

1958

Present : H. N. G. Fernando, J.

TULIN PERERA, Appellant, and G. RAJAKULASINGHAM
(Inspector of Police), Respondent

S. C. 130—M. C. Colombo, 49,827/C

Explosives Act, No. 21 of 1956—Sections 9 (2), 10, 11—Possession of dashing-crackers—Culpability—Explosives Regulations 1957, Regulations 5, 9 (2), 49.

A permit under section 9 (2) of the Explosives Act is not required for the possession of fireworks in a quantity not exceeding 50 lbs. Nevertheless, Regulation 5 of the Explosives Regulations absolutely prohibits the possession of any firework the explosive mixture of which contains the chlorate of any metal or any sulphide of arsenic.

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

Colvin R. de Silva with *V. W. Vidyasagara*, for the Accused-Appellant.

V. C. Gunatilaka, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 24, 1958. H. N. G. FERNANDO, J.—

The appellant has been convicted on a charge that he possessed "dangerous explosives", to wit two hand bombs, in breach of Section 9 (2) of the Explosives Act, No. 21 of 1956. The report of the Government Analyst stated that the two hand bombs contained "a mixture of potassium chlorate, Arsenic sulphide and pebbles" and that they are "dashing-crackers" and are "prohibited explosives".

Section 9 (1) of the Act prohibits *inter alia* the possession of explosives for certain specified business purposes except under the authority of a licence, and Section 9 (2) prohibits possession of explosives for other purposes except under the authority of a permit. But there is an important exception to the latter prohibition, for Section 10 provides that a permit is not required for the possession of such a quantity of fireworks as does not exceed the prescribed quantity. The quantity has been prescribed in Regulation 9 (2) of the Explosives Regulations 1957 (*Gazette* 11,125 of June 3rd, 1957) and in the result a permit under Section 9 (2) of the Act is not required to authorise possession of fireworks in a quantity not exceeding 50 pounds.

The effect of the definition of "cracker" and "fireworks" in Regulation 49 is that what is commonly called a dashing-cracker is included within the meaning of the term "fireworks". Accepting then the report of the Government Analyst in this case that the hand bombs in question are dashing-crackers, the effect of the various statutory provisions to which I have already referred is that it is not an offence under Section

9 (2) of the Act to possess dashing-crackers except in a quantity which exceeds 50 pounds. That being so, the accused in this case could not have been properly convicted of such an offence.

This conclusion is surprising, particularly in view of the fact that the Government Analyst described the hand bombs as “dangerous explosives”; one would not expect that the law would permit people to possess or use such articles with impunity. I have therefore examined the question further after reserving judgment, and am satisfied that there is no such defect in the law.

Section 11 of the Act authorises regulations to be made *inter alia* prohibiting the possession of any explosives. By virtue of this power Regulation 5 of the Explosives Regulations 1957 prohibits the possession of any firework the explosive mixture of which contains the chlorate of any metal or any sulphide of arsenic. Far then from allowing a person, either freely or under a permit, to possess hand bombs of the description which the appellant in this case is alleged to have possessed, the law absolutely prohibits the possession of any firework containing the explosive mixture found by the Analyst in these bombs. The appellant therefore undoubtedly committed an offence by possessing articles prohibited by Regulation 5, and should have been charged for that offence.

I have anxiously considered whether in view of the gravity of his offence he should not now be convicted as for a contravention of that Regulation. I desist from doing so for the following reasons:—

- (a) The offence of contravening Regulation 5 is an offence quite distinct from that contemplated in Section 9 (2) of the Act.
- (b) It would be unfair at this late stage to substitute a conviction for an entirely different offence, particularly when it was not suggested during the argument of the appeal that an offence under Regulation 5 had been made out.
- (c) There was evidence to prove that the two hand bombs marked P1 and P2 were dispatched in proper custody to the Government Analyst for report and duly returned by him to the Magistrate’s Court. There was however no evidence to prove that P1 and P2 were the hand bombs found in the possession of the appellant. The Police Constable who is alleged to have detected the offence said that on searching the appellant he saw two paper balls in his hand similar to P1 and P2. There was lacking the necessary evidence to establish beyond doubt that the articles seized from the possession of the appellant were the identical articles produced in Court and subsequently transmitted to the Analyst for report.

My remark during the course of the argument, that “this case has been bungled from beginning to end”, has been amply confirmed upon consideration of the evidence and of the relevant statutory provisions governing the possession of explosives of the type concerned in this case.

I am compelled to set aside the conviction and acquit the accused.

Accused acquitted.