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POLICE
v.
KYRIACOS SOFOKLI.

[THOMAS, AG.C.J., AND FUAD, J.]

POLICE

v.

KYRIACOS SOFOKLI AND ANOTHER.

Criminal Law—Corroboration of an accomplice's testimony—Corroborative evidence of accomplice's wife—The Cyprus Courts of Justice Order, 1927, *Clause* 205 (6), *as enacted by Law* 45 *of* 1934.

(*Criminal Appeal No.* 1703.)

The appellants were convicted by the Magisterial Court of Limassol (Case No. 175/38) on evidence to the following effect:—

One A.D. gave evidence against them to the effect that they came to his house near midnight bringing a ewe, which they slew in his stable, and that on the following morning the second appellant came and asked what he had done with the meat, to which A.D. answered "we hid it", whereupon the second appellant went away. Shortly afterwards the sergeant found the skin and carcass of a ewe in A.D.'s house. His wife gave evidence confirming her husband about the nocturnal visit with the ewe but without specifically mentioning the first appellant. She said her husband brought the meat into her house; that the second appellant came in the morning and told her to hide it; and that the police came and found it. Another witness, the sergeant, met A.D. about midnight near his house after the appellants' alleged visit and talked with him and went away. In the morning he noticed two foot-prints of two men and a sheep leading to his yard and sheep's wool on the bushes; so he went in and found the meat and skin. There was also the evidence of one E. to the effect that he saw the second appellant in the morning in A.D.'s yard. The trial judge regarded A.D. as an accomplice and treated his wife's evidence as corroborating him. The foot-prints of two men and a sheep leading to his yard and E.'s evidence were also regarded by him as corroborating the accomplice's testimony.

Held, (1) that the nature and extent of the evidence needed to corroborate an accomplice's testimony is a question of law;

(2) that the evidence in corroboration must be independent evidence implicating the accused person in the commission of the crime, in accordance with the rule in *R.* v. *Baskerville* (1916), 25 Cox at p. 531;

(3) that a wife cannot corroborate her accomplice husband if he gives evidence at the trial.

Cr. Tornaritis for the appellants:

The only evidence against the appellants is that of the accomplice, who is not corroborated save by his wife; but a wife cannot corroborate her accomplice husband if he gives evidence at the trial: *R.* v. *Neal*, 7 C. & P., 168. The other evidence in the case does not implicate the appellants and is therefore not corroborative at all: *R.* v. *Baskerville*, 25 Cox, 529. The English authorities must be looked at in interpreting the local provision on corroboration in Law 45 of 1934.

S. Pavlides, Crown Counsel, for the Crown:

R. v. *Neal* has been discredited in *R.* v. *Willis* (1916) 1 K.B., 1933. Latter case establishes that where the corroboration comes from the wife of an accomplice the jury has to be cautioned by the judge. In Cyprus there are specific provisions in regard to the relationship between husband and wife in criminal cases where it differs from the general law. There is no principle in force in Cyprus by which, for purpose of corroboration, husband and wife are one. C.C. Code, sections 19 and 24. Clause 204 of C.C.J.O., 1927: wife not a compellable witness against husband. Nothing in Cyprus law by which one accomplice is excluded from corroborating another. Court found that the wife was not an accomplice. If the wife was not an accomplice, the Court below could have acted on her evidence alone. Even if the evidence of the wife cannot be looked upon as corroborative evidence, it is legitimate to consider the evidence of the other two witnesses as corroboration.

THOMAS, Acting C.J.: The two appellants were convicted by the Magisterial Court at Evdhimou of receiving a ewe knowing it to have been stolen. They appeal from that conviction on several grounds, only one of which was argued, viz.: that the evidence of the accomplice was not corroborated. The evidence against the accused was that of A., an undoubted accomplice, who was present late at night at his *mandra* with the two accused, when the animal was killed, and who hid the meat in his house. A.'s wife said the two accused came to their house late at night, and that they and her husband went to their stable and killed the animal. She said further, as her husband did, that accused 2 came to their house in the morning shortly before the Police came and found the meat and skin. The Police officer who found the meat stated he saw two foot-prints of two men and a sheep coming to the yard of A. There was also a further witness who saw accused 2 enter A.'s yard in the morning.

There being no judgment the case was remitted to the Magistrate who reported that he treated A. as an accomplice but not his wife. That he considered the evidence of the accomplice, A., was corroborated by the evidence of (1) his wife, (2) of the foot-prints, and (3) of the witness who saw accused 2 entered A.'s house shortly before the meat was found by the Police.

