

1957

Present : T. S. Fernando, J.

J. MUNASINGHE, Appellant, and W. G. NELSON and
another, Respondents

S. C. 811—M. C. Matara, 47,756

Fisheries Ordinance, No. 24 of 1940—Section 14—“ In Ceylon waters ”.

In a prosecution for using explosives for the purpose of killing or stupefying fish in breach of section 14 of the Fisheries Ordinance, the accused person is liable to be convicted if there is proof that he committed the offence at sea within three nautical miles from what is commonly accepted as the sea-shore.

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

Ananda Pereira, Crown Counsel, for the Attorney-General.

No appearance for the accused-respondents.

Cur. adv. vult.

October 30, 1957. T. S. FERNANDO, J.—

This is an appeal by the complainant against the acquittal of the accused-respondents who had been charged in the Magistrate's Court with using explosive or a stupefying substance for the purpose of killing or stupefying fish in breach of section 14 of the Fisheries Ordinance,

No. 24 of 1940, an offence punishable under section 22A (1) of the same Ordinance, as amended by the Fisheries (Amendment) Act, No. 25 of 1952. The acquittal resulted from a finding reached by the learned Magistrate that the prosecution had failed to establish that the offence was committed in Ceylon waters. The Ordinance itself defines "Ceylon waters" as including the territorial waters of Ceylon. The "territorial waters" have been defined as meaning the part of the sea within a distance of three nautical miles from any point of the coast of Ceylon measured from low-water mark of ordinary spring tides. It is clear therefore that if the contravention of the Ordinance had been committed at sea within three nautical miles from what is commonly accepted as the sea-shore the accused was liable to the punishment prescribed by the Ordinance. The learned Magistrate in acquitting the respondents has stated that "from the evidence the accused must be presumed to have been within close quarters of the officers" (who claim to have seen them from the shore), "but at the same time there is no explicit evidence that they were within territorial waters as defined by the Ordinance. Being a criminal case I think the section has to be strictly construed". I believe the reference by the Magistrate to a strict construction of the section means in the context nothing more than that the prosecution must establish beyond a reasonable doubt that the place where the offence was committed was within three nautical miles from the shore. (A nautical mile, it may be noted, is understood as being 6080 feet)

According to the two officers of the Fisheries Department who were called as witnesses for the prosecution the two respondents were seen hovering in a canoe near some rocks in the sea. The 1st respondent was seen having a fire-brand in his left hand, then bringing both his hands together and throwing some object into the sea. Immediately there was an explosion and the water was seen rising up. The 2nd respondent was then seen getting off the canoe and collecting fish. All these happenings were observed by the witnesses who were themselves on the shore "in a hiding place". When the 2nd respondent was busy collecting fish in the water, the witnesses say they moved towards the respondents: whereupon the 1st respondent shouted to the 2nd that "the gentlemen were coming". On this warning being given, the 2nd respondent is alleged to have got on to the canoe hurriedly and the two respondents are alleged to have rowed off far into the sea.

This evidence adduced on behalf of the prosecution has not been rejected by the learned Magistrate. The defence called no evidence and counsel on behalf of the respondents was content to rely on the point that the prosecution must establish that the offence was committed "in Ceylon waters". It seems to me that if the prosecution witnesses are believed it is incontestable that the offence was committed in Ceylon waters. The explosive was thrown within a very short distance from the shore and indeed so close to the shore that all the movements of the respondents could have been espied therefrom. No reason was advanced by the defence in the Magistrate's Court why these witnesses should be disbelieved. The Magistrate has not disbelieved them and it is a fair

inference that the Magistrate would have convicted the respondents if he had directed himself correctly on the evidence relating to the place where the offence is alleged to have been committed.

The first respondent as the person who threw the explosive is guilty of a contravention of section 14 of the Ordinance. The 2nd respondent has conspired with the 1st respondent in committing the said contravention, and is therefore by reason of the operation of section 22 (3) of the Ordinance deemed to be guilty of the offence alleged against him. I have discussed in a judgment delivered by me today in a similar case—*Weerasinghe v. Kathirgamathamby*¹—the question of the liability to punishment of persons who conspire with others to commit contraventions of the Fisheries Ordinance and it is therefore unnecessary to say anything here on that question.

I would therefore set aside the order of acquittal and direct that an order of conviction be entered. Each of the respondents will pay a fine of Rs. 100 or undergo rigorous imprisonment for one month in default of payment.

[His Lordship added a postscript in terms identical with those of the postscript in *Weerasinghe v. Kathirgamathamby* (*supra*).]

Acquittal set aside.

¹ (1967) 60 N. L. R. 87.
