

1955

Present : Sansoni J.

FERNANDO, Appellant, and GOONEWARDENE,
Respondent

S. C. 496—M. C. Colombo South, 62,792

Excise Ordinance—Section 44—Unlawfully manufactured liquor—Evidentiary value of Government Analyst's report.

In a prosecution under section 44 of the Excise Ordinance for possession of unlawfully manufactured liquor the report of the Government Analyst is evidence, even though he is not called to testify in person.

APPPEAL from a judgment of the Magistrate's Court, Colombo South.

S. B. Lekamge, for the accused appellant.

Ian Wikramanayake, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 24, 1955. SANSONI J.—

The accused in this case was charged with having in his possession without lawful authority 7 gallons and 2 drams of unlawfully manufactured liquor in breach of S. 44 of the Excise Ordinance. The defence raised was an alibi which was disbelieved.

The only point urged in appeal was that the prosecution failed to prove that the liquor was unlawfully manufactured.

The evidence led by the prosecution on this point was the report of the Government Analyst who found on examination that the samples P 2, P 4 and P 6 of the liquor sent to him contained 6%, 5.7% and 6.7% by volume of alcohol respectively. He also reported:

“The characteristics of P 2, P 4 and P 6 are not similar to those of samples of either approved brands of imported liquors or liquors manufactured under licences issued under the Excise Ordinance.

“In my opinion P 2, P 4 and P 6 are liquors which do not fall under the following categories:—

- (1) Approved brands of imported liquors,
- (2) Liquors manufactured under licences issued under the Excise Ordinance.”

It is argued, however, that in spite of this report the prosecution has failed to establish that the liquor seized in the accused's possession was unlawfully manufactured, and I have been referred to the judgment of Nagalingam S. P. J. in *Ramsamy Kone v. Ginigathena Police*¹. I would point out that the report of the Government Analyst in that case did not say that the liquor which was the subject matter of the charge was not a liquor which has been manufactured under licences issued by the Excise Commissioner, and the learned Judge held that the prosecution had failed to exclude the possibility of the liquor having been manufactured under a licence. But the report furnished in this case does exclude that possibility, and says expressly that the liquor seized is not a liquor manufactured under a licence issued under the Excise Ordinance. This is sufficient to bring it within the category of an unlawfully manufactured liquor.

Nagalingam S.P.J., however, also added that when the Government Analyst said in his report that the liquor seized was not manufactured under a licence issued by the Excise Commissioner “he

¹ 56 N. L. R. 404.

is giving utterance to some information which he has probably obtained from the Excise Commissioner himself. The Government Analyst cannot say of his own knowledge what licences have been issued by the Excise Commissioner". With respect, I am not prepared to take this view of the Analyst's means of knowledge in the absence of further proof. It is not, it seems to me, a necessary inference that the Government Analyst was acting on hearsay, for there is nothing in the record which compels me to arrive at that conclusion. The Analyst's report is evidence, even though he was not called to testify in person.

If the defence intended to raise an objection to the contents of the report on the ground that certain findings made by the Government Analyst should be disregarded for any particular reason, the Government Analyst should have been summoned and cross-examined on his means of knowledge, or the sources of his information. No such course was adopted by the defence. It was therefore quite permissible for the learned Magistrate to act upon the report and that is what he has done. Having regard to the terms of the report I think the prosecution has proved that the liquor in question was unlawfully manufactured. The appeal is dismissed.

Appeal dismissed.
