

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 17 of 1961

Between:

1. HARI KISSUN, s/o KALI DIN
 2. GANGA NAIDU, s/o DESAIA NAIDU Appellants
- v.*
- REGINAM Respondent

Fisheries Ordinance (Cap. 154)—possession of fish taken by explosives under s. 8 (4)—whether possession must be “for sale”.

The appellant was convicted of possessing fish taken by the use of explosives contrary to s. 8 (4), Fisheries Ordinance (Cap. 154). Upon appeal it was contended that mere “possession” of fish taken in this way was no offence, but that it must be “possession for sale”.

Held.—The words “for sale” in section 8 (4) of the Ordinance were to be read only with the word “exposing”. Mere “possession” of fish taken by the use of explosives was an offence.

Appeal dismissed.

M. T. Khan for the Appellant.

K. C. Gajadhar, Crown Counsel, for the Respondent.

KNOX-MAWER, Ag. J. (16th June, 1961).

The first appellant was convicted before the Magistrate's Court of the First Class, Ba, upon two counts, namely possession of explosives, contrary to section 56 of the Explosives Regulations 1955, and possession of fish taken by explosives, contrary to section 8 (4) of the Fisheries Ordinance (Cap. 154). Upon the first count he was sentenced to a fine of £25 or one month's imprisonment in default. Upon the second count he was sentenced to six months' imprisonment. The second appellant was convicted upon the second count and also sentenced to six months' imprisonment.

Upon appeal, it has been contended that the particulars charged in count 2 do not disclose any offence under section 8 (4) of Cap. 154. The relevant words of the subsection are:—

“any person possessing, transporting or selling or exposing for sale or hawking fish which has been taken by the use of one of the aforesaid explosives, shall be liable for a first offence to imprisonment for six months or to a fine of fifty pounds or to both such penalties;”.

Learned counsel for the appellants has argued that mere possession of fish which has been taken by the use of explosives is not an offence: it must be “possession for sale”. I do not think this is a correct interpretation of the

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words of the subsection. The words "for sale" are to be read only with the word "exposing". To adopt counsel's interpretation would require the words "for sale" to be read with "selling", as well as with "possessing", which would be very odd indeed. Moreover, the comma after "possessing", in no way assists the appellants contention in this regard. This ground of appeal therefore fails.

Both appellants maintain that having regard to the fact that they are first offenders the sentences imposed are harsh and unreasonable. The reasons which the learned magistrate has given for imposing a sharp lesson read as follows:—

"When people catch fish in this way they should remember that while they may get their living from it now, the explosions kill all the young fry. When your children and your children's children come to fish these waters there will be no catchable fish. There will be no fish to eat. Dynamiting of fish destroys one of the great natural assets of the country. You are thieving from posterity."

This court is wholly in agreement with these comments. The fact that the legislature has provided that even for a first offence a sentence of six months' imprisonment and a fine of £50 may be imposed, is an indication of the gravity with which this evil is viewed. It is hoped that the punishment awarded in this case will be a warning to others. The sentences of six months' imprisonment imposed upon the second count will stand.

Having regard to the sentence of imprisonment imposed upon the first appellant under count 2, I think a fine of £5 or seven days' imprisonment in default should be substituted for the sentence imposed upon count 1. It is ordered accordingly.

Cases cited:
Pinpoint v. Sankar E.R. Vol. 155 p. 1292
Melling v. East E. R. Vol. 139 p. 821
 K. C. Ramayya for the Appellant
 D. M. N. McFarlane for the Respondent.

Judgment: (read by HANMANT, President).

This is an appeal from the decision of the Supreme Court of Fiji dated 9th September, 1960, in which the plaintiff-appellant's claim as the trustee in bankruptcy of the estate of Subbaraj to certain decisions in connection with an interest in land held by the bankrupt but disposed of by him before his adjudication, was dismissed.

The circumstances under which the claim arose and the facts found by the court below are set out clearly in the learned trial judge's judgment and may be summarized briefly as follows:—The appellant, Ram Anant, was married to Subbaraj and his brother Govinda held undivided half shares of an interest in 8½ acres of native agricultural land at Tavua under the terms of a letter from the Native Land Trust Board dated 12th July, 1956, which reads as follows: