

1946

Present : de Silva J.

CORNELIS *et al.*, Appellants, and EXCISE INSPECTOR,  
Respondent.

494-5—M. C. Colombo, 9,519.

*Illegal possession of excisable article—Excisable article found in house occupied by husband and wife—No evidence against husband except that he was chief occupier—Inference of guilt—Excise Ordinance (Cap. 42), s. 44.*

The mere finding of an excisable article in a house occupied by husband and wife is insufficient to establish possession of it by the husband if there is no other evidence as against him except that he was chief occupier.

**A** PPEAL against two convictions from the Magistrate's Court,  
Colombo.

*H. W. Jayewardene*, for the accused, appellants.

*J. G. T. Weeraratne, C.C.*, for the Attorney-General.

June 28, 1946. DE SILVA J.—

The two accused in this case who are husband and wife were charged with having been in possession of an excisable article, to wit, about 14 drams of arrack which had been unlawfully manufactured in breach of section 44 of Chapter 42 of the Revised Legislative Enactments. After trial, both accused have been convicted and the 1st accused was sentenced to undergo three months' rigorous imprisonment and to pay a fine of Rs. 100 ; and the 2nd accused to pay a fine of Rs. 50.

The evidence shows that, on a complaint made by the wife of the headman of Talangama, two constables and a sergeant and the headman went to search the accused's house for unlicensed firearms. At the search no firearm was found, but the search party found two bottles of unlawfully manufactured arrack in a cupboard and also on their approach the 2nd accused rushed inside the house and broke a pot which contained what is called goda which appears to be fermented toddy which forms the base for the manufacture of arrack. They also found a tin containing the same substance.

In appeal, it is urged that there is no evidence to show that the 1st accused was in possession of the bottles of arrack which were found in the cupboard. The evidence shows that the 1st accused was the chief occupant but, apart from that, there is no other evidence to show that he had anything to do with the arrack which was found. As far as the 2nd accused is concerned, her conduct shows that she was conscious of the fact that the goda and the arrack were in the house and she attempted to destroy part of that evidence. The appellants' Counsel relies on the case of *Perumal v. Lucia Anthony and another*<sup>1</sup> and the case of *Banda v. Haramanis*<sup>2</sup>. These cases are to the effect that the mere finding of an

<sup>1</sup> (1937) 10 C. L. W. 21.

<sup>2</sup> (1936) 21 N. L. R. 141.

excisable or other unlawful article in a house occupied by husband and wife is insufficient to establish possession by husband as well as wife. There is no other evidence in this case as against the 1st accused except that he was the chief occupier. Further, he was not present at the time of the search.

In the circumstances, I set aside the conviction of the 1st accused and acquit him. The conviction and sentence on the 2nd accused are affirmed.

*Conviction of 1st accused set aside.*

*Conviction of 2nd accused affirmed.*

