

Present: Lyall Grant J.

1930

ALMEIDA *v.* FERNANDO.

838—P. C. Negombo, 66,631.

Unlawful possession of ganja—Report of Public Analyst—Other methods of proof—Knowledge of substance.

In a case of unlawful possession of ganja or opium, the production of a report by the Public Analyst is not the only method of proving the nature of the substance.

Evidence of a person who has some knowledge of the substance may be sufficient.

A PPEAL from an acquittal by the Police Magistrate of Negombo.

Schokman, C.C., for appellant.

Rajapakse, for respondent.

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February 12, 1930. LYALL GRANT J.—

*Almeida v.
Fernando*

In this case the accused was charged with unlawful possession of ganja and in the connected case with unlawful possession of opium.

After the evidence of one witness for the prosecution (the Excise Inspector) had been taken, the Magistrate stopped the case and discharged the accused. He did so on the grounds that (1) the Excise Inspector did not seal the productions immediately on seizure, (2) no analyst's report on the productions was obtained.

The Crown appeals from this order which amounts to an acquittal.

The learned Magistrate says on the first point that there is a recent decision of this Court to the effect that unless productions of this nature are sealed immediately they are found the possibility of introducing arises and the accused is entitled to the benefit of the doubt.

On the second point he says that there is no proof that the substances were opium or ganja.

On the second point I am not prepared to hold that the only way of proving the substances to be opium and ganja is to obtain an analyst's report. No doubt such evidence may be necessary in certain cases where the point is seriously disputed. In the present case the Excise Inspector, who is presumably familiar with the substances, has stated that from his own knowledge the substances produced are opium and ganja.

That is evidence which, in the absence of contest on the point, I do not think the Magistrate is entitled to brush aside as of no value.

The prosecution has not been given an opportunity of leading further evidence in regard to the nature of the substances produced and is entitled to lay all its evidence before the Court. There is no admission that there is no further evidence to be led on this point.

The question of sealing may be important, but this again depends on circumstances in each case.

I was referred to a case decided by Jayewardene J. (*Kalpage v. Casim*, 580 P. C. Colombo No. 22,098¹), where he held that an objection that certain tins taken from the possession of the accused were not sealed in his presence was a good one. The accused there asserted that the medicine found in the tins was not the medicine in them at the time they were removed from the premises.

That case was followed by me in *Holsinger v. Joseph*, 553 P. C. Colombo No. 3,249,² where the circumstances were similar.

In neither of these cases were the packages sealed in the accused's presence, and there was a reasonable possibility that they might have been tampered with.

¹ S. C. Mins. of September 14, 1926.² S. C. Mins. of September 27, 1929.

In *Bandaranayake v. Segu Ismail*, 735 P. C. *Kurunegala No. 11,996*,¹ where it was shown that the Inspector had possession of the ganja till he produced it in Court and where the accused did not rely on the defence of substitution but asserted that the ganja had been introduced into his house at an earlier stage of the proceedings, I declined to interfere with the conviction.

In the present case the Inspector says that he found the stuff in the presence of the accused, that he went with productions and the accused to the police station, that he weighed the opium in the presence of the accused, and that he got the police to seal the productions in the presence of the accused. There is, of course, always the possibility of fraud if the Inspector is dishonest, but that possibility exists even where the productions are sealed immediately. In that event it might be alleged that the Inspector had substituted similar sealed packages.

All one need say is that the circumstances proved do not entitle the Magistrate to dismiss the case without hearing further evidence.

The productions were sealed in the presence of the accused and so far as the case has gone there is no evidence that he at that time raised any question as to their being the articles seized in his house.

I allow the appeal and send the case back for trial before another Magistrate.

Sent back.

1930.

LYALL
GRANT J.

*Almeida v.
Fernando*