

1947

Present : Windham J.SENANAYAKA, Appellant *and* GOONASEKERE, Respondent.*S. C. 1,332—M. C. Colombo South, 11,383, D. R.*

Defence Regulations—Failing to place paddy at disposal of headman—Elements of charge—Proof of possession—Burden of proof—Regulation 52—Miscellaneous Regulations.

Where a person is charged with having failed to place at the disposal of the village headman paddy in his possession or under his control after having been served with an order requisitioning the same under regulation 52 of the Defence (Miscellaneous) Regulations—

Held, that it is incumbent on the prosecution to prove that he had the paddy in his possession or under his control and in the absence of such proof he cannot be convicted.

APPPEAL from a judgment of the Magistrate, Colombo South.

D. Wimalaratne, for the accused, appellant.

Boyd Jayasuriya, C.C., for the Attorney-General.

December 4, 1947. WINDHAM J.—

This is an appeal against the conviction of the appellant under Regulation 52 of the Defence (Miscellaneous) Regulations, for failing on demand to place at the disposal of the Village Headman 8 measures of

paddy in his possession or under his control after having been served with an order requisitioning the same. The main point argued in the appeal was that there was no proof that the accused had the said 8 measures of paddy in his possession or under his control that this element of the offence must be proved by the prosecution was laid down in *Bandaranayaka v. Silva*¹. It is argued that since that case was decided, the Regulations regulating the transport of paddy published in the *Government Gazette* No. 9,653 of January 24, 1947, have altered the position. Those Regulations provide that no person may remove his paddy from the threshing-floor without a permit. It is accordingly contended that, there being evidence that the accused's paddy had been removed from the threshing-floor without a permit, the accused cannot be heard to say that he did not remove it or that it was not in his possession or under his control. I do not think that this contention can be acceded to. It still remains upon the prosecution to prove that he had it in his possession or under his control. The accused, when the Village Headman went to his house and handed over to him the Requisition Order, stated that, "he had paddy". The statement was admissible in evidence, it is true, for it was not a confession because it did not admit that the accused had already committed an offence. The offence in question could not be committed until the accused refused to deliver the paddy, and he had not yet refused when he made the statement that he had paddy. But this statement was not an admission that he had the 8 measures of paddy to which the Requisition Order referred. It was merely an admission that he had some unstated quantity of paddy. It lay upon the prosecution to prove that he had the 8 measures of paddy in his possession or under his control, and there was no other evidence to that effect. Thus the prosecution failed to prove an essential element in the charge, and accordingly the learned Magistrate erred in convicting the accused. The appeal must therefore be allowed and the judgment set aside. The accused is acquitted and discharged.

Accused acquitted.
