Present : Dalton J.

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ASHTON *v.* CROOS *et al.*

704, 704A—P. C. Colombo, 27,641.

Opium—Landing of opium from ship by launch—Importation—Ordinance No. 5 of 1910, s. 4 (1) (a).

The landing of an article, which was brought by ship from overseas, amounts to importation within the meaning of section 4 (1) (*a*) of Ordinance No. 5 of 1910.

APPEAL from a conviction by the Police Magistrate of Colombo.

H. V. Perera (with *Ponnambalam*), for appellants.

Illangakoon, C.C., for respondent.

February 1, 1929. DALTON J.—

The appellants, Anthony Croos and Mallis Appu, were, at the date of the commission of the offences charged (September 7, 1928), coxswain and driver respectively of the Customs motor launch "Wasp". They have both been convicted of the following two offences :—

(1) Being jointly concerned in the importation into Ceylon of 4 lb. of opium in H. M. Customs launch "Wasp" in contravention of section 4 (1) (*a*) of the Opium Ordinance, No. 5 of 1910.

(2) Jointly transporting 25 lb. of ganja in H. M. Customs launch "Wasp" from the ss. Bamora to the Lake Canal Basin contrary to the provisions of section 43 (*a*) of the Excise Ordinance, No. 8 of 1912.

The first ground of appeal is to the effect that the Magistrate should not have accepted the evidence of the witnesses for the prosecution, including Soris, Sergeant Beevers, and Assistant Preventive Officer Perkins. I do not think it necessary to detail their evidence here. It is sufficient to state that after hearing all that Counsel for appellants has to say I am quite satisfied that the Magistrate was fully justified in coming to the conclusion that the ganja and opium found early on the morning of September 7, near the bridge over the Lake Canal, as the witnesses depose, was conveyed in the launch from the ss. Bamora by the man Martin who had been picked up by the launch at the Prince of Wales Jetty after it had dropped Mr. Perkins who directed it to proceed to its usual place at the

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Passenger Jetty. The launch was then in charge of the first accused and driven by the second accused. The Police Magistrate has, before accepting the evidence of the witness Soris, who was the sternman in the launch, and to all intents and purposes an accomplice, rightly looked to see if there is any corroboration of his story that he can accept. In his reasons for his judgment he details the various points upon which Soris has been corroborated. There are a few points upon which Soris' evidence is contradictory, but I have no doubt on the main points the Magistrate was entitled to accept his evidence. The suggestion that Sergeant Beevers had fabricated his evidence with respect to the landing of Martin from a launch near the bridge in the Lake Canal was hardly worthy of Counsel. No such suggestion seems to have been made to the witness during the trial and the watcher in the canal yard actually reported at 8·30 A.M. next morning that he had heard the blast of a whistle from the main road when a launch had gone into and out of the canal. This was undoubtedly the whistle of Beevers when he was chasing Martin. There was no possibility that Beevers and the watchman had met prior to 8·30, nor was any such suggestion ever made.

It was next urged that accepting all the facts deposed to by the witnesses with regard to the part played by the launch and the two accused, they do not disclose any offence. It was specially urged that there was nothing to show that the accused, or at any rate the driver, knew what Martin was conveying ashore. I was referred to *Attorney-General v. Rodriguesz.* [1] On that point one has to bear in mind the hour of the night when the journey took place, the dropping of the preventive officer, the journey to pick up Martin, the trip to the ss. Bamora, the method of receipt of the bags or parcels which turned out to be opium and ganja through a port hole into the launch, the rapid journey from the ship to the Lake Canal, the fact that neither passengers nor goods are landed there, the landing of Martin at that out of the way spot, and the rapid passage back to the Passenger Jetty, to which point the launch had been ordered to go. It is suggested that the first accused, being in charge of the launch, might know what Martin was doing, but the second accused was but carrying out the first accused's orders. But he does not say so. He denies that anything of the kind took place at all, but states that the launch after dropping Mr. Perkins went back as directed to the Passenger Jetty and remained there for the night. The second accused had duties in the launch independent of the first accused. He was responsible for all the petrol used, and from the evidence given on the matter of the speed of the launch at more than one point of the journey that night, one can reasonably infer the second accused as driver played a most important and understanding part in the landing of the man Martin with his freight.

[1] *19 N. L. R. 65.*

I am satisfied that on the evidence and all the circumstances I have set out, the Magistrate was entitled to come to the conclusion, in the absence of some satisfactory explanation by both or either, that both accused were fully aware that Martin was conveying ganja and opium ashore and were both playing a willing and active part in its conveyance.

Next it was urged that the ganja and opium had been imported so soon as the ship " Bamora " reached territorial waters or came to rest in the harbour, and if that was so, the landing of it from ship to shore by the launch was not " importation". The definition of time of an importation as set out in section 14 of the Customs Ordinance, 1869, is only for the purpose of determining in the instances set out the precise time at which an importation shall be deemed to have had effect. In *Whitfield v. Martin Singho*[1] however it was common ground between the parties that "'importation " in both the Excise and Opium Ordinances meant the actual landing of the article and that was accepted as correct by Lyall Grant J. in upholding a conviction on a charge of attempting to import. A person may do something in respect of the importation of an article, in other words begin to import an article, before it is actually landed, but the act of importation is in the ordinary course completed, in the absence of any law or regulation governing special cases, when the article comes oversea, as here, by the landing of the article in Ceylon. On the facts it seems to me clear that both the accused were concerned in importing the opium set out in the first count, and were also concerned in transporting the ganja set out in the second count in contravention of the provisions of the respective Ordinances mentioned.

The appeals must therefore be dismissed and the convictions affirmed.

Appeal dismissed.

[1] *9 C. L. R. 103.*