

1956 *Present* : Basnayake, C.J., and K. D. de Silva, J.

M. SELVAN, Appellant, and SENARATNE (Police Sergeant),
Respondent

S. C. 887—M. C. Ratnapura, 18,063

*Evidence—Government Analyst's report—Admissibility—Criminal Procedure Code
s. 406 (3) and (4).*

The whole of a report issued by a Government Analyst under section 406 (3)
of the Criminal Procedure Code is admissible in evidence.

APPPEAL from a judgment of the Magistrate's Court, Ratnapura. The question of law involved in this case was reserved in the following terms by Gunasekara, J., under section 48 of the Courts Ordinance, for decision by more than one Judge :—

“The learned Magistrate's finding that the liquor in question has been unlawfully manufactured appears to be based entirely upon the report P8 submitted by the Government Analyst.

The Analyst states in his report ‘In my opinion P1 and P2 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.’

The question arises whether the admission of the material portions of this report involves the admission of inadmissible hearsay. On this question there appears to be a conflict of opinion among the Judges of this court. This conflict is exemplified by the views expressed by Nagalingam J. in *Ramasamy Kone et al. v. Ginigathena Police*¹ and by Sansoni J. in *S. C. No. 496E—M. C. Colombo South No. 62,792*² decided on the 24th August, 1955.

In this conflict of opinion I think it is desirable that I should reserve this appeal for the decision of more than one Judge of this court and I direct that the case be submitted to My Lord, the Chief Justice, for an order constituting a bench to hear the appeal.”

B. A. R. Candappa, with *M. Shanmugalingam*, for the accused-appellant.

A. C. Alles, Crown Counsel, with *V. S. A. Pullenayegum*, Crown Counsel, for the Attorney-General.

February 29, 1956. BASNAYAKE, C.J.—

The question which arises for determination on this appeal is whether the following statement in the Government Analyst's report is inadmissible on the ground that it is hearsay evidence.

“In my opinion P1 and P2 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 ”.

¹ (1954) 56 N. L. R. 404.

² *Fernando v. Gconewardane* (1955) 57 N. L. R. 17.

Under section 406 (3) of the Criminal Procedure Code

“any document purporting to be a report under the hand of the Government Analyst upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any inquiry, trial or other proceeding under this Code”.

The Analyst's report PS has therefore been properly used in evidence. The question is whether all the facts stated in a report by the Government Analyst, whether they are matters within his own personal knowledge or not, are admissible in evidence. Section 406 (4) of the Criminal Procedure Code provides that either party in a case may request the attendance of the Government Analyst at any trial or proceeding where his report is used in evidence for the purpose of giving evidence. In the instant case there has been no such application. Where the report of the Government Analyst is made admissible it is our opinion that the whole of such report may be used in evidence.

Counsel for the Crown has referred us to the judgment of my brother Sansoni in *Fernando v. Goonewardene*¹, where he has taken the same view. We are in agreement with that judgment. Our decision on the point referred to us is that the whole of the report of the Government Analyst is admissible in evidence. In this case the prosecution has led the evidence of a clerk in the Excise Commissioner's Department to prove some of the material facts referred to in the report of the Government Analyst but it is not necessary to do so where the report is issued under section 406 (3) of the Criminal Procedure Code. We therefore dismiss the appeal.

K. D. DE SILVA, J.—I agree.

Appeal dismissed.
