1955 *Present :* Gunasekara, J.

T. KULASEGARAM, Appellant, *and* P. F. CHARLY SINGHO, Respondent

S. C. 663—M. C. Batticaloa, 20,643

"*Ganja*"—*Not a plant—Poisons, Opium and Dangerous Drugs Ordinance* (*Cap. 172*), *ss. 26, 28, 76* (*5*).

"Ganja" is not a plant. Possession, therefore, of an article which is described by the prosecution as "ganja, the parts of a hemp plant known as *cannabis sativa*" is not punishable under section 28, read with section 76 (5), of the Poisons, Opium and Dangerous Drugs Ordinance.

APPEAL from a judgment of the Magistrates Court, Batticaloa.

H. A. Wijemanne, Crown Counsel, for the complainant-appellant.

J. N. David, for the accused-respondent.

Cur. adv. vult.

January 17, 1955. GUNASEKARA, J.—

This is an appeal with the sanction of the Attorney-General against an acquittal on a charge of an offence punishable under section 76 (5) of the Poisons, Opium and Dangerous Drugs Ordinance (Cap. 172). The charge alleged a contravention of section 28, which provides among other things that no person shall without a licence have in his possession " any resin obtained from the hemp plant or the preparations of or extracts from the hemp plant commonly known as bhang, hashish, or ganja, or any other preparation of which such resin forms a part ".

The case for the prosecution consisted of evidence to the following effect given by a divisional preventive officer of the Excise Department and an excise guard. The respondent's house was raided by the two of them and the headman of the village at 8.50 a.m. on the 10th March. As they approached the house they saw the respondent, who had been seated on a chair in the front verandah, rush into a room. They followed him and they saw him place a packet inside a large pot that was in the room. The preventive officer immediately seized him and took the packet out of the pot. It contained a substance that the preventive officer purports to have identified as " Ceylon ganja, the parts of hemp plant known as cannabis sativa ". He took the respondent with him in a car to a dispensary and from there to the excise station, having had the substance weighed at the dispensary in the presence of both of them and the packet sealed with the respondent's left thumb impression. The two witnesses admitted in cross-examination that they also took away from the respondent's house a bottle containing two drams of arrack and a glass.

At the close of the case for the prosecution the learned magistrate delivered the following judgment :

" The accused is charged with the possession of ganja in breach of S. 28 of the Excise Ordinance. There is a fatal error committed by the D. P. O. The accused was in the rear seat of the car whilst the production was in the front seat. The guard said that it was in the pocket of the D. P. O. Hence the accused does not know whether it had been introduced or not.

Further in evidence it is stated that the accused ran inside. He did not have anything in his hand. Why he should have taken the alleged packet and placed it in a pot is inexplicable. This is necessary only if there is evidence that there were other people in the house. Further the explanation given by the guard about the removal of bottle of arrack and glass is not explained. Most probably the raiding party may have tried to introduce a sale but failed. These show that no Court can believe the story for the prosecution. I therefore acquit and discharge accused. "

I agree with Mr. Wijemanne that the fact that the preventive officer sat in the front seat with the production in his pocket while the accused was in the rear seat cannot lead to the inference that " the accused does not know whether it had been introduced or not ". There is no evidence that

the respondent " did not have anything in his hand " when he rushed inside the house. This statement in the judgment is apparently based upon an admission by the excise guard that " he did not see whether the accused had anything in his hand " at that time, which of course is not an admission that the accused " did not have anything in his hand ". It is true that the prosecution witnesses did not explain why the bottle and the glass were removed from the house, but they were not asked for an explanation. There appears to be no ground at all for the learned magistrate's finding that most probably the raiding party tried to fabricate evidence of an illicit sale of arrack.

I agree with the contention for the Crown that the learned magistrate has misdirected himself on the evidence and that his judgment discloses no adequate ground for his disbelief of the two prosecution witnesses. It seems to me, however, that the appeal must be dismissed for the reason that the prosecution has adduced no satisfactory evidence that the substance that is said to have been found in the possession of the respondent was such a substance as is described in section 28 of the Ordinance, that is to say, any resin obtained from the hemp plant or a preparation of or extract from that plant or a preparation of which such resin forms a part. As was pointed out by Basnayake J. in *Samarasekera v. Soysa* [1] " ' Ganja ' is not a plant. It is a preparation of or extract from a plant. " The evidence of the preventive officer that the substance in question is "ganja, the parts of a hemp plant known as *cannabis sativa* ", indicates that he is unaware of a distinction between parts of the plant itself (if he can identify them) and the preparation or extract from it that is known as ganja. (The possession of any part of the plant without a licence would be breach of section 26 and a different offence to the possession of ganja without a licence.) The preventive officer stated in his evidence in chief that he had had " seven years experience " and that he had been " trained to identify ganja ". Apparently the " ganja " that he had been trained to identify is not the substance referred to by that name in section 28 of the Ordinance. The excise guard too declared that the packet contained " Ceylon ganja ". No evidence was placed before the court, however, about his qualifications to express an opinion, apparently for the reason that the preventive officer was the witness upon whose evidence as an expert the prosecution relied.

The appeal is dismissed.

Appeal dismissed.

[1] *(1951) 52 N. L. R. 380.*