The main question to be determined in this appeal is: Can the evidence of the wife of an accomplice who gives evidence be treated in law as corroborating that of her husband ? By virtue of the Evidence Act, 1935, the English law of Evidence applies in Cyprus except in so far as other provision has been made here by statute.

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The only provision that has been enacted here relating to accomplices is that contained in section 8 of the Courts of Justice Order, 1927 (Amendment) Law, 1934, which is as follows:—

"*Clause* 205.—(6) No person shall be convicted of an offence upon the evidence of an accomplice unless such evidence is corroborated by some other material evidence which, in the opinion of the Court, is sufficient to establish the accuracy of the evidence of such accomplice."

This deals with one particular point of the law of Evidence regarding accomplices, leaving the rest of the law on this subject to be governed by English law. The clause set out above must in my view be interpreted in the light of the English law relating to the evidence of accomplices.

The uncorroborated evidence of an accomplice is admissible in England, but for more than a century it has been a rule of practice, which the Lord Chief Justice in *Baskerville* (1916) 2 K.B. at p. 663, said had become virtually equivalent to a rule of law, requiring judges to warn juries of the danger of convicting upon the uncorroborated evidence of an accomplice. Where a judge fails to warn the jury a conviction will be set aside by the Court of Criminal Appeal.

What evidence is capable of amounting to corroboration always appears to have been treated by the Courts as a question of law, *e.g.* it has been laid down as a rule of evidence that the evidence of one accomplice cannot corroborate that of another (*R.* v. *Noakes*, cited in judgment in *Baskerville* at p. 664). It is likewise a rule of evidence that corroboration of an accomplice's evidence as to one prisoner is no corroboration of his evidence as to the other. These rules, being part of the English law of Evidence, apply in Cyprus.

In the case of *R.* v. *Noal* the judge withdrew the case from the jury on the ground that the only corroboration of the accomplice's evidence was that of his wife. In *R.* v. *Willis* (1916) 1 K.B. 933 at p. 936, the Court of Criminal Appeal held he was wrong, and that he should have left the case to the jury after warning them of the danger of convicting upon the accomplice's evidence where corroborated only by the wife. Under English law the evidence of the wife of an accomplice is treated in just the same way as an accomplice's evidence, and the jury must be warned of the danger of convicting upon it. It has never been definitely laid down by any decision that the evidence of a wife is not considered as corroborating that of an accomplice husband who gives evidence, but this is stated to be the law of England by the highest

authorities; Halsbury's Laws of England (Hailsham Edition), Vol. 9, p. 233; Taylor on Evidence (11th Edition), p. 664; Archbold (28th Edition), p. 474; and Best on Evidence (12th Edition), p. 163.

In the case of *R.* v. *Pouri & others* (14 C.L.R. 121 at p. 124) the Court said: "Clause 205 does not state that the corroboration shall be evidence implicating the accused. . . . . And this language has received judicial interpretation in *R.* v. *Neocli Antoni* (7 C.L.R. 63) deciding that the corroborative evidence required by the clause need not actually implicate the accused in the commission of the crime."

The question whether the corroborative evidence must implicate the accused was not argued in *R.* v. *Pouri*, and the Court contented itself by saying that this point had already been decided by two earlier decisions in 1902 and 1907—*R.* v. *Ioannis Haji Nicola*, 6 C.L.R. 5; *R.* v. *Neocli Antoni*, 7 C.L.R. 63.

In the latter case, which was a charge of being in unlawful possession of firearms and the headnote of which says, "It is not necessary that the corroborative evidence should actually implicate the accused in the commission of the crime. It is sufficient if it is of such a nature as to satisfy the Court to the accuracy of the principal witness"; Tyser, C.J., following the earlier said: "It is not necessary that every part of a witnesses's story should be corroborated," and he found there was "other material evidence" sufficient to establish the accuracy of the principal witness's story. Bertram, J., thought the finding of the gun in the place indicated confirmed the principal witness's story in a substantial point. He said: "But the effect of previous decisions of this Court seems to be that the corroborative evidence need not necessarily implicate the accused".

