

1954

Present : Swan J.

W. A. SURABIEL, Appellant, and K. D. C. EKANAYAKE
(Inspector of Police), Respondent

S. C. 906—M. C. Horana, 16,228

Excise Ordinance—Possession of unlawfully manufactured liquor—Proof.

A conviction for possession of unlawfully manufactured liquor cannot be based on an inconclusive report of the Government Analyst.

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

P. B. Tampoe, for the accused appellant.

M. Kanagasunderam, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 2, 1954. SWAN J.—

In this case the appellant was charged with possession of a large quantity of unlawfully manufactured liquor. His defence was that it was introduced by the Police. After trial the learned Magistrate found him guilty and sentenced him to four months' rigorous imprisonment.

At the appeal the only point pressed by learned counsel for the appellant was that there was no proof that the stuff was unlawfully manufactured liquor. It was at first contended by Mr. Tampoe that the Government Analyst's report was not properly received in evidence. Latterly the point was confined to the inconclusive nature of the report.

The Government Analyst has said that the stuff examined by him contained 5·6% alcohol and did not fall into any one of the following categories :—

- (a) Approved brands of imported liquors ;
- (b) Arrack ;
- (c) Gin ;
- (d) Toddy ;
- (e) Beers, wines, polpala decoctions and tea ciders manufactured under licence issued by the Excise Commissioner.

He also reported that it was not distilled spirits but a fermented liquor.

Mr. Tampoe said that there were tea ciders, fruit and coconut ciders and other decoctions that could be manufactured under licence, and that such beverages could contain more than 4% alcohol. Learned Crown Counsel maintained that no such lawfully manufactured stuff

could contain more than 4% alcohol ; no licence is ever issued for the manufacture of any beverage containing more than 4% alcohol. This may be so, but it does not appear in or from the evidence. The Analyst has not been called and there is no apparent reason why he has excluded only certain liquors and beverages. The prosecution has not proved that the stuff found with the accused was unlawfully manufactured liquor and the accused is therefore entitled to be acquitted. "

I set aside the conviction and acquit the accused.

Appeal allowed.

