

1970

Present : Siva Supramaniam, J.

K. G. FRANCIS, Appellant, and B. D. O. JOSEPH
(Food and Price Control Inspector), Respondent

S. C. 217/69—M. C. Galle, 57032

Control of Prices Act—Prosecution against two accused for jointly selling a price-controlled article at excessive price—Quantum of evidence—Scope of s. 35 of Penal Code—Balance sum due to buyer—Tender by seller of a lesser sum—Effect.

(i) Where A and B are charged with having jointly sold a price-controlled article in excess of the prescribed price by selling it under-weight, B is not liable to be convicted if the evidence shows that he was not aware that the article handed to the buyer by A was under-weight and that B was only called upon by A to take the money for the correct weight and to pay the balance to the purchaser. In such a case the principle of liability contained in section 35 of the Penal Code has no application.

(ii) In a prosecution for contravention of the Control of Prices Act, the seller is not liable to be convicted if, when the balance sum due to the purchaser is, for instance, Re. 1.06, he hands over to the purchaser a lesser sum of Re. 1.05 owing to his inability to find a one-cent coin. In such a case it is open to the buyer to get back the sum which had been tendered by him or to recover from the seller the sum of one cent on the basis of a debt due.

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

Colvin R. de Silva, with *I. S. de Silva*, for the 2nd accused-appellant.

S. L. Gunasekara, Crown Counsel, for the respondent.

Cur. adv. vult.

March 12, 1970. SIVA SUPRAMANIAM, J.—

The appellant, who is the 2nd accused in this case, and another were charged with having jointly sold 1 pound 15 ounces of yellow gram at a price in excess of the maximum retail price fixed by the Controller of Prices and thereby committed an offence under the Control of Prices Act. After trial, the Magistrate held that the charge was proved against both accused. In view of his young age, the 1st accused was placed under the supervision of a Probation Officer for a period of two years. He has not appealed against the order. The appellant was convicted and sentenced to one month's rigorous imprisonment and to a fine of Rs. 1,000, in default, a further six weeks' R.I.

The prosecution case is that the Food and Price Control Inspector of Galle sent a decoy to the boutique in which the two accused were employed, with instructions to purchase 2 pounds of yellow gram, the controlled maximum price of which was 47 cent; per pound. The decoy stated that he asked the 1st accused for 2 pounds of yellow gram. The 1st accused then weighed the gram and gave him the parcel. He tendered to the 1st accused a two-rupee note. The 1st accused handed the note to the appellant.

It would appear from the evidence that the appellant quoted the price of the 2 pounds at 94 cents which was the controlled price, but informed the purchaser that he did not have a one-cent coin with him to give him the full balance of Re. 1.06. He therefore gave him Re. 1.05. These facts were not denied by the decoy.

The Inspector stated that on a signal from the decoy, he went up and took charge of the parcel of yellow gram and the balance sum of Re. 1.05. When he weighed the gram without the wrapper, the weight was found to be 1 pound 15 ounces. He could not say if the weight with the wrapper would have been 2 pounds. According to the decoy, the 1st accused had weighed the gram with the wrapper. The Inspector also admitted that he searched the drawer of the appellant but found no one-cent coin therein.

The question that arises for consideration on this appeal is whether, on the admitted facts, the appellant is guilty of having sold the gram, jointly with the 1st accused, at a price in excess of the controlled maximum price. The essential steps in the conclusion of a contract of sale are (1) the stipulation of the price, (2) the payment thereof, and (3) the delivery

of the article which is subject of the sale. In the instant case, the gram had been weighed by the 1st accused in the presence of the purchaser and the purchaser had accepted the parcel as containing 2 pounds of gram. The evidence does not show that the appellant played any part in the weighing of the article or that he was aware that it was one ounce short of 2 pounds. The appellant was called upon to take the money for 2 pounds of gram and to pay the balance to the purchaser. When the appellant quoted the price at 94 cents it meant that the contract of sale was to be concluded at that price. The fact that he handed to the purchaser a balance of Re. 1.05 owing to his inability to find a one-cent coin to give him the full balance of Re. 1.06 did not vary the price at which the contract of sale was concluded. The resulting position was that the seller became indebted to the purchaser in the sum of one cent which the purchaser would have been entitled to recover from the seller thereafter, or, if he so wished, he could have waived that debt. That the seller had in his drawer two-cent coins with which he could have made up the full balance payable does not make any difference. If the buyer was not willing to recover the balance later or to waive it, it was open to him to pay to the seller the exact amount that was quoted, namely 94 cents and to get back the two-rupee note that had been tendered by him. On the evidence, therefore, the appellant recovered from the purchaser only a sum of 94 cents as the price of 2 pounds of yellow gram and, in doing so, he committed no breach of the price control order.

Crown Counsel invited my attention to the judgment of Tennekoon J. in the case of *Mahabood v. Food and Price Control Inspector*¹ and submitted that in the light of the reasoning in that case both accused in the instant case are guilty of the offence with which they are charged. In that case two accused were charged with jointly selling 2 pounds of beef at Rs. 2.50 which was above the controlled maximum price. The evidence disclosed that the 1st accused quoted the price, cut and weighed the beef and delivered the parcel to the buyer and the 2nd accused who was in charge of receiving the money himself quoted the sum of Rs. 2.50 as the price for 2 pounds of beef and received that sum from the buyer. I am in respectful agreement with Tennekoon J. that on those facts, upon an application of the principle of liability contained in Section 35 of the Penal Code, both accused were guilty of the offence with which they were charged.

The facts of the instant case, however, as stated already, are entirely different. On the evidence, the appellant was not aware that the parcel of gram handed to the buyer by the 1st accused was one ounce short and the principle of liability contained in Section 35 of the Penal Code can have no application.

I set aside the conviction and sentence and acquit the appellant.

Appeal allowed.

¹ (1967) 72 N. L. R. 116.