

Present: De Sampayo J.

1919.

BANDA v. HARAMANIS et al.

493 and 494—P. C. Henaratgoda, 16,418.

Possession of beef—Beef found in house occupied by father and son—No evidence as to who was responsible.

Two accused, father and son, who occupied the same house, were convicted of having been found in possession of beef, for which they were unable to account to the satisfaction of the Magistrate.

Held, that as there was nothing to show that either of the accused put the article there, or was responsible for its being found there, the conviction was bad.

“ Possession to be criminal must be actual and exclusive, for criminal liability does not attach to constructive possession Where property is found in a house in the possession of more than one inmate, none of them could be said to be in possession of it for the purpose of this offence, unless there is evidence of exclusive conscious control against them. ”

THE facts appear from the judgment.

E. W. Jayawardene, for appellants.

July 18, 1919. DE SAMPAYO J.—

The two accused are father and son, and occupy the same house. They have been convicted, under section 31 (1) of the Ordinance No. 9 of 1893, for being found in possession of beef, for which they were unable to account to the satisfaction of the Police Magistrate. It appears that a calf belonging to a man named Carolis was stolen, and on complaint being made, the headman made inquiries, and among other things, he searched the house of the accused. There he found about 3½ pounds of beef in a pot in the kitchen. One of the witnesses named Deonis gives evidence almost amounting to evidence of actual theft on the part of the accused, but that evidence is manifestly unreliable, and the Magistrate has not acted upon it. The question is whether either of the accused could be convicted under the provision in question. Mr. Jayawardene has referred me to page 1892 of the second volume of Gour, where the learned author states, with reference to authorities, that “ possession to be criminal must be actual and exclusive, for criminal liability does not attach to constructive possession. . . . From this it follows that, where property is found in a house in the possession of more than one inmate, none of them could be said to be in possession

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of it for the purpose of this offence, unless there is evidence of exclusive conscious control against them." This passage is a comment on the provision of the Penal Code as to the receipt or retention of stolen property, but the principle appears to be applicable generally. This point is further discussed and decided in the same sense in the case of *Punchi v. Babappu*.¹ Beyond the fact of the finding of the beef in the house, there is nothing in the case to show that either of the accused put the article there, or was responsible for its being found there. The evidence may disclose a case of strong suspicion against one or the other, or both of them, but I am obliged to give effect to the law on the subject, and to hold that actual exclusive possession could not be attributed to either of the accused.

The convictions are, therefore, set aside.

Set aside.
