

1945

Present: Wijeyewardene J.

THOMPSON, Appellant, and INSPECTOR OF POLICE (C.I.D.),  
Respondent.

106—M. C. Colombo, 43,647.

*Defence (Miscellaneous) Regulation 14 (3) (f)—Possession, by accused, of photographs containing information useful to enemy—Defence that the possession was not likely to prejudice defence of Island or the efficient prosecution of the war—Proviso to Regulation 14.*

Where the accused had in his possession, as manager of a firm of photographers, certain photographs belonging to a customer which contained information which might be useful to the enemy, and there was evidence that the photographs were "packed in an ordinary newspaper" and placed by the accused on the top of a cabinet for nearly two years in a shop frequented by a number of people—

*Held*, that the accused had failed to show that he was entitled to the benefit of the proviso to Regulation 14 of the Defence (Miscellaneous) Regulations.

**A** PPEAL from a conviction by the Magistrate of Colombo.

*E. F. N. Gratiaen* for the accused, appellant.

*H. W. R. Weerasuriya, C.C.* for the Crown, respondent.

*Cur. adv. vult.*

March 22, 1945. WIJEYWARDENE J.—

The four accused charged in this case are employed in the Colonial Photographic Company and are paid by the firm of photographers called Pláté Limited. The first accused, the present appellant, is the Manager of the Company and the other accused occupied positions subordinate to the first accused.

The Police charged all these accused with having had in their possession on May 26, 1944, photographs marked P1 to P15 containing information

which might be directly or indirectly useful to the enemy and thereby committed an offence in contravention of Regulation 14 (3) (f) of the Defence (Miscellaneous) Regulations. The Magistrate acquitted the second, third and fourth accused and convicted the first accused and sentenced him to pay a fine of Rs. 500 or, in default, undergo one month's rigorous imprisonment.

The accused did not question the correctness of the opinion given by one of the witnesses for the prosecution—the Senior Naval Security Officer for the Island—that the photographs contained information which might be useful to the enemy. The first accused admitted further that he had those documents in his possession as Manager of the Colonial Photographic Company. He relied, however, for his defence on the proviso to Regulation 14 which reads:—

“ A person shall not be guilty of an offence against this regulation in respect of anything done by him if he proves . . . . that the doing of that thing was not likely to prejudice the defence of the Island or the efficient prosecution of the war ”.

The evidence of the first accused shows that one Boone, a customer of the Company, brought to him in December, 1942, some photographs for enlargement and also some negatives for contact printing. In the normal course of business the first accused himself took them to Plâté Limited. Sometime later the prints and enlargements were sent by Plâté Limited to the premises of the Colonial Photographic Company. The smaller prints were kept under lock and key in a cabinet, when the shop was closed for the day. The larger parcels were kept on top of the cabinet. Boone did not come back for the parcels. If he came to claim the photographs, the first accused would have examined them before delivery to him to see if the pictures were likely to convey information useful to the enemy and would have sent them to the Civil Censor, if there was any doubt. That was the course of business consistently followed by the first accused since the outbreak of the war.

While there is no reason for rejecting that evidence given by the first accused, I am unable to ignore the evidence led by the prosecution to the effect that the photographs P1, P13, P14 and P15 were “ packed in an ordinary newspaper ” and had probably been kept on the top of a cabinet for nearly two years in a shop frequented by a number of people.

I am unable to say that the Magistrate has erred in holding that the accused has failed to shew that he was entitled to the benefit of the proviso to Regulation 14.

The accused who is an elderly person of sixty-five years is a British subject whose loyalty to the Allied cause is not open to the least suspicion. He was a member of the Ceylon Planters' Rifle Corps and had served in the last war.

I do not think that in all the circumstances of this case it is necessary to impose a heavy penalty. I reduce the fine to Rs. 75. Subject to this modification, the order made by the Magistrate will stand.

*Conviction affirmed.*

*Fine reduced.*