

1948

Present : Howard C.J. and Soertz S.P.J.

GNANAJAH (Price Control Inspector) and KANDIAH, Respondent.

*S. C. 1177—M. C. Vavuniya 21,232**Defence Regulations—Sale of potatoes—Excess of price—Accuracy of balance—No proof—Control of Prices (Supplementary Provisions) Regulations, Section 2 (2).*

The accused was charged with selling a pound of potatoes at a price in excess of the retail price. The weight of the potatoes was found to be one pound whether weighed with the accused's scales or with the standard weights brought by the Price Control Inspector from the Kachcheri.

Held, that there was evidence with regard to the accuracy of the scales and in the absence of evidence indicating their inaccuracy the accused should have been convicted.

Sub-Inspector of Police, Kandy v. Wassira (1945) 46 N. L. R. 93 distinguished.

APPEAL against an acquittal from the Magistrate's Court, Vavuniya.

Alan Rose, K.C., Attorney-General, with A. C. Alles, Crown Counsel, for the appellant.

H. W. Thambiah, with S. Sharvananda, for the accused respondent.

Cur. adv. vult.

February 27, 1948. HOWARD C.J.—

This is an appeal by the complainant, the Food and Price Control Inspector, Vavuniya, with the sanction of the Attorney General, against an order of the Magistrate dismissing the charge against the respondent of selling to one C. Rajanathan one pound of potatoes for 50 cents, a price in excess of the retail price of 28½ cents in contravention of section 2 (2) of the Control of Prices (Supplementary Provisions) Regulations. The facts in the case were not disputed. The only point taken by the respondent at the trial and in this Court was that there was no proof of the balance in which the pound of potatoes were weighed being accurate. The Magistrate relying on the decision in *Sub-Inspector of Police, Kandy v. Wassira*¹ found the respondent not guilty. That case, also an appeal by the Attorney-General from an order of acquittal by

¹ (1945) 46 N. L. R. 93.

the Magistrate, was heard by me. The concluding portion of my judgment was as follows :—

“ With regard to the weighing of the bread on the scales of the respondent, criminal cases of this nature must be established beyond all reasonable doubt. With no evidence as to the accuracy of the scales it cannot be said that this standard of proof has been reached. I think the Magistrate’s decision on this point was correct.”

The earlier part of my judgment upheld the Magistrate’s decision in this case on another point. I am of opinion that the present case is distinguishable inasmuch as in *Sub-Inspector of Police, Kandy v. Wassira*, there was no evidence at all of the accuracy of the weights and scales. In the present case the weight of the potatoes was found to be one pound whether weighed with the respondent’s weights or with the standard weights brought by the Price Control Inspector from the Kachcheri. In the unreported case *Food and Price Control Inspector, Colombo v. William Singho*¹ decided by me on August 19, 1947, I distinguished the facts of that case from those in the Kandy case on the ground that there was evidence in the latter case with regard to the accuracy of the weights and scales. I think the present case can be distinguished in the same way. The weights of the respondent and the standard weight indicated that the potatoes sold weighed a pound. In these circumstances I consider that the Magistrate, in the absence of any evidence indicating the inaccuracy of the weights or scales, should have convicted the respondent.

For the reasons I have given the appeal must be allowed and the order of acquittal is set aside. The case is remitted to the Magistrate to convict the accused and pass sentence.

SOERTSZ S.P.J.—I agree.

Appeal allowed.