The judgment in the earlier case was: "The Court held that it was not necessary that every part of a witness's evidence should be corroborated by other material evidence". No reasons were given for this opinion. The basis of the opinions of Tyser, C.J., and Bertram, J., appears to have been that there was other material evidence which could satisfy the Court that the principal witness's story was true. A few months after the decision of *R.* v. *Pouri* I had occasion to look more fully into the meaning and scope of corroborative evidence, and after a careful consideration of all the authorities I expressed in a written judgment the opinion that evidence cannot be corroborative unless it connects the accused with the crime. The new clause 205 and the old are not satisfied by the presence of "other material evidence which etc. . . . . ." The

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clause says " no person shall be convicted of an offence upon the evidence of an accomplice unless such evidence is *corroborated*. . . . ." This involves two questions: (1) Is there corroborative evidence, and (2) is it sufficient to establish the accuracy of the accomplice's evidence. The first thing to be determined therefore is not whether there is " some other material evidence which is sufficient to establish the accuracy of the evidence of such accomplice " but whether the other evidence amounts to corroboration, for, unless it does, there cannot be a conviction.

In considering this question the Court of Criminal Appeal (consisting of Lord Reading, C.J., Scrutton, Avory, Rowlatt, and Atkin, JJ.) in *R.* v. *Baskerville*, (1916) 2 K.B. 658 at p. 665 said: " If the only independent evidence relates to an incident in the commission of the crime which does not connect the accused with it, or if the only independent evidence relates to the identity of the accused without connecting him with the crime, is it corroborative evidence ? " The Court cites with approval the opinion of Lord Abinger in *Reg.* v. *Farler*, 8 C. & P. 107: " Corroboration ought to consist in some circumstance that affects the identity of the party accused. A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all. . . . . It would not at all tend to show that the party accused participated in it ". After a careful consideration of all the authorities, and with the object of settling the law on the question the Court in *Baskerville* declared the law to be as follows: " We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that a crime has been committed, but also that the prisoner committed it. . . . . It would be in high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, that that it was committed by the accused." (P. 667.) This is the Court's answer to the question " What is corroborative evidence ". From the passages cited it is quite clear that in the opinion of the Court, following that of Lord Abinger, unless the evidence connects the accused with the crime; and shows that he participated in it, it is not corroborative.

Have the greatest respect for the two distinguished members of this Court who thought that there was no necessity for the corroborative evidence to implicate. These decisions were given in 1902 and 1907, long before *Baskerville* which review all the authorities on the subject. Had they been after *Baskerville* I think their decision would have followed that case.

The question is a very important one in our criminal law. I think the framers of the Order in Council of 1882 showed a deep appreciation of the nature of evidence in this country when they laid it down that no one should be convicted upon the evidence of a single witness unless such evidence were corroborated. I much regret that this wise provision has been removed from the Statute Book and I hope it will later find its place there once more. It is an absolutely necessary safeguard against fabricated cases and false evidence, both of which are a daily occurrence in the Courts of this Colony.

For the reasons set out above I think this appeal should be allowed, and the convictions set aside.

FUAD, J.: In this case the appellants were found guilty of being in possession of a ewe reasonably suspected of being stolen. One Avraami Dionyssiou gave evidence against them to the effect that they came to his house near midnight bringing a ewe, which they slew in his stable, and that on the following morning the second appellant came and asked what he had done with the meat, to which Dionyssiou answered "we hid it", whereupon the second appellant went away. Shortly afterwards the sergeant found the skin and carcass of a ewe in Dionyssiou's house. His wife gave evidence confirming her husband about the nocturnal visit with the ewe but without specifically mentioning the first appellant. She said her husband brought the meat into the house; that the second appellant came in the morning and told her to hide it; and that the police came and found it. Curiously enough the sergeant met Dionyssiou about midnight near his house after the appellants' alleged visit and talked with him and went away. In the morning he noticed two foot-prints of two men and a sheep leading to his yard and sheep's wool on the bushes; so he went in and found the meat and skin. There was also the evidence of one Elia to the effect that he saw the second appellant in the morning in Dionyssiou's yard.

Upon inquiry made of the trial judge we were informed that he regarded Dionyssiou as an accomplice and treated his wife's evidence as corroborating him. The foot-prints of two men and a sheep leading to his yard and Elia's evidence were also regarded by him as corroborating the accomplice's testimony.

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The question in this appeal has turned upon the construction of para. (6) in the new clause 205 of the C.C.J.O., 1927, as re-enacted by Law 45 of 1934. This clause reads as follows:—

"No person shall be convicted of an offence upon the evidence of an accomplice unless such evidence is corroborated by some other material evidence which, in the opinion of the Court, is sufficient to establish the accuracy of the evidence of such accomplice."

