

1955

Present : Swan, J.

SOCKALINGAM (Inspector of Labour), Appellant and ASANERIS
APPU, Respondent

S. C. 1,260 of 1955—M. C. Badulla, 1,037

*Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19
of 1954—“Serving of customers”—Sections 62 (2), 63.*

A customer is served within the meaning of the Shop and Office Employees
(Regulation of Employment and Remuneration) Act when a man who enters
a shop and inquires for the price of an article is told what the price is.

APPPEAL from a judgment of the Magistrate's Court, Badulla.

I. S. A. Pullenayegum, Crown Counsel, for the complainant appellant.

T. B. Dissanayake, for the accused respondent.

Cur. adv. vult.

November 1, 1955. SWAN, J.—

This is an appeal with the sanction of the Attorney-General against the order of acquittal made in this case by the Magistrate of Badulla. The accused-respondent was charged under the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954, with having kept his boutique open after closing hours, the time for closing in this instance being 6 p.m. After trial the learned Magistrate while accepting the evidence for the prosecution acquitted the respondent on the ground that he had not kept his shop open for the purpose of serving customers.

Briefly stated the facts are as follows :—When the appellant, who is a Labour Inspector, was going on his rounds on the day in question he observed at about 7.20 p.m. that the respondent's boutique was partially opened. He watched the premises for about half a minute and saw people going inside. One man asked the accused what was the price of green-gram and the accused replied that it was 80 cents. He added that he saw people enter the shop, and from the manner in which they entered and remained inside he concluded that they were waiting to be served. The accused in his evidence said that he left two or three planks open to enable his children who had gone out to play to come inside. He specifically denied that he had kept his boutique open for business. He denied that he had answered the query of a man regarding the price of green-gram. This evidence, however, was disbelieved. The learned Magistrate said that he was satisfied that the prosecution version was true and that the accused in denying that a man came and inquired for green-gram was speaking a falsehood. However he acquitted the accused because he was not satisfied that the prosecution had proved that the shop was kept open for the purpose of serving customers.

I think the learned Magistrate was clearly wrong. Sub-section 2 of section 62 provides that "where in any prosecution for any offence alleged to have been committed by reason of the contravention of any closing order made under this Act any person is proved to have entered or to have been found in any shop at any time when such shop was required by such order to be closed for the serving of customers, such person shall be presumed, until the contrary is proved, to have been a customer". There were thus persons in the shop who, unless the contrary was proved, were customers.

That the boutique was kept open after closing hours has been proved. So that the only question one has to decide is whether it was kept open for the serving of customers. In the interpretation clause (vide section 6S) *serving of customers* includes "the answering of questions or furnishing of information or explanation relating to the price, description or quality of any goods whether or not such goods are kept for sale at such shop". Thus a customer was served within the meaning of the Act when the man who came in and inquired for the price of green-gram was told that it was 80 cents.

I set aside the order of acquittal and convict the accused. The case will be remitted to the lower court in order that the learned Magistrate may pass sentence.

Acquittal set aside.

