

1956

Present : Sinnetamby, J.

K. VALLIAMMAI, Appellant, and F. D. T. WEBER
(Inspector of Police), Respondent

S. C. 831—M. C. Kalmunai, 22,531

Evidence—Expert—Must he always give reasons for his opinion?—Evidence Ordinance s. 51—Poisons, Opium and Dangerous Drugs Ordinance (Cap. 172), ss. 22, 76.

In a prosecution for unlawful possession of parts of a hemp plant, an Excise Inspector who was specially trained to identify parts of hemp plants expressed the view that a parcel which was in the possession of the accused contained parts of the hemp plant botanically called *canabis sativa*. No objection was taken to the evidence of the expert.

Held, that the evidence of the expert could not be rejected merely because he did not state the grounds upon which he based his opinion.

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

C. T. Olegasegarem, for the accused-appellant.

B. B. de Silva, Crown Counsel, for the Attorney-General.

October 31, 1956. SINNETAMBY, J.—

The accused in this case is charged with having been in possession of a quantity of ganja in contravention of section 76 read with 22 of Chapter 172 of the Legislative Enactments. She was convicted and sentenced to pay a fine of Rs. 400.

The evidence of the police sergeant is that he found a parcel on the lap of the accused when he stopped bus No. CV 1738 on certain information and examined it. At his request, the accused handed the parcel to him and he found that it contained parts of a hemp plant. The accused denied that any parcel was taken from her lap. On the contrary, she says that the police sergeant picked up a parcel from inside the front seat. The driver of the bus was called to support her evidence. He admitted that the police sergeant took a parcel when he examined the bus. The parcel, he said, was taken from under the seat immediately preceding the accused's seat.

On the question of fact as to whether the parcel was taken from under the seat in front of the accused's seat or from the accused's lap, the learned Magistrate has held that the police sergeant's evidence is true. I see no reason to interfere with that finding.

Learned Counsel also contended that the evidence in regard to whether the parcel contained hemp plants was unsatisfactory and for that reason his client was entitled to an acquittal. The evidence of an Excise Inspector who was specially trained to identify parts of hemp plants was led. That officer in the course of his evidence, examined the hemp plant in Court after breaking the seal and opening the parcel. He expressed the view that the contents of that parcel are parts of the hemp plant botanically called *canabis sativa*. Learned Counsel contended that this evidence is insufficient. His argument is that before the evidence of an expert can be called, the expert must in terms of section 51 of the Evidence Act state to Court the ground on which his opinion was based, so that it will enable the Court to test it. He relied upon the case of *Ramke Ram Singh v. Emperor*¹ reported in 36 Criminal Law Journal, 1935, page 511. It is not known whether in that case the objection was taken to the evidence of the expert in the original Court, but it would appear that the Court had not ascertained the grounds on which the expert based his opinion.

In the present case, the expert has not stated the grounds upon which he came to the conclusion that the parcel contained parts of the hemp plant but in the trial Court his evidence was not questioned, indeed he was not cross-examined at all.

The question now is whether in that state of affairs, the Appeal Court can reject an expert's evidence merely because he had not stated the grounds upon which he based his opinion. Learned Crown Counsel cited several cases in which this Court has acted upon opinions expressed by experts who have not stated the grounds on which they based their opinion. Some of these cases are unreported. I would refer to two of them. In S. C. Minutes 565 of 1956, in M. C. Colombo, 26949/A the Supreme Court refused to interfere. Likewise, in a case reported in 31 N.L.R., page 332 in the absence of a contest as to the capacity of an officer to identify excisable articles, the Supreme Court refused to set aside the conviction.

There is also a case reported in the Excise Judgments File bearing No. 4 of the E. V. O. 38, S. C. Minutes 945, M. C. Ratnapura 10,277. In that case this Court once again accepted the evidence of an Excise Inspector who professed to possess expert knowledge in regard to the manufacture of various liquors on the ground that the defence did not at the trial challenge the competency of the Inspector to speak on these technical subjects.

Having regard to the line of local cases, in which our Courts have accepted the evidence of an expert who did not state the grounds on which he bases his opinion, I do not think I should follow the Indian case if in that case the objection was raised for the first time in appeal and upheld.

[His Lordship then considered the question of sentence, and concluded :—]

I am satisfied that the evidence on record justified the conclusion which the learned Magistrate has reached. The appeal is accordingly dismissed.

Appeal dismissed,