The argument for the Crown has been that this paragraph does not require corroboration implicating the accused or impose any restrictions in regard to the source of the corroboration: any evidence purporting to be corroborative satisfies the paragraph, and any witness may give such evidence in corroboration; all that is needed is that the trial Court *qua jury* should be satisfied of the accomplice's veracity. In support of this argument it was pointed out that the words "implicating the accused", though present in para. (5) of the clause and in sections 144 and 145 of the Criminal Code, are absent from para. (6). It was also pointed out that the wording of para. (6) follows that of the original clause 205 and its prototype, clause 196 of the 1882 Order, and the decisions under them were prayed in aid. The clause originally read as follows:—

"No Court shall give judgment or convict in any case on the evidence of a single witness, which in a civil case is contradicted, or in a criminal case is contradicted or not admitted by the opposite party to the proceeding in which such evidence is given, except where such evidence is corroborated by some other material evidence, which in the opinion of the Court is sufficient to establish the accuracy of the evidence of the witness."

The decisions relied upon were to the effect that there was no need for the corroboration to cover every particular of the witness's evidence or to implicate the accused; that there was no distinction drawn between accomplices and non-accomplices, and that accomplices could corroborate each other: see *R.* v. *Ioannis Haji Nicola*, 6 C.L.R., 5; *R.* v. *Mustafa Haji Ahmet, ibid.; R.* v. *Nicoli Antoni*, 7 C.L.R., 63; and *R.* v. *Christoforos Pouri & others*, 14 C.L.R., 121.

Much though I dislike dissenting from my brother judges, I regret I find it impossible not to do so in regard to their decision in the last-mentioned case. In the other cases the principal witness was not an accomplice, and the extent of corroboration regarded as sufficient gave no cause for alarm and did not sin against the rules of evidence adopted by the Courts of Cyprus. Those rules, however, were the rules obtaining in England, and when the principal witness happened to be an accomplice, the nature and extent

of the corroborating evidence required which could be regarded as sufficient should, therefore, have been considered in the light of their provisions. Looked at from another point of view, if the old clause 205 and its prototype, clause 196 of the 1882 Order, were made to require corroboration on account of the low standard of veracity among the people and the absence of juries, it could hardly have been intended that a smaller degree of corroboration in the case of accomplices should be sufficient in Cyprus, and that its source should not matter, whilst in England (where, unlike Cyprus, corroboration of an untainted witness is not required) a higher degree of corroboration of an accomplice—and that from an independent source—should be required as a matter of prudence.

Be that as it may, I think, for the reasons given hereafter, that the cases cited above do not help in the interpretation of the new clause 205. The new clause is not a fresh link in a chain of continuity with the old clause; it is a break arising from a different order of ideas. The new clause opens out with a paragraph embodying the principle of the English Common Law—that a single witness is sufficient; it then goes on to lay down the exceptions to that principle which obtain in England partly by statutory provisions (viz. paras. (2), (4) and (5)), and partly by the rules of prudence adopted by equity and the Common Law (viz. paras. (3) and (6)), which in practice are given statutory force. The old clause embodied a principle which is totally alien to that of England—that of the maxim (one witness is no witness)—which is found in various systems of law, viz. the Mosaic, civil, canon, and Islamic, all of which require a plurality of witnesses. It is, for example, stated in Best on Evidence (12 Ed., p. 533) that "in Scotland the general rule is that the testimony of one witness is not full proof of any ground of action or defence whatever." It will also be found laid down in Art. 1685 of the Mejellé that two witnesses are required in all proceedings. The rule in the old clause was borrowed from some such system and designed to accord with the notions of a people whose affairs had been and would continue to be governed by Ottoman Law. The provisions in sections 144 and 145 of the Criminal Code enacted in 1928—to which may be added section 108 on perjury—were taken from the statutes of England, but did not conflict with the rule of plurality of witnesses. That rule continued in force until the passing of Law 45 of 1934, which abandoned the principle of the civil and Islamic systems of jurisprudence and adopted that of England. The two principles are in essence and foundation totally different, and arguments drawn from the one cannot, therefore, assist in interpreting the other.

