to see the accused when he used to come with prisoners on the road." Both Tevita and Mota Kolisi say that the man was wearing long white trousers and a short sleeved white shirt. Mele thought he was a prisoner but could not recognise him again.

It was bright moonlight.

Fakasi'i'eiki describes the same cow and chain and says the accused wore white trousers.

The evidence so far shows that a man, believed to be the accused was seen riding a horse, later seen at Hu'atolitoi, in the vicinity of the cow about 9 p.m. on 3/8/49. This shows that apparently a prisoner was riding near the cow and he might have been the accused, but it does not prove that the accused did anything to the cow.

On the 5th Constable Manitisa saw the accused and Saia 'Ahau on a cart in which was a bucket of fat. The constable said it was cow fat but the accused said it was pig fat. All meat and fat is alleged by witnesses to have come from Salimo whose birthday it was said to have been. The truth about this birthday never appears to have been questioned or surely there would have been some investigation.

The only other witness is Warder Kuli Tonga whose evidence for obvious reasons can not be relied upon.

In my opinion there is insufficient evidence to corroborate the accomplice and therefore the appeal is dismissed.

I would point out, for the information of the Magistrates, that the correct practice is for the accused to first give his evidence and then call his witnesses. He should not be allowed to call his witnesses and then give his evidence.
