

1955

Present : Sansoni, J.

SIMON, Appellant, and CHIEF PREVENTIVE OFFICER, EXCISE
FORCE, Respondent

S. C. 408—M. C. Kegalle, 5,537

*Excise Ordinance—Sections 12 and 16—Unlawful transport or possession of Govern-
ment arrack—Proof of quality of arrack.*

In a prosecution for unlawful transport or possession of Government arrack it is sufficient for the complainant to make out a *prima facie* case that the contents of the bottles in question were Government arrack.

APPPEAL from a judgment of the Magistrate's Court, Kegalle.

J. C. Thurairatnam, for the accused appellant.

Ian Wikramanayake, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 24, 1955. SANSONI, J.—

The accused in this case was charged on two counts: (1) With having transported an excisable article, to wit, 16 drams of Government arrack, which is 8 drams in excess of the prescribed quantity, without a permit from the proper authorities in breach of S. 12 of the Excise Ordinance. (2) With having possessed an excisable article, to wit, 16 drams of Government arrack, which is 8 drams in excess of the prescribed quantity, without a permit from the proper authorities in breach of S. 16 of the Ordinance.

The learned Magistrate convicted the accused on both counts and the only point taken in appeal on behalf of the accused is that it has not been proved by the prosecution that the article in question was Government arrack.

It was proved that the accused transported and possessed two bottles bearing labels which described the contents as Government arrack: it was also proved that the capsules on the bottles were intact at the time of detection, and they were also intact when they were produced in Court: it was also proved that the seals on the capsules were the proper seals and they were intact. No suggestion was made to the prosecution witnesses, nor was any evidence led on behalf of the accused, to the effect that the contents of the bottles had been tampered with at any time after the capsules had been placed in the bottles and duly sealed.

It would seem that the question of the contents of the bottles was only raised after the case for the prosecution had been closed.

Under these circumstances I think the prosecution had made out a *prima facie* case that the contents of the two bottles were Government arrack. That seems to me to be the only commonsense view of the matter. I think the learned Magistrate was entirely justified in finding that no further proof of the character of the contents of the bottles was necessary. The appeal is therefore dismissed.

Appeal dismissed.
