

1972

Present: Rajaratnam, J.

A. M. JALALDEEN, Appellant, and C. JAYAWARDENA (O.I.C.,
Central Vice Squad), Respondent

S. C. 937/71—M. C. Colombo, 70776/D

*Charge of profiteering in beef—Burden of proof—Meaning of expressions
“beef” and “offal”—Evidence Ordinance, s. 114—Control of
Prices Act, s. 8 (1) (6).*

The accused-appellant was convicted on a charge of selling a pound of beef without bones at a price in excess of the controlled price. The definition of “beef” in the relevant Price Order excluded any form of offal. The Oxford Dictionary defines offal as including kidney, heart and liver.

Held, that, in regard to the burden of proof on the prosecution, it could be presumed that the accused did not sell liver and kidney when he was asked for beef. The term offal normally relates to refuse and the rejected stuff from slaughtered cattle.

A PPEAL from a judgment of the Magistrate’s Court, Colombo.

Mark Fernando, for the accused-appellant.

P. Ramanathan, State Counsel, for the Attorney-General.

Cur. adv. vult.

December 15, 1972. RAJARATNAM, J.—

The accused-appellant in this case was convicted on a charge of profiteering in beef by selling a pound of beef without bones for Re. 1.50 when the maximum controlled retail price of a pound

of beef without bones was Re. 1.25¹ an offence punishable under s. 8, sub-section 1 of the Control of Prices Act, Chapter 173, and punishable under s. 8 (6) of the Act.

Learned Counsel for the appellant very forcefully made a submission on a point of law in that the prosecution failed to establish that the article sold was beef as defined in the Price Order. He contended that the prosecution had the burden to prove that it was beef that was defined in the order and not beef as it is popularly understood. I have had the advantage of the oral and the written submissions he has made in support of his argument. According to the Price Order the expression "beef" is defined excluding *inter alia* any form of offal. Therefore offal is excluded. The report of the Government Analyst was called for in this case to state as to whether the sample of the beef, P1, that was sold contained beef without bones and was free of offal. The report P5 stated that no examination for offal was done and in his evidence the Government Analyst stated that he was not competent to do so and he generously conceded this competence to the Government Veterinary Surgeon. He, however, stated that the seriological examination revealed that the sample P1 was beef.

Learned Counsel referred me to the definition of offal in the Oxford Dictionary which defines offal as including *inter alia* kidney, heart, and liver. This definition no doubt includes in the term offal such choice parts as the liver and the kidney. Learned Counsel therefore argued that the prosecution has not excluded the probability or even the possibility that the accused sold these choice parts which may have accounted for the higher price. He cited the case of *Ummar v. Rambukwella*² reported in 44 N. L. R. 161 where Moseley A. C. J. held that if what was sold was offal the price of offal is not controlled and therefore no offence was committed and he regretfully set aside the conviction in the case. Again in the case of *The Attorney-General v. Rahim*³ 69 N. L. R. 519, Abeyesundere J. held that where in a prosecution for contravention of Price Order relating to beef, the expression "beef" is defined in the order as including any kind of beef other than imported beef or any offal, the burden is on the prosecution to prove that the beef referred to in the charge was not imported beef or any offal. I respectfully agree with these two decisions although I am not prepared to apply the decisions in these two cases without examining the particular circumstances of each case. The burden no doubt is on the prosecution to prove that the beef referred to was not offal. If the accused sold offal he would have been guilty of some other

¹ (1943) 44 N. L. R. 161.

³ (1966) 69 N. L. R. 519.

offence. The term offal normally relates to refuse and the rejected stuff from slaughtered cattle. No doubt the Oxford Dictionary includes the liver and the kidney which is within the knowledge of every one more expensive than the flesh. Therefore the court is entitled to presume this fact under s. 114 of the Evidence Ordinance regard being had to the common course of natural events, human conduct and public and private business. Furthermore the price order in Tamil refers to offal as "Kalivu" (கழிவு) and in Sinhala offal is referred to as "Manshavashesha" (මාංශවශේෂ).

I am in respectful agreement with the observation made by My Lord the Chief Justice in the case of *Jalaldeen v. Jayawardena*¹ 70 N. L. R. 476 at p. 479. I have myself never enjoyed the pleasant surprise of being given liver and kidney by a butcher when I asked for beef. Applying the observation of My Lord the Chief Justice it would be absurd to suppose that a butcher adopted the uncommon course of practice to sell liver and kidney when he was asked for beef.

The fact that the law demands that the burden is on the prosecution to prove that the article sold was beef and not offal does not mean that the prosecution can only prove it through an Analyst or Veterinary Surgeon. The Court can take the facts of each case and the circumstances to arrive at a finding of fact on this question.

Quite apart from the law even on the facts there is the evidence of the Sub-Inspector at page 15 of the record that he did not find any offal in the beef although he was not an expert in the veterinary field. One does not require expert knowledge to distinguish offal from beef or bread from cake. There is the further evidence of Police Constable Jayalath that the beef that was cut was cut from a hanging chunk and that there were two pieces so cut which contained nothing but beef. In my view this evidence apart from the evidence of Government Analyst that from a seriological examination it was revealed that the sample of flesh P1 was beef as defined in the Price Order was sufficient proof and the prosecution discharged its burden.

In the totality of all the evidence and in the absence of any evidence given by the accused or any other witness it is not possible for me to say that the prosecution has not proved its case that it was beef that was sold. I also take into consideration the item of evidence that what was asked for was beef and there is no counter evidence that something else was given.

I therefore dismiss the appeal.

Appeal dismissed.

¹ (1967) 70 N. L. R. 476 at 479.