

1953

Present : Rose C.J.

SEEMON SINGHO, Appellant, and PADDAWALA POLICE,
Respondent

S. C. 1,317—M. C. Gampaha, 8,452

Excise—Charge of possession of pot arrack—Evidence of type of liquor.

In a prosecution for possession of unlawfully manufactured pot arrack there must be some reliable evidence that the liquid in question was in fact pot arrack.

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

R. L. Pereira, Q.C., with *S. W. Jayasuriya*, for the accused appellant.

A. Mahendrarajah, Crown Counsel, for the Attorney-General.

February 25, 1953. ROSE C.J.—

In this case the appellant is charged with being in possession of two bottles alleged to contain pot arrack. Now, it is quite true that one does not wish to set aside convictions in Excise matters on grounds of pure technicality, but it seems to me that when the prosecution allege that an accused is in possession of unlawfully manufactured arrack there must be some reliable evidence as to the contents of the bottles which are found in his possession. In this case the only witness for the prosecution

was a police constable, T. B. Sarap, who states that he discovered the accused with a mat bag containing two bottles containing pot arrack and another three-quarters filled with toddy. He gives no details of his own experience in detecting various types of liquor, nor does he state the reasons for coming to the conclusion that the liquid in question in these bottles was in fact pot arrack. It is true that the learned Magistrate in his judgment adverts to this matter and says that the evidence was not challenged and therefore that evidence should be accepted. With great respect to him, I feel that the evidence of this Police officer on this matter should have been supplemented and that as it stands it is not sufficient to justify a conviction. That being so, the appeal must be allowed and the conviction quashed.

Appeal allowed.
