

1970

Present : Thamotheram, J.

A. L. MOHIDEEN, Appellant, and SUB-INSPECTOR OF
POLICE, MOUNT LAVINIA, Respondent

S. C. 728/69—M. C. Colombo South, 97315/A

Control of Prices Act (Cap. 173)—Price Order of 18th August 1967—"Beef (with bones)".

Selling a quantity of beef together with a quantity of bones is a sale of "beef (with bones)" within the meaning of that expression in the Price Order of 18th August 1967.

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

C. Ranganathan, Q.C., with G. D. C. Weerasinghe, for the accused-appellant.

R. Gunatilleke, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 7, 1970. THAMOTHERAM, J.—

The accused was charged with selling one pound of beef (with bones) for Re. 1.25, a price in excess of the maximum controlled price of Re. 1.10—an offence under Section 8(1) of the Control of Prices Act (Cap. 173) and thereby committed an offence punishable under Section 8(6) of the said Act, as amended by the Control of Prices (Amendment) Acts, Nos. 44 of 1957 and 16 of 1966.

The facts in this case are not in dispute. P. C. S230 Bandusena of the Mt. Lavinia Police acted as a decoy. He was searched by Sub-Inspector Gunaratne who gave him a marked Rs. 2 note with instructions to buy one pound beef (with bones). P. C. Bandusena asked the accused for one pound of beef (with bones). The accused cut a piece of beef from a chunk hanging at the stall, put it into weighing balance, put some bones that were on the table, weighed it, wrapped it in a Habarala leaf and a piece of newspaper and handed over to him. When the Police party rushed, on a given signal, P. C. Bandusena told them that he was charged Re. 1.25 for one pound of beef (with bones). The accused tried to swallow the Rs. 2 note, but was prevented by the Police Officer present.

The only point pressed in appeal was that this was a sale of beef and bones and not beef (with bones) and that therefore the price order did not apply to the facts of this case.

The Control of Prices Act (Cap. 173) is an Act to provide for the regulation and control of the price of commodities. This is the only object of the Act and of any price order made thereunder.

The price order relevant to the present case appears in Government Gazette No. 14761/12 of 18th August, 1967. This order fixes the maximum prices per pound above which beef of the description and grade specified shall not be sold. It directs that for the purpose of this order the expression "beef" shall mean flesh or meat, cattle or buffalo and shall exclude any form of offal. It also directs that when beef is sold (with bones) the weight of the bones sold therewith shall not exceed 25 per cent. of the total weight sold. The order further states that when beef (without bones) or beef (with bones) is sold together with offal in the course of one transaction the beef (with bones) or beef (without bones) shall be weighed and sold separately from the offal. According to this order, every trader who sells beef of the description and grade mentioned in the schedule shall give the purchaser of the beef on demand: (a) the date of the sale; (b) the quantity of the beef sold (by weight); (c) the description of beef sold; and (d) the price paid for the quantity of beef sold.

I have set out above the provisions of the order which are relevant to the point raised by Counsel for the appellant. The following comments may be made in regard to them:—

- (i) Offal does not come within the description of beef and therefore the mixing of offal with beef for purposes of sale by weight is prohibited.
- (ii) Beef is described and graded for purposes of the order as: (a) beef (without bones); (b) beef (with bones); (c) beef (dead weight).

We are not here concerned with (c) above. Beef (without bones) would be where the flesh is separated from the bones. This has to be so necessarily. Beef (with bones) includes beef which is not separated from the

bones. The question I have to decide here is whether this description only applies to such a case or whether it includes a sale where the quantity of beef sold includes both flesh and bones. The seller is nowhere required to sell beef (with bones) as one unseparated whole. The requirement that when beef (with bones) is sold the bones do not weigh more than 25 per cent. would suggest that in appropriate cases the seller is free to separate the bones from flesh to ensure that he does not commit a breach of this requirement. This requirement is impossible of observance only if there is a requirement that beef (with bones) should be sold as an unseparated whole. An individual customer may want it as an unseparated whole for any special reason such as for "chops". As remarked earlier, the Price Control Order is only concerned with regulating prices and is not concerned with the customer's special requirements.

The phrases "with bones" or "without bones" are descriptions of the beef sold and affects the grade of beef sold. Beef (with bones) is of a lower grade and priced less. Any quantity of beef is sold by weight and where the quantity sold has both flesh and bones, it is a sale of beef (with bones). Where the quantity sold has flesh alone, it is a sale of beef (without bones). In this view of the matter "with bones" means no more than "together with bones". The requirement that when beef is sold with bones the weight of the bones sold *therewith* shall not exceed 25 per cent. of the total weights sold supports this view.

I hold that the Price Control Order in question applies to the facts of this case and that the accused has been rightly convicted.

Mr. Ranganathan asked that in any event I should deal with the accused under Section 325 of the Criminal Procedure Code as the accused is a first offender and as he had charged only 15 cents more on a pound. I am unable to do this. Under the Amending Act, jail sentence must be given to a first offender. The accused has charged 15 cents more where the price is fixed at Re. 1.10. This is not a small percentage of the price which he could legitimately have charged. There are no mitigating circumstances for me to act under Section 325.

I reduce the jail sentence from six weeks to four weeks which is the minimum jail sentence required by the Amending Act. Subject to this variation the appeal is dismissed.

Appeal mainly dismissed.