

ABEYSIRI
v.
WIJESIRI

COURT OF APPEAL.

ISMAIL, J.

C.A. 247/87

M.C. HINGURAKGODA 59083

MARCH 13, 1995.

Weights and Measures Act S 29, S. 44(b) – Selling petrol short of the quantity – Decoy – Evaporation – Benefit of the Doubt.

Accused-Appellant a pump attendant was charged for selling Petrol short of the quantity demanded. The Petrol was purchased by a Decoy in a plastic can. The Magistrate's Court found him guilty.

Held:

It was alleged that the measure of Petrol was short of the quantity demanded by 90 ml. The time of the alleged offence was around 11.30 a.m. shortly before noon. Therefore, there was every possibility of evaporation of a certain quantity of Petrol; before the Petrol was re-measured. There was also the possibility of evaporation of Petrol even at the stage of re-measuring, when Petrol is poured into the measuring can. Further it was in evidence that Petrol Meters cannot be tampered with, without damaging the seal.

In the circumstances the benefit of the doubt should be given to the accused.

AN APPEAL from the Order of the Magistrate's Court of Hingurakgoda.

Daya Guruge with Nimal Jayasingha for Accused-Appellant.

Aruna Jayasekera S.C. for State.

March 13, 1995.

ISMAIL, J.

The accused-appellant who was a pump attendant was found guilty of a charge under section 29 read with section 44(b) of the Weights and Measures Act for selling petrol short of the quantity demanded on 05.10.86 from the Filling Station at Giritala. The prosecution led the

witness K. M. Abeyesiri, Weights and Measures Inspector, W. A. Dharmasena, Price Control Inspector and a minor employee named S. Tennakoon who acted as the decoy. The defence witness was Chandra Bandara, the Regional Manager of the Petroleum Corporation. The accused was found guilty after trial and was ordered to pay a fine of Rs. 500/-.

Learned Counsel for accused-appellant has pointed out that the petrol was purchased by the decoy Tennakoon in a plastic can which has not been produced at the trial. He submitted that the decoy walked a distance of 50 meters from where the vehicle was parked and purchased the petrol. After purchasing he has walked back the same distance to report the purchase to the Weights and Measures Inspector. The time of the alleged offence was about 11.30 a.m. shortly before noon. It was submitted that the can must have been warm and that there was every possibility of evaporation of a certain quantity of petrol from the can during the time before the petrol was remeasured. The prosecution alleged that the measure of petrol was short of the quantity demanded by 90 ml. Instead of 5 litres the quantity of petrol alleged to have been sold was 4 litres and 910 ml. It was further submitted that a period of 10 minutes had lapsed before the petrol was remeasured. In regard to remeasuring itself it appears that the petrol which was purchased in a plastic can was poured into a 2 litre can and remeasured. Thus the petrol would have been poured three times from the 5 litre can in which the petrol was purchased by the decoy into the can which was used for measuring. There was a possibility of evaporation of petrol even at this stage. The decoy does not say anything in regard to the meter used at the Filling Station. His evidence is that he did not look at the meter when he purchased 5 litres of petrol.

The defence witness who had experience and who periodically checked the petrol meters explained that petrol is measured for the purpose of checking the measure by pouring into a standard 5 litre can on which the measurement is indicated. He also stated that the petrol meters cannot be tampered with without damaging the seal. The prosecution has failed to exclude the possibility that the shortfall of 90 ml. could have been due to evaporation during the space of about 10 minutes which lapsed before it was remeasured in the manner it was

done. I am of the view that the benefit of the doubt created as the result of the possibility of evaporation of petrol as being a cause for the short measure of 90 ml. of petrol should have been given to the accused appellant. I therefore set aside the conviction and sentence and acquit the accused of the charge.

Appeal allowed.

Accused acquitted.
