

APPELLATE CRIMINAL.

Before the Hon'ble Mr. Justice Baguley.

APPAYA AND EIGHT OTHERS

v.

KING-EMPEROR.*

1924

Sep. 1.

Burma Excise Act (No. 17 of 1917), section 51—Joint possession.

The nine accused were found in a *sampan* in which were also found thirty-six quarts of *kazawye* in nine bundles of four bottles each.

Held, that the accused could not be said to be in joint possession of all the thirty-six quarts of the *kazawye*.

King-Emperor v. Nga Pyu, 8 L.B.R., 464; *Queen-Empress v. Rajia*, P.J.L.B. 405—*distinguished*.

BAGULEY, J.—In this case the accused have been fined Rupees 10 each under the Excise Act in the following circumstances.

They were all caught in one *sampan*, and in the *sampan* were found thirty-six quarts of *kazawye* in nine bundles of four bottles each. The learned magistrate has convicted them all, holding that they were in joint possession of thirty-six quarts. As authority for this he quotes the case of *King-Emperor v. Nga Pyu* (1). In that case two men were found carrying a pot containing eight quarts of country-fermented liquor, and they were held to have been in joint possession of the eight quarts. This ruling followed the ruling of *Queen-Empress v. Rajia* (2); where also there was a jar containing eleven quarts of toddy said to have belonged to different people.

But the present case is not on all fours with the case quoted by the learned magistrate. When the liquor is placed in a jar, it is impossible to say that

* Criminal Revision No. 634B of 1924 from the order of the Second Additional Magistrate of Rangoon passed in his Summary Trial No. 1089 of 1924.

(1) (1915-16) VIII, Lower Burma Rulings, p. 464.

(2) (1893-1900) Printed Judgments, p. 405.

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one person is in separate possession of any one part of it. The liquor, as it is being carried, shakes about in the jar, and it is clearly a fact that people, who have each put, say, four quarts into the jar, are jointly in possession of the whole contents of the jar.

In the present case the liquor was in nine separate bundles of four bottles each, and presumably each man was in possession of his own four bottles. To hold that everybody in the *sampan* is in joint possession of all the contents would lay down a principle that all the passengers on an Ocean Liner are in joint possession of all the boxes in the passengers' baggage room—a finding which it would obviously be quite impossible to support.

When the liquor of each person is kept separate, as in the present instance, the owners of each portion of it are not in joint possession of the whole.

I, therefore, set aside the conviction and sentence and acquit the accused. The fines which have been paid will be refunded to them.