

1969

Present : H. N. G. Fernando, C.J.

J. M. SHERIFDEEN, Appellant, and
M. B. GIRIHAGAMA (Inspector of Police), Respondent

S.C. 371/69—M. C. Kandy, 57043

Control of Prices Act—Charge of profiteering in sale of beef—Proof—Requirement of evidence of the accuracy of the scales in which the beef was weighed—Failure to seal the parcel of the beef—Effect.

In a prosecution for selling beef at a price in excess of the maximum controlled retail price—

Held, that, in view of the possibility that the scales used to weigh the beef could have been inaccurate and also of the possibility that, on account of failure to seal properly, there could have been tampering with the beef sold, there was doubt as to the guilt of the accused.

“Having regard to the fact that prison sentences are quite usual in cases of profiteering, it is important that when the alleged offence consists of selling under-weight there should be satisfactory evidence of the correctness of the scales in which articles are weighed before prosecutions are launched in respect of the sale of them.”

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

K. Thevarajah, with *S. Sittampalam*, for the accused-appellant.

Kosala Wijayatilake, Crown Counsel, for the Attorney-General.

November 26, 1969. H. N. G. FERNANDO, C.J.—

The appellant in this case has been convicted of selling 15 ounces of beef for Re. 1.20 in an area in which the maximum controlled retail price for a pound of beef is Re. 1.15. The evidence of the prosecution was that a police constable was instructed to purchase a pound of beef without bones from the appellant and that the appellant delivered some beef to the constable and charged him Rs. 1.20. The evidence was that the beef was weighed at a Co-operative store in the presence of the accused and found to weigh 15 ounces, and that it was taken to the police station and parcelled and sealed in the presence of the accused. Thereafter the parcel was sent to the Veterinary Surgeon who identified it as containing beef without bones.

The Veterinary Surgeon however was definite that the parcel when he examined it was not sealed. His evidence casts serious doubt on the truth of the prosecution case that the accused was present right through-out from the time of the sale of the beef up to the time when the parcel was examined by the Veterinary Surgeon. If as the evidence of this witness reveals, the parcel was not sealed when it was brought to him,

there was every possibility that some portion of the beef which had been sold by the appellant to the police constable had been abstracted, thus reducing the weight of the beef which had been sold to the constable.

Moreover there was no evidence to show that the scales on which the beef was weighed was accurate. Having regard to the fact that prison sentences are quite usual in cases of profiteering, it is important that when the alleged offence consists of selling under-weight there should be satisfactory evidence of the correctness of the scales in which articles are weighed before prosecutions are launched in respect of the sale of them. In view of the possibility that the scales used in this case may have been inaccurate and also of the possibility that there could have been tampering with the beef sold by the appellant, there was in my opinion doubt as to his guilt.

The appeal is allowed, and the conviction and sentence are set aside.

Appeal allowed.
