

ROTHWELL J. April 1945 1946 22, 25, December; 16 January. ROTHWELL J.

Prosecution for theft - possibility of other persons giving evidence being accomplices - Court exercising care in considering evidence - corroboration.

Where in a criminal prosecution evidence is given by persons who (though not subjected to any charge) may be treated as accomplices, the Court must exercise caution in considering the evidence as a whole to ensure that corroboration of the matters alleged against a defendant is forthcoming from a source independent of the evidence of such persons.

Defendant convicted.

Sub-Inspector Kruse, for Police.  
Phillips, for defendant.

Cur. adv. vult.

ROTHWELL J.: This was a prosecution for theft of a bale of ticking (which will be referred to in this judgment as "the bale" or "the ticking") against the defendant Jamieson and also against William Stowers and Pale Tagaloa. Stowers pleaded guilty and is serving a term of imprisonment, and at the conclusion of the prosecution case I dismissed the information against Pale as the sum of proof against him had not been discharged. Judgment in Jamieson's case was reserved so that justice might be done in giving full consideration to the effect of the clear status of William Stowers as an accomplice and the suggestion made by Mr Phillips for the defendant that all the Union Company clerks in the shed were aware that something irregular was going on and that they must also be treated as accomplices although they are not subjected to any charge. In order therefore to give the defendant every possible chance, I propose to treat the evidence of all these persons with considerable reserve and to look for corroboration from other sources if possible.

A considerable amount of evidence was directed to credibility of the various witnesses and is not otherwise important. Much of this evidence related to proof of actual dates of various happenings but in my view the precise dates are not a matter of great moment.

Mr Peterson deposed to having received the ticking at the end of July, but that it had been lying in the Customs shed awaiting delivery for about a fortnight when he sold it to E.A. Coxon and Company Limited through the agency of the defendant. Mr Heise, who was then Acting Manager of E.A. Coxon and Company Limited, gave evidence that on August 13th, he wrote the Company's cheque for the amount required to take up Peterson's draft, and accordingly the ticking on that day became the property of E.A. Coxon and Company Limited.

The next clear evidence from persons who cannot be regarded as in any way involved is from Mr Peterson and Mr von Reiche that about October 21st, they searched in the Customs shed and in the Customs bond as well as the Union Company bond, and that the ticking on that date was not to be found.

The Chief Clerk of the Union Company in charge of the shed and also his assistant gave evidence that the ticking had arrived on July 29th and had been received into the shed but that there was no record of its having left the shed, and that there was no inquiry concerning the ticking until the visit of Mr Peterson and Mr von Reiche on October 21st.

Subsequent inquiries and investigations by the Police revealed that Ah Mau and several other Chinese associated with him had substantial quantities of ticking answering to the description and bearing the quality number and other markings of the missing bale. They all said that they had bought the ticking in their possession from Mr Meredith of C.F. Nelson and Company Limited, but Mr Meredith gave evidence that he had not sold any ticking of that description to any of the Chinese, nor had he in fact

had any ticking of that description in stock for the last year. The prosecution gave evidence that a check had been made on all the main stores and no ticking answering to the description of the stolen bale other than the bale itself had come into the Territory except in the possession of Messrs Charles Bartley and Son Limited which was all fully accounted for.

It is clear, therefore, from the combined effect of these pieces of evidence that the ticking was stolen by some person and removed from the Customs shed and into the possession of Ah Mau and other Chinese on some date between August 13th and October 21st.

I now pass to a consideration of the evidence which would tend to implicate the defendant, Jamieson. Firstly there is the evidence of William Stowers, who made the astonishing statement that defendant came to him and "asked if I could get something to get some money for us". Stowers then said he went to get the key of the bond, opened the bond and found a bale of ticking marked S.A.P. He then told his assistant that if defendant called for the bale it was to be delivered to him and that he, Stowers would make out a release docket for it. He did in fact make out a bogus order dated October 3rd 1958 and this order was produced in evidence. He does not testify to the actual removal of the ticking because he was not there when it was taken. Now the effect of this evidence is to inculcate the defendant in respect of a theft of a piece of cargo selected at random by the witness without any assistance or suggestion from the defendant as to the selection. Stowers said that at no time did he see any bill of lading or other document describing the ticking which he took; that there was no prompting or suggestion from the defendant, and that the selection was made from some 50 or 60 parcels in the locker at that time. He invites the Court to believe that this selection resulted in a choice of a bale of ticking which had in fact been bought by the defendant's employer company and had been lying in bond unclaimed for nearly two months. In view of the fact that this improbable story appears to be intended to exculpate the defendant in some measure, the rest of it (apart from the method of selection) can be accepted as being probably true.

The other evidence tending to fix guilt on the defendant is that of Iosa, Fuli, Saipele and Sam Frucan. These are all clerks employed by the Union Company in the shed where the ticking was stored, and they all say that early in October, the defendant came and took the ticking on a hand trolley to the door where it was loaded (according to the evidence of Fuli, Saipele and Sam Frucan) on to Ah Mau's station waggon.

Defendant's explanation was that on October 3rd he picked up a case of aerated water and sundries and this was proved by the evidence of Mr Stanley who produced the delivery order for the goods in question. It is suggested, therefore, by the defendant that what was picked up on Ah Mau's station waggon was an innocent and lawful consignment of goods and not the stolen ticking. This, however, does not establish that there was no other collection that day.

The case therefore, against the defendant depends largely on the evidence of the clerks in the shed who all had some suspicion that something irregular was taking place. To give the defendant every chance therefore, this evidence should be treated with some reserve and corroboration should be looked for from some other source.

According to his own evidence the defendant bought the ticking by paying the liability on the draft and collecting the papers on August 13th. He then says that after two or three days (during which he was waiting for a delivery order from Macdonald and Company) he went to pick up the ticking and it was not to be found. He was told it might be in the bond. He then took the delivery order away, put it in the strong room of his employer and forgot about it. He says that when Mr von Reiche returned over two months later and asked about the missing ticking, he and Mr von Reiche together went to the Customs shed to look for it. He says he had taken no action in the meantime to find out where the bale had gone to. His evidence and that of Mr Heise and Mr von Reiche establish that he is a shipping clerk of some years experience and that this is his sole work with B.A. Coxon and Company Limited but "not exactly a full time job".

In answer to my final question, the defendant admitted that he was aware that daily charges accrued on bonded goods.

In my view, an experienced shipping clerk, who has no other functions to discharge in his employment, and who is aware that goods in bond are accumulating additional charges so long as they are left there, would, having completed the purchase of goods in bond by payment of over £100 be anxious to uplift the goods at the earliest possible moment. On presentation of the documents and on being told that the goods were perhaps in bond, he would insist upon their being immediately found and handed over in order to avoid further charges. He would certainly not allow the matter to drift with charges accruing daily for over two months until inquiries were made by his employer returning from overseas.

I do not believe his story of forgetfulness. His actions during the period of more than two months are not consistent with an innocent explanation. This factor in conjunction with the evidence of opportunity and to some extent of incentive is sufficient to satisfy me that the evidence of Fuli, Saipole and Sam Fruean is true. Defendant will be convicted.