

1945

Present: Canekeeratne J.

PONNACHIPILLAI, Appellant, and DE SILVA (S. I. Police),
Respondent.

364—M. C. Mallakam, 27,827.

Defence (Miscellaneous) Regulations, s. 53—Military petrol found in garden of house—Heavy petrol drum—Accused, main occupant of house—Exclusive possession.

Where the accused was charged under section 53 of the Defence (Miscellaneous) Regulations for unlawful possession of military petrol and there was evidence that the petrol was found in a heavy petrol drum in the garden of the house the inmates of which were the accused and her daughter—

Held, that, considering the nature of the articles found in the premises, the accused, who was the main occupant of the house, should be presumed to have been in exclusive possession of the petrol.

A PPEAL against a conviction by the Magistrate of Mallakam.

H. V. Perera, K.C. (with him *S. H. Perimpanyagam*), for the accused, appellant.

T. K. Curtis, C.C., for the Attorney-General.

Cur. adv. vult.

July 17, 1945. CANEKERATNE J.—

The accused and her daughter, a married woman, live in a stone building consisting of two rooms, a verandah and a kitchen. The house stands on a land four lachams in extent and fenced all round with a gap in front which is closed with a detachable tat gate. The owner of the property, according to the accused, is her daughter and the two are the only occupants of the house.

On October 31, 1944, a Police party entered the premises: they examined the rooms but found nothing incriminating therein. They then searched the garden: certain articles—a drum containing 14 gallons of petrol, a small empty drum, an empty kerosene oil tin, a funnel and a rubber tube—were found at a spot between the western wall of the house and the western fence; these were about 6-8 ft. distant. The articles were not visible from the entrance to the property. After examining these premises the party conducted a search of another house on the west. It appears from the evidence of the accused that she and her daughter went to the temple early that morning, it being a festival day; they returned home about 9 or 10 and went soon after to work in their garden about half a mile away; they came home about noon and were preparing their meal in the kitchen when the search party arrived. The suggestion is that these articles have been placed in the premises by some third party without her connivance.

The learned Magistrate convicted the accused of being in possession of 14 gallons of military petrol in breach of regulation 3 of the Emergency Powers Act of 1939 and thereby committing an offence punishable under section 53 of the Defence (Miscellaneous) Regulations and sentenced her to undergo six month's rigorous imprisonment.

Where property is found in a house in the possession of one or more persons, mere discovery of the property is not in itself sufficient to prove that the possession was of any of those persons¹. Possession to be criminal must be actual and exclusive.

Besides the discovery of the articles there is the fact that many men would be needed to carry the heavy petrol drum to its resting place from outside; it seems hardly credible that the articles were brought during the absence of the accused that morning. The mother and daughter live at Kathiripay in the Jaffna Peninsula. The accused was, on her own admission, the main occupant of the house; it may thus be inferred that she was the one who managed the house. That her daughter would act independently and bring or allow the introduction of these articles to the premises appears improbable. Such a manager would be presumed to have such control over the premises as to prevent anything of this nature coming in without his or her sanction. Knowledge of the presence in the premises of the property having been established against the accused, the managing member, she must as the house mistress be presumed to have been in possession of articles².

The petrol was kept on the premises apparently for the purpose of being sold. Was the person who had the disposal of it the accused or some other? It is not likely that a woman like the accused would be concerned in the sale of petrol; it is more probable that it was some other person who was living outside: the presence of the funnel and the rubber tube, at the spot and not inside the house, is a circumstance, though slight, in favour of this view. The accused had agreed to take care of these articles for the owner: she had the *de facto* possession of them with the consent of the owner. She has allowed the premises to be used for storing these articles. Taking those circumstances into consideration, I think the appropriate sentence would be a fine. I sentence her to pay a fine of Rs. 400 in default 3 month's rigorous imprisonment.

Sentence varied.
