

## APPELLATE CRIMINAL.

*Before U Bo Gyi, J.*

DAW SAN YI AND ONE (APPELLANTS)

v.

THE UNION OF BURMA (RESPONDENTS).\*

H.C.  
1948

Feb. 5.

*Confession before an Excise Officer is no longer admissible in view of the Burma Act 28 of 1940. The decision in Maung San Myin v. King-Emperor, 1.L.R. 7 Ran. 771, is no longer law.*

T. K. Boon for the appellants.

U Bo Gyi, J.—The appellants Daw San Yi and Ma Ah Mar Sein have been convicted under section 9 (a) of the Opium Act for possession of raw opium and sentenced each to six months' rigorous imprisonment and a fine Rs. 1,000, or, in default, a further term of three months' rigorous imprisonment.

The undisputed facts are that about 3 p.m. on August 18th, 1947, an Excise party led by Inspector of Excise U Maung Maung Tin raided house No. 77, Windsor Road, Rangoon, under the personal supervision of the Superintendent of Excise (2) U Tun Kyi and Assistant Superintendent of Excise U Tha Aung. The search party were accompanied by two elders, U Yone and Esoof Ebrahim Khabaidi (P.Ws. 2 & 3). They found the downstairs front door padlocked on the outside and shouted for the inmates. The door was of collapsible metal, through which a young woman, the 2nd appellant, was seen coming down the stairs. When told that the party had come to see the owner of the house, she went up again and a little while later the 1st appellant came down. She said she was the

\* Criminal Appeal No. 1973 of 1947 being appeal against the order of the District Magistrate of Rangoon, dated the 10th November 1947, passed in Criminal Regular Trial No. 41 of 1947.

H.C.  
1948  
—  
DAW SAN YI  
AND ONE  
v.  
THE UNION  
OF BURMA.  
—  
U Bo GYI, J.

owner of the house and when the search party apprised her of the object of their visit she replied that people of her standing would never have dealt in opium. But she found that the search party were not impressed and she shouted to the 2nd appellant to bring the keys. While the party at the front door were waiting for the keys, certain members of the Excise party stationed at the back of the house shouted that packets were being thrown down. U Maung Maung Tin, accompanied by U Yone, rushed towards the back of the house, and they saw the 2nd appellant on the backstairs of the house. Sub-Inspector of Excise Maung Pe Thein (P.W. 5) had seen the 2nd appellant fling down a gunny bag and its contents, 5½ packets, strewn about. The packets were seized and the 2nd appellant was taken upstairs.

Meanwhile, those at the front door had managed to get into the house and had gone upstairs with the 1st appellant. There the 1st appellant was asked to produce the key of an almirah in the dining room. She did not produce it and apparently getting impatient U Maung Maung Tin tugged at it, when it came away together with the hasp. Inside the almirah were found three trunks containing a considerable quantity of raw opium. These facts have not been challenged.

The real points of controversy are whether, as alleged by some of the searchers, the 1st appellant told them before the almirah was opened that there was opium inside the almirah and whether she told them that three trunks whose contents she did not know had been left with her by one Saw Tun. The authority of the decision in *Maung San Myin v. King-Emperor* (1) that an admission to an Excise Officer is admissible in evidence seems to have been shaken by section 20A of the Opium Act, which has been added by Burma

(1) I.L.R. 7 Rau, 771.

Act XXVIII of 1940, according to which no confession made to an Excise Officer empowered thereunder can be proved as against a person accused of any offence. U Maung Maung Tin says that he has been invested with the powers of a Police Station Officer to investigate into cases. As to the second point in dispute, an overwhelming array of prosecution witnesses have stated that the 1st appellant never told them that the trunks had been left in her care by Saw Tun. What they do say is that she told them that the trunks had been left with her by Nyi Bu, Ba Ba Gyi and Sunny. Those men were arrested forthwith and denied knowledge of the affair. In her examination she states that as the Excise party wanted three or four men to be sent up she mentioned the names that occurred to her. It is plain that she only mentioned those three men as the persons who had kept the trunks in her house, and in these circumstances the evidence of her witnesses who say that a certain unknown man left the trunks in her house is unworthy of credit. Furthermore, her story that a person who was comparatively a stranger to her left three trunks said to contain nothing more valuable than medicine and clothing in an almirah which was padlocked is very improbable on the face of it. Then there is the fact that two cigarette tins full of opium were found on the almirah.

The 2nd appellant in her examination states that when she heard that the raiding party would search for opium she thought that what she saw on the almirah was all that had been kept by the unknown man and through fear threw it down not knowing it to be opium. This statement considered in conjunction with the evidence that she threw out 5½ packets of opium leaves no room for reasonable doubt that she knew that there was opium in the house.

H.C.  
1948DAW SAN YI  
AND ONEv.  
THE UNION  
OF BURMA.

U Bo Gyi, J.

H.C.  
1948

DAW SAN YI  
AND ONE

v.  
THE UNION  
OF BURMA.

U Bo GYI, J.

After a consideration of all the evidence, I find that these two appellants were in possession of the opium. They were the principal occupants of the house, the other inmates being two minor girls. Since 9,597 tolas of opium were found it is clear that the appellants were trafficking in opium on a large scale and accordingly I am not prepared to hold that the sentences passed upon them, though severe, are excessive. The appeals are dismissed. The appellants must surrender to their bails.