1936

Present : **Abrahams C.J.**

TALAISINGHAM *v.* MUTTIAH.

487—P. C. Point Pedro, 12,075.

Unlawful possession of ganja—Proof of possession with knowledge and sanction—First offence—Sentence of imprisonment.

Where a person is charged with unlawful possession of ganja the prosecution must prove that the article was in the possession of the accused with his knowledge and sanction.

It is not desirable that, as a rule, an accused person should be sentenced to a term of imprisonment for a first offence.

APPEAL from a conviction by the Police Magistrate of Point Pedro.

L. A. Rajapakse (with him *Gilbert Perera* and *Soorasangaram*), for accused, appellant.

M. F. S. Pulle, C.C., for Crown, respondent.

Cur. adv. vult.

November 24, 1936. ABRAHAMS C.J.—

The appellant was convicted of having in his possession 5 pounds and 4½ ounces of ganja, in breach of section 28 of Ordinance No. 17 of 1929, as amended by section 7 (1) of Ordinance No. 43 of 1935, and was sentenced

[1] *19 N. L. R. 426.* [2] *(1913) S. L. R. App. Div. 390.*

to 9 months' rigorous imprisonment in addition to a fine of Rs. 300 or a further 3 months' rigorous imprisonment.

The facts are these. On May 7 last, a few minutes before midday, a number of Excise Officers entered into the house of the appellant accompanied by the Police. The excise authorities were acting on certain information which they had received. The name of the informant was naturally not disclosed in Court. The appellant was not at home, and a servant was in charge of the house. The officers made a search, and in a room in the house they discovered a pile of five tin boxes the bottom one of which was locked. Hanging on the wall of the room was a bunch of keys, one of which fitted the box. The box was found to contain 5 pounds and 4½ ounces of ganja, 25 letters, 4 Money Order receipts, and a woman's gold ornament. The appellant and his wife were both charged for being in possession of the ganja but the wife was acquitted. The appellant gave evidence and denied any knowledge of the presence of the ganja in his box. He admitted that the box was his and said that he had locked it when he left the house on April 22 to go with his wife to worship at a temple a few hundred yards away. He said that he and his wife did not leave the temple even for meals until they returned to the house to find that it had been searched by the Excise Officers, and he called in evidence the officiating priest of the temple to corroborate his story. It was given in evidence, both by the prosecution and by the appellant, that the room in which the box containing the ganja was found had no wall at the back and opened on to the compound of the appellant's house, and that the opposite end of that room faced the road and had an opening in the wall which was secured by a shutter which apparently could be opened from the outside. The appellant stated that his next door neighbour was ill-disposed towards him, and could easily get into the compound and so enter the room by the open end.

The statement of reasons for finding the appellant guilty was, I am afraid, not satisfactorily expressed. I regret to have to comment on the fact, but cases from Magistrate's Courts are all too common where Magistrates give findings on facts without stating their reasons. It makes matters very difficult for an Appeal Court, especially if the judgment is partially founded upon inadmissible evidence or false inferences from facts. Here, the statement of reasons consisted very largely of a recital of undisputed facts. The Magistrate then says that he disbelieves the defence, and says it is not true to say that the accused was staying at the temple, and that he does not accept the suggestion that the accused's next door neighbour must have introduced the ganja.

It is not possible to say from his judgment whether the Magistrate really addressed himself to the real point of the case. That point was this: Had the prosecution satisfactorily shown that the contraband article was in the possession of the appellant, that is to say, did he know that it was on his premises, and did he sanction its presence there? It was said in *Rex v. Lewis*[1], that the mere fact of finding stolen property on premises occupied by a person is not *per se* sufficient to raise a presumption that the occupier is in possession of that property, and it was also

[1] *4 Cr. App. R. 96.*

said in *Rex v. Savage*[1], that where stolen property is found in a man's house it is a question of fact for the Jury whether the property was found in his possession, that is to say, whether it was there with his knowledge and sanction. The same reasoning naturally applies to any property the possession of which is illicit.

Now it is obviously not sufficient to secure a conviction in this case that the sole evidence against the appellant should be the mere presence of the ganja in his house. What further evidence is there to raise the presumption which, if not rebutted by the appellant, would justify the Court in coming to the conclusion that the ganja was on his premises with his knowledge and consent ? Now, the ganja was found in his box and he admittedly had control over that box. There was no evidence nor was it even suggested by the defence that some other person, whether in the house or not, was in the habit of using that box. In that box were a number of letters, and some of them are addressed to somebody by the initials P. T., which are the initials of the appellant. One of the letters is dated April 26, 1936, and another dated April 30, 1936, so that it is obvious that the appellant went to the box on several days after the date on which he said he locked it, namely, April 22. The appellant having manifestly given false evidence about the date on which he locked the box, and not having denied that the letters were his, then comes the question as to when he visited the box last since he wishes it to be believed that somebody else, in fact his next door neighbour, unlocked that box sometime between April 22 and the date (May 7) when the Police discovered the ganga. It is obvious that the appellant has failed to support his contention that he was not the last person to handle that box, and I am of the opinion that the prosecution has put forward sufficient evidence to justify a conviction.

I dismiss the appeal, but I do not consider that a sentence of such severity can stand. Appropriate measures must of course be adopted to suppress this traffic in forbidden drugs, and it appears that the area in which the appellant is resident is a centre of that traffic, but in any campaign for the suppression of any particular form of crime Courts must be obedient to the principles upon which punishment must be inflicted, and at the same time must maintain a proper sense of propotion in imposing sentences. It has been said again and again in this Court that it is not desirable as a rule that people should be sent to Prison for a first offence. More than one case has been cited to me during these proceedings in which persons offending more seriously than the appellant again the Ordinance concerned in this case have been punished with no more than a fine. The Magistrate here has actually imposed a sentence of three-quarters of the maximum term of imprisonment which can be inflicted under the enactment contravened. It is difficult to believe that he really paused to think, otherwise he must have appreciated that he was leaving very little margin for an appropriate punishment for any subsequent offence committed by this appellant against the same enactment. I see no justification for departing from the policy which the Judges of this Court have continually observed. I quash the sentence of imprisonment, but I leave the fine and the default sentence untouched.

Varied.

[1] *(1906) 70 J. P. 36.*