As already stated, the new clause embodies the common law rule and a number of the exceptions to that rule obtaining in England. The reasonable inference can only be that the legislature intended the provisions of the new clause to be applied in the same way as they are applied in England. Confirmation of this view is furnished by para. (2) of the new clause. The first sentence was taken from section 2 of the Evidence Further Amendment Act of 1869. The second, which is a piece of statutory interpretation, gives the effect of the decision on appeal in *Wiedemann* v. *Walpole* (1891) 2 Q.B.D. 534. The judgments in that case make it plain that what is or is not corroboration under that section in actions for breach of promise is a question of law. Likewise is it, in my opinion, a question of law under para. (6) in regard to accomplices. In England, where the rule in regard to accomplices is only one of prudence and discretion, Lord Reading, in the case of *Louis Cohen* (10 C.A.R. 101) definitely approved the trial Judge's direction to the jury that there must be corroboration and that it was for him to determine whether there was evidence in the case fit to be submitted to them as corroboration in the eyes of the law. A similar view was expressed by him in the House of Lords and concurred in by Lord Dunedin in *Albert Christie's* case (10 C.A.R. 167)—a case under section 30 of the Children Act, 1908 (the prototype of section 38 of the Children and Young Persons Act of 1933, on which para. (5) of our new clause was probably modelled). " It was ", said His Lordship, " for the Deputy Chairman to satisfy himself that there was evidence of corroboration fit to be submitted to the jury within the meaning of the statute." A further illustration may be had from cases of perjury, in which, pursuant to the provisions of section 108 of the local Criminal Code (taken from section 13 of the Perjury Act of 1911) a person cannot be convicted solely upon the evidence of one witness as to the falsity of any statement alleged to be false. It is written in Kenny's little classic on the Criminal Law (1920, p. 385) that " the question as to whether a point is sufficiently material is for the judge, not the jury, to decide ". There is thus abundant authority for holding that where corroboration is required, the materiality and adequacy of the evidence offered by way of corroboration is a question of law: it is not until after the judge is satisfied that in law such evidence is corroborative in its nature and extent, that the jury can accept it as material and sufficient to act upon.

It now falls to consider whether evidence which does not implicate the accused can, under the new clause, be regarded in law as material or sufficient to corroborate

an accomplice's testimony. I have already given my reasons for holding that the decisions under the old clause are not germane to this question. We have been pressed to adopt the view that there was a deliberate intention to dispense with such a requirement on the ground that the words " implicating the accused ", though present in para. (5) are absent from para. (6). This argument proceeds on the assumption that there is something sacrosanct about the phrase and, in my opinion misses the object and force of the language used in para. (6) to denote the nature and extent of the evidence needed to corroborate an accomplice's testimony. An accomplice's testimony must, according to para. (6), be " corroborated by some other material evidence which, in the opinion of the Court, is sufficient to establish the accuracy of the evidence of such accomplice." There is a passage in *R.* v. *Farler* (8 C. & P., 107) which explains what is material evidence. In that case Lord Abinger said: " It is a practice which deserves all the reverence of the law, that judges have uniformly told juries that they ought not to pay any respect to the testimony of an accomplice unless the accomplice is corroborated in some material circumstance. Now, in my opinion," His Lordship went on to say, " that corroboration ought to consist in some circumstance that affects the identity of the party accused ". There is also a passage in *R.* v. *Birkett* (8 C. & P. 732) which makes it plain that unless the evidence offered by way of corroboration does so affect him, it cannot be regarded as sufficient. " If ", said Pattison, J., in this case, " 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." Even stronger language was used by Alderson, B., in *R.* v. *Wilkes and Edwards* (7 C. & P., 272): " The confirmation of an accomplice as to the *commission* of the felony is really no confirmation at all; because it would be a confirmation as much if the accusation were against you and me, as it would be as to those prisoners who are now upon their trial. The confirmation which I always advise juries to require, is a confirmation of the accomplice in some fact which goes to fix the guilt on the particular person charged. You may legally convict on the evidence of an accomplice only, if you can safely rely on his testimony; but I advise juries never to act on the evidence of an accomplice, unless he is confirmed as to the particular person who is charged with the offence ". The latter remarks are of course valid in England, where the rule is one of prudence and discretion only. In Cyprus, however, that rule has been elevated to one of law, and a Court here cannot convict unless there is the requisite corroboration.

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In considering the question in hand one can hardly avoid reference to *Baskerville's* case; for the whole matter was dealt with there in the most lucid language possible. I am citing from p. 530 of Vol. 25 of Cox's Reports. "The rule of practice as to corroborative evidence", states the judgment, "has arisen in consequence of the danger of convicting a person upon the unconfirmed testimony of one who is admittedly a criminal. What is required is some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it." The second sentence just cited might well have been a paraphrase of our para. (6), with which it is identical in substance and effect; or, shall we say, our para. (6) might well have been a paraphrase of that sentence. The judgment then goes on to state the question involved in that rule of practice:

> "If the only independent evidence relating to an incident in the commission of the crime which does not connect the accused with it, or if the only independent evidence relates to the identity of the accused without connecting him with the crime, is it corroborative evidence?"

