

1968

Present : Alles, J.

NALLARAKKUPILLAI, Appellant, and M. I. KHALEEL
(Fisheries Sub-Inspector), Respondent

S. C. 1123/1967—M. C. Puttalam, 3265

Fisheries Ordinance (Cap. 212)—Sections 14 and 15—Offence of possessing fish dynamited in Ceylon waters—Ingredients of the offence.

In a prosecution under section 15 of the Fisheries Ordinance for possessing fish killed by using dynamite in contravention of section 14, it is incumbent on the complainant to prove, *inter alia*, that the fish was dynamited in Ceylon waters.

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

Colvin R. de Silva, with *M. L. de Silva* and *Mrs. Sarath Muttetuwegama*, for the accused-appellant.

Lalith Rodrigo, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 3, 1968. ALLES, J.—

The accused-appellant in this case was charged and convicted with having in his possession 150 pounds of 'seraya' fish, knowing or having reasonable cause to believe that the said fish was killed in contravention of section 14 of the Fisheries Ordinance, by using an explosive substance, to wit, dynamite, and thereby committed an offence punishable under section 26 of the said Ordinance.

Section 14 of the Fisheries Ordinance reads as follows :

"No person shall in Ceylon waters use any poisonous, explosive or stupefying substance for the purpose of poisoning, killing or stupefying any fish."

'Ceylon waters' includes—

- (a) the territorial waters of Ceylon ; and
- (b) all public bays, rivers, lakes, lagoons, estuaries, streams, tanks, pools, ponds and channels and all other public inland waters."

In order therefore to establish the charge under section 15 in this case the prosecution must establish beyond reasonable doubt—

- (a) that the accused was in possession of dynamited fish ;
 - (b) that he knew or had reason to believe that the fish was dynamited ;
- and

(c) that the fish had been dynamited in *Ceylon waters* as defined in the Ordinance.

In this case, I am satisfied that the accused, who has been described as a Fish Mudalali, had in his wadiya at Kalpitiya a large quantity of fish which he knew or had reason to believe to have been killed with the use of dynamite. Indeed, his entire conduct, at the time the Fisheries Inspector visited the wadiya, is indicative of his guilty knowledge—he denied the presence of the fish in his wadiya and when the fish was discovered, he denied it was dynamited fish and commenced to plead with the Inspector. A sample of fish was removed from his wadiya, examined by the Doctor and found to have been killed with dynamite.

Counsel for the appellant however submits that an essential ingredient of the charge has not been established by the prosecution inasmuch as there is no evidence that the fish was dynamited in 'Ceylon waters'. The accused admitted that the fish was bought by his agents at Unchamulla, 12 miles from Kalpitiya along the sea-coast and transported by boat to his wadiya. It was not disputed that Unchamulla is within Ceylon waters but Counsel for the appellant submits that there is no admissible evidence that this fish was dynamited at Unchamulla and the evidence of the Fisheries Inspector that "dynamiting of fish is frequent in Unchamulla and Dutch Bay" is only hearsay. It is not clear whether the Inspector was personally aware of this fact or whether he obtained this information from some other source, particularly as this evidence was elicited only in re-examination. In spite, therefore, of the admission of the accused that the fish came from Unchamulla and that the fish was found to be dynamited, the evidence is not sufficient to establish that the dynamiting took place at Unchamulla. One cannot exclude the possibility of the fish being dynamited outside territorial waters, brought to Unchamulla, purchased by the accused's agents and then transported from Unchamulla to Kalpitiya.

It is not an offence to have in one's possession dynamited fish knowing or having reason to believe that it has been killed by the use of explosives. The offence under section 15 can only be committed if the prosecution proves further that the fish was dynamited in Ceylon waters. The prosecuting authorities have not given their mind to this essential ingredient of the offence and failed to lead evidence on this essential matter. If there was a modicum of admissible evidence on this point, I would not have hesitated to affirm the conviction.

I am therefore constrained to hold that in this case, the prosecution has not proved beyond reasonable doubt that the fish had been dynamited in 'Ceylon waters' and consequently the charge under section 15 of the Ordinance has not been established. I allow the appeal, set aside the conviction and acquit the appellant.

Appeal allowed.