

1952

Present: Swan J.

JOSEPH, Appellant, and D. M. H. PERERA, Respondent

S. C. 124—M. C. Colombo, 21,906

Control of Prices Act, No. 29 of 1950—Section 8 (1) (6)—Sale of bread—Excess of price—Accuracy of balance—Proof of.

Accused was charged with selling a loaf of bread weighing 15 ounces for twenty-six cents which is the controlled price for a pound loaf, in breach of section 8 (1) of the Control of Prices Act.

Held, that if the loaf weighed less than a pound according to the accused's own scales and weights there was a *prima facie* case made out against the accused.

APPEAL from an order of acquittal of the Magistrate's Court, Colombo.

T. S. Fernando, Crown Counsel, with *A. C. Alles*, Crown Counsel, for the complainant appellant.

No appearance for the accused respondent.

Cur. adv. vult.

May 20, 1952. SWAN J.—

This is an appeal with the sanction of the Attorney-General against an order of acquittal made by the learned Chief Magistrate of Colombo acquitting the accused-respondent on a charge preferred against him by the complainant-appellant of having sold a loaf of bread weighing 15 ounces for twenty-six cents which is the controlled price for a pound loaf in breach of Section 8 (1) of the Control of Prices Act, No. 29 of 1950, an offence punishable under Section 8 (6) of the said Act.

The accused-respondent was an employee of the Sandasiri Bakery and Hotel and it was common ground that he had sold what purported to be a pound loaf of bread to one D. M. W. Jayasekera for twenty-six cents. The complainant-appellant stated that he weighed the loaf with his own scales and weights and found it to be 15 ounces. He then weighed it again using the scales and weights of the accused-respondent with the same result. In the face of these facts it is difficult to understand how the accused came to be acquitted. In cross-examination the complainant-appellant said that his "stamped weights" were sent every three months to the Kachcheri to be tested but could not be certain when they were last so sent.

The accused gave no evidence. In fact, when the case for the prosecution was closed, Counsel for the defence made certain submissions and the learned Magistrate dictated his order acquitting the accused without calling for a defence. In that order the learned Magistrate says that although the sale was not disputed the accuracy of the weights was challenged. He seemed to think that the prosecution had not proved the accuracy of the weights used and that he was therefore bound "to hold with the defence". He thought that in order to prove the accuracy

of the weights used by the complainant-appellant there should be some evidence that those weights had been recently compared with the standard weights in the Kachcheri. He did not realize that the accused was under a legal obligation to use correct weights himself, and if the loaf weighed 15 ounces according to the accused's own scales and weights there was, to say the least, a *prima facie* case made out against the accused.

In the case of *S. I. Police, Kandy v. Wassira*¹ Howard C.J. said that the accuracy of the scales must be established beyond reasonable doubt. That statement has unfortunately been construed to mean much more than it plainly says.

In that case the complainant with the leave of the Attorney-General appealed against an order of the Kandy Magistrate acquitting the accused on a charge of selling what was alleged to be two "four-ounce" loaves of bread for fifteen cents when the controlled price was thirteen cents. The learned Magistrate had acquitted the accused on the ground that there was no evidence regarding the accuracy of the scales and weights used to weigh the loaves. In this Court a further point was taken on behalf of the accused, namely, that the Ordinance only affected sales of sixteen-ounce and eight-ounce loaves, and the appeal was dismissed on that ground. That, in point of fact, was not a correct reading of the Ordinance. However that may be, the *ratio decidendi* of that appeal was not the absence of evidence regarding the accuracy of the scales and weights employed. But there can be no question that the prosecution must establish beyond reasonable doubt the accuracy of the scales and weights used when that fact is challenged or not conceded by the defence.

In the case of *Gnanaiah (Price Control Inspector) v. Kandiah*² which came up before a Divisional Bench consisting of Howard C.J. and Soertsz S.P.J. reference was made to the learned Chief Justice's dictum in *S. I. Police, Kandy v. Wassira*¹ and it was made abundantly clear that in that case there was *no evidence at all* as regards the accuracy of the scales and weights. The learned Chief Justice also drew attention to the fact that in the unreported case of *Segarajasingham (Food and Price Control Inspector) v. William Singho*³ he had distinguished the case of *S. I. Police, Kandy v. Wassira*¹. The appeal was allowed and the case was remitted to the Magistrate for conviction and sentence.

In the case of *De Alwis (Food and Price Control Inspector) v. Subramaniam*⁴ Basnayake J. held that where the article sold was re-weighed by the Price Control Inspector with the scales and weights of the accused and there was no discrepancy, the accused could not reasonably be heard to complain that the prosecution had not proved its case. Said His Lordship:—

"I think it can safely be presumed that in the ordinary course of business a trader will not keep a balance which gives the customer more goods than the quantity he purports to sell, nor is a trader

¹ (1945) 46 N. L. R. 93.

(1943) 49 N. L. R. 153.

³ S. C. 810/M. C., Galle, 5,343/S. C. Minutes of 19.8.1947.

⁴ 787/788 M. C., Badulla, 7,812/S. C. Minutes of 23.9.1949.

likely to keep a weight which weighs more than the weight indicated on its face, for the reason that a trader who sells with such scales or such weights is inviting loss and not gain. Profit being the motive of trade, it must be presumed that a trader's scales are not inaccurate at least to the extent of causing him loss. A person who claims that he trades with scales which favour the customer must rebut the presumption in favour of the accuracy of his scales and weights.

The correct statement of law is in my view to be found in the latter of the two cases cited by counsel, wherein Howard C.J. observes 'in the absence of any evidence indicating the inaccuracy of the weights or scales the accused should be convicted'. The Weights and Measures Ordinance provides that all weights shall have the number of pounds or aliquot parts or multiples thereof in legible figures and letters in the English, Sinhalese or Tamil Language (Section 9). Provision is also made for the periodic examination and stamping of weights by examiners appointed by the local authority of each area. The Ordinance also penalises the possession of false weights by the imposition of a fine and also by forfeiture of the offending weights. With these safeguards it is idle to contend that the prosecution must in every case, regardless of the circumstances, prove the accuracy of the offender's scales and weights."

With those remarks I entirely agree. In this case the offending loaf was not only weighed with the complainant's scales and weights but also with the scales and weights in the bakery and the result was the same. The prosecution had therefore proved the weight of the loaf beyond reasonable doubt to be 15 ounces.

I set aside the order of acquittal and remit the case for the trial to be continued, directing the Magistrate to make his order after hearing what the accused has to say in his defence.

Acquittal set aside.