I cannot improve on the form in which the question is put, and that is precisely the question before us. The judgment next examines various *dicta* bearing on this question, and on p. 531 there is this most important conclusion. "We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other 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 committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at Common Law or within that class of offence for which corroboration is required by statute. The language of the state 'implicating the accused' compendiously incorporates the test applicable at Common Law in the rule of practice." In the opinion, therefore, of the five eminent judges who decided that case, the words "implicating the accused" are no more than a "compendious statement" of the rule of practice in regard to an accomplice's testimony incorporated in para. (6) of our new clause 205. That there is nothing sacrosanct in those words may readily be seen from the statement of the law on corroboration in Halsbury's Laws of England, 2nd Ed., Vol. 13, p. 765, para. 841. That paragraph deals with cases in which corroboration is required in practice, and in that part of it which treats of accomplices the words "implicating the accused", or words to the like effect, are not to be found, although *Baskerville's* case

is cited in the footnote as one of the two authorities on which the statement in the text is based. All that is said is this: " Where the evidence is that of an accomplice in crime, the judge must warn the jury of the danger of convicting the accused on such testimony unless corroborated."

I, therefore, do not hesitate in deciding that para. (6) of the new clause 205, which embodies provisions taken from England, is to be interpreted in accordance with the principles obtaining in England. If the legislature had intended that those principles should not apply, it would, in my view, have made use of express language clearly indicating such an intention: in such a case it would have been quite easy to insert in para. (6) some such words as " not necessarily implicating the accused ".

The view which I have already expressed in regard to the principles of interpretation to be adopted in considering questions arising under the new clause 205 enables the other point in this appeal to be disposed of in a more summary manner. That point relates to the source of the corroborative evidence offered and is likewise to be determined on English principles. An illustration from a case falling under para. (5) of the clause would help to clear the ground. This paragraph relates to the unsworn testimony of young children. It would, I think, be idle to contend that the English decisions in regard to the source of the corroboration required do not apply in Cyprus.

Take the case of *Arthur Richard Manser* in Vol. 25 of the Criminal Appeal Reports. It was there decided that where the evidence of a young child requires corroboration, the unsworn testimony of another child cannot be treated as supplying it. In the words of the Lord Chief Justice the argument " is an argument in a circle " when it contends that the source of the corroboration does not matter. There is nothing in our para. (6) on accomplices requiring the corroborative evidence to be given by a person who is not a child, but I do not think it would ever be seriously argued that an accomplice's evidence could be corroborated by the unsworn testimony of a child, or, for that matter, by the evidence of another accomplice in the face of express provisions requiring corroboration of the testimony given by either.

Now the source of confirmation in the case on appeal before us is the accomplice's wife, and in my opinion a wife cannot in law corroborate her accomplice husband if he gives evidence at the trial. This was definitely so laid down in *R.* v. *Neal* (7 C. & P., 168), and is still regarded as the better view of the law according to the statement in Halsbury (2nd Ed., Vol. 9, p. 223) and

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Phipson (7th Ed., p. 469). That case has indeed been criticized in *R.* v. *Willis*, 1916, 1 K.B. 933, but the criticism is directed to the course taken by the judge of withdrawing the case from the jury—a course which he was not entitled to take. The principle itself, as above formulated, was left untouched; for in the circumstances of *Willis's* case its application was not called for as the accomplice husband did not give evidence at the trial. The underlying reason of the principle is that where an accomplice gives evidence at a trial to secure his impunity, his wife's confirmatory evidence cannot be relied upon: her interests are identical with his and her testimony is therefore not independent; and as already stated from the judgment in the *Baskerville* case, the confirmatory evidence must be independent.

Having regard to the views expressed in this judgment, it follows that in the case in hand the residue left after discarding the evidence given by Dionyssiou's wife does not furnish the requisite corroboration. If I may again borrow from the *Baskerville* judgment, in cases in which corroboration is required by statute, " the judge, in the absence of such corroborative evidence, must stop the case at the close of the prosecution and direct the jury to acquit the accused." I am, therefore, of opinion that the appellants are entitled to succeed and that the conviction and sentence should be set aside.

Appeal allowed. Conviction and sentence set aide.