

1959

Present : H. N. G. Fernando, J.

A. KARUPPAN, Appellant, and S. I. POLICE, PINDENIYA,
Respondent

S. C. 689—M. C. Deniyaya, 225

Excise—Charge of possession of unlawfully manufactured liquor—Characteristics of the liquor in question—Evidence relating thereto.

In a prosecution for possession of unlawfully manufactured liquor, the witness who gives evidence as to the characteristics of the liquor found in the possession of the accused must give valid reasons for his opinion that the liquor was unlawfully manufactured.

APPEAL from a judgment of the Magistrate's Court, Deniyaya.

V. Kumaraswamy, with *E. S. Dassanayake*, for Accused-Appellant.

Shiva Pasupati, Crown Counsel, for the Attorney-General.

November 25, 1959. H. N. G. FERNANDO, J.—

On this charge of possession of unlawfully manufactured liquor called pot arrack the only evidence as to the identity of the liquor found in the possession of the accused was that of the Preventive Officer who had

been in the excise department for seven years. The relevant portion of his examination-in-chief reads as follows : " I find the seal of production P1 intact. I am opening it in Court. I am of opinion that the contents of P1 is unlawfully manufactured arrack ". In cross-examination the officer said that the contents of P1 is a distilled spirit and then said " this is smoky in taste ".

The excise officer did not say that he knew the difference in the characteristics of government arrack and other arrack. He did not mention what these differences are and he did not state which of these differences he had noticed in the arrack produced in this case. The officer did not state in Court that he had tasted the liquor in the bottle P1, nor is there any record to show that he had tasted or smelt the contents in Court. Crown Counsel invites me to presume that he must have tasted the contents in Court because the judge has in his reasons mentioned that the officer " stated after examining the contents of P1 in Court that it was unlawfully manufactured arrack. It was smoky in taste and smell ". The learned judge was mistaken as to the evidence given by the officer because at no stage was any mention made of the smell of the contents of P1. It is quite possible that when that officer said that the contents of P1 are smoky in taste he was referring to his general knowledge as to the taste of unlawfully manufactured arrack, and I cannot be certain from the evidence on record that the liquor was actually tasted by the officer nor can I be certain that the officer had any good reasons for his opinion that the liquor was unlawfully manufactured arrack. His failure to state any of his reasons disables me from considering whether there were any valid reasons for his saying so. In these circumstances I allow the appeal and acquit the accused appellant.

Appeal allowed.
