

1944

Present: Soertsz J.

MENDIS APPUHAMY, Appellant, and ATAPATTU, Respondent.

1,059—M.C. Gampola, 6,841.

*Arrack—Purchase of arrack with intention of selling to another—Transfer for money consideration—Excise Ordinance, s. 2.*

Where a person buys arrack at the request of another and then transfers it to the latter for a money consideration.

*Held*, that the transaction amounted to a sale within the meaning of section 2 of the Excise Ordinance.

**A** PPEAL from a conviction by the Magistrate of Gampola.

No appearance for accused, appellant.

*D. Jansze, C.C.*, for complainant, respondent.

February 20, 1944. SOERTSZ J.—

The facts from which the question for decision on this appeal arises are these: The appellant is a hotel-keeper in Dolosbage. Excise Guard No. 231 visited this hotel from time to time concealing his real identity and passing off for a baas on a neighbouring estate. He appears to have broached the subject of procuring some arrack and to have been told that there were estate labourers who would sell their ration of arrack at a high price. In due course the Excise Guard wrote letters to the appellant requesting him to buy arrack for him and the appellant wrote back that he could buy it at Rs. 10 a bottle. A few days later a "raid" was arranged. The Acting Commissioner gave the Guard ten five-rupee notes to enable him to buy five bottles. The Guard went to the hotel and the appellant had two bottles in readiness for him. That was all he had been able to get. The Guard handed over four of the ten five-rupee notes and got in return two bottles of arrack. These facts are not disputed but it is contended that the transaction between the Guard and the appellant was not a sale but that it amounted to no more than to a

<sup>1</sup> 25 *Criminal Appeal Reports*, p. 49.

case of a servant or agent going into the market and buying for the employer or principal some article. In other words that the appellant occupied the position of a buyer and not that of a seller—a buyer buying for a principal and handing over to him the article bought. Now, this contention has to be examined not in the light of the word sale as it is generally understood in contracts of purchase and sale, but in view of the meaning given to it in the Excise Ordinance. In that Ordinance section 2 which is the section of interpretation, “sale” or “selling” is said to include “any transfer otherwise than by way of gift”. The appellant does not pretend that this was a gift and the only question is whether there was a transfer from the appellant to the Guard of the two bottles. There can be no doubt at all that there was a transfer on September 18 from the appellant to the Guard in the sense in which the word transfer is commonly understood in relation to movables—there was a handing or giving over of the thing. In this instance the evidence shows that the appellant had had the bottles for a day or two in reserve for the Guard. In other words, the appellant purchased the goods for himself, with of course, the Guard in mind. He had sufficient control over them in law to be able lawfully to change his mind and to dispose of them as he chose to do. He could drink the arrack, give it as a gift, throw it away or exchange it for money or some other commodity. He had paid his own money for it. The Guard had no legal claim to it whatever such as, for instance, a master who sends a servant out to buy him a bottle of arrack would have. I had occasion a few days ago to consider a case of that kind and I held that the transaction was not a sale by the accused in that case because all he had done was to take money given him by another with a request to fetch him a bottle of arrack and he had gone and fetched it. This is an entirely different case that I am dealing with. Here the appellant buys arrack—it may even be not for himself so far as his intentions are concerned—none the less he has dominion over that arrack. He gives it over to the Guard and gets in return twenty rupees—it is immaterial whether this amount represented what he had paid himself or more or less—the transaction is unequivocally a sale.

The appeal fails. It is dismissed.

*Appeal dismissed.*

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