

1920.

Present : Dias A.J.

LAWRENCEPILLAI *v.* KIRIHAMY.

280—*P. C. Anuradhapura, 49,379.*

Excise Ordinance—Several persons jointly transporting over one gallon of arrack in a cart.

There is nothing in the Excise Ordinance to prevent several men joining together and buying a one-third of a gallon each and conveying the aggregate quantity together.

THE facts appear from the judgment.

R. L. Pereira, for the accused, appellant.

June 11, 1920. DIAS A.J.—

The accused, appellant, has been fined Rs. 150 for possessing and transporting a certain quantity of arrack in excess of the prescribed quantity under the provisions of the Excise Ordinance,

No. 8 of 1912. According to the prosecution, the complainant, who is an arachchi, seized the accused when he was driving a cart from the direction of Trincomalee to Anuradhapura, and it is said that he then found in the cart, under some straw, five large bottles and two half bottles containing one gallon and four and three-quarters drams of arrack. The quantity a man is permitted to possess or transport is only one-third of a gallon. The defence was that the accused and four others had hired this cart and gone to Trincomalee to buy provisions for the Sinhalese New Year which was approaching, and that each of them bought a bottle or two of arrack and brought them in the cart. It was said that each man's bottle or bottles were kept in separate places in this cart, but if what they stated is true, it makes no difference whether all the bottles were kept together or separately, because there is nothing to prevent several men joining together and buying a few bottles of arrack and conveying them in the most convenient manner. The question the Magistrate had to decide was whether the explanation given by the accused was true. The accused himself gave evidence and called several witnesses to support him, one of them was Mr. Navaratnam, the recordkeeper of the Anuradhapura Courts, and another was a Moorish peon of the Courts, and the other was Mr. Kahanda, the native writer. According to these witnesses, the complainant really brought up three accused before the Court, and he incidentally mentioned to Mr. Navaratnam what the accused were charged with, and also that he found the bottles in separate places in the cart, and that besides the accused there were three other men in the cart. That strongly supported the accused's defence. But the Magistrate has given a very curious explanation of this evidence. He does not say that he disbelieves these respectable witnesses called by the accused, but he says that he must accept the complainant's statement because it was made under the sanction of an oath, and that he must reject these alleged statements of these three witnesses because they had not been made under the sanction of an oath. But that is not the point. If the arachchi had made such an admission in the presence of these witnesses, it is quite sufficient to show that the evidence given by the arachchi in the Court was false, and that is the opinion I entertain after reading his evidence. It seems to me that the arachchi originally intended to charge three people, but afterwards when he divided the one gallon and four drams by three he discovered that each individual did not possess more than the prescribed quantity, and hence the prosecution of this one man alone, namely, the driver of the cart. In these circumstances the accused was entitled to be acquitted, and his appeal is therefore allowed.

1920.

DIAS A.J.

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