1969 *Present :* Samerawickrame, J.

M. C. HAMZA LEBBE, Appellant, *and* FOOD AND PRICE CONTROL INSPECTOR, PUTTALAM, Respondent

S. C. 221/68—M. C. Puttalam, 4069

Control of Prices Act—Price Order relating to condensed milk—Charge of contravening it—Weight of tin—Statement on label of tin—Evidential value of it—Standard of proof varies according to nature of offence.

In a prosecution for selling a tin of condensed milk "Golden Crown" 14 ounces at a price in excess of the maximum controlled price, the tin that was sold, if it is produced in Court, constitutes real or material evidence which the Court may consider.

In such a case, prima facie proof that the tin sold was one of 14 ounces in weight may be furnished by the production of the tin of condensed milk which is to all appearances a tin of 14 ounces in weight and the statement of the accused to the decoy that it was a 14 ounce tin. Such evidence will suffice, as the standard of proof required is not so strict as in the more serious case of an offence relating to opium, ganja or unlawfully manufactured spirits.

[1] *(1951) 2 Q. B. 317 at 325.*

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

C. Ranganathan, Q.C., with *M. T. M. Sivardeen*, for the accused-appellant.

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

Cur. adv. vult.

October 22, 1969. SAMERAWICKRAME, J.—

The appellant appeals against his conviction under the Control of Prices Act for having sold a tin of condensed milk "Golden Crown" 14 ounces for 98 cents when the maximum controlled retail price was 90 cents.

Learned counsel for the appellant submitted that there was no evidence to prove that the tin that was sold was one of 14 ounces in weight and that the statement to that effect on the label which was relied upon by the prosecution was hearsay. He relied on decisions of the Privy Council in *Patel v. Comptroller of Customs* [1] and *Comptroller of Customs v. Western Lectric Co.*, [2] which held that legends or marks on bags or goods stating the country of which they were the produce or the country of origin were hearsay and insufficient evidence of such facts on which to found a conviction.

The Food and Price Control Inspector who acted as the decoy and whose evidence has been accepted has stated, "I asked him if he could give me a tin of condensed milk. He said 'yes'. He told me he had condensed milk of the Golden Crown Brand. I asked him if that was good and he said it was very good and could be given even to children. I asked him if they were 1lb. tins. The accused said they were 14 ozs. tins. I asked him for the price of a tin of condensed milk of Golden Crown Brand. He quoted 98 cents for a tin of condensed milk, Golden Crown Brand. I asked him to reduce the price. He said he could not do that and that he was getting only 7 to 8 cents profit. Then I asked him for a tin of Golden Crown Brand Condensed milk. The accused gave me a tin and I gave him Rs. 2 and the accused gave me Re. 1·02". The tin of condensed milk was a production in the case and it was presumably to all appearances a tin of condensed milk 14 ounces in weight. It was real or material evidence produced in Court and was a matter before it which the Court could consider when deciding whether the case was proved.

In my view there was sufficient circumstantial evidence to afford prima facie proof that the article that was sold by the appellant was the article referred to in the Food Price Order P1. In the schedule to P1 there is "Golden Crown—14 oz. tin". The evidence might not have been

[1] *(1965) 3 A. E. R. 593.*

[2] *(1965) 3 A. E. R. 599.*

sufficient if the offence related to opium, ganja or unlawfully manufactured spirits for the reason that such things are *per se* either injurious and harmful or prohibited by law. Condensed milk, on the other hand, is not only not harmful but is an useful article of food and its sale is an offence only when it is sold at a price in excess of the controlled price. It is true that in the case of offences in respect of opium, ganja, or unlawfully manufactured spirits as well as offences in respect of condensed milk the standard of proof is that of proof beyond reasonable doubt but in the case of the latter, proof need not be as strict as in the case of the former. This is because of the principle that the more serious the imputation the stricter is the proof which is required.

Denning, L.J. in *Bater v. Bater* [1], stated :—

"It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear."

Later he stated :—

"What is a real and substantial doubt? It is only another way of saying a reasonable doubt, and a 'reasonable doubt' is simply that degree of doubt which would prevent a reasonable and just man from coming to a conclusion. So the phrase 'reasonable doubt' gets one no further. It does not say that the degree of probability must be as high as ninety-nine per cent. or as low as fifty-one per cent. The degree required must depend on the mind of the reasonable and just man who is considering the particular subject-matter. In some cases fifty-one per cent. would be enough, but not in others."

In my view, to require the kind of proof that learned counsel for the appellant submitted should have been led in this case and to reject the circumstantial evidence led in this case would be to require a ninety-nine per cent. degree of probability in a matter in which a lower degree would suffice. This case is to be distinguished from the two Privy Council decisions cited to me by the learned counsel for the appellant. An examination by itself, however close, will not reveal the country of origin of an article. On the other hand by an examination of a tin of condensed milk one can be satisfied as to its weight to that degree of probability referred to by Denning, L.J. in the dictum set out above.

I am accordingly of the view that the finding of guilt is correct and must be uphe'd. Learned counsel for the appellant pointed out that the prosecution itself conceded that at the time a tin of condensed milk fetched in the market between Re. 1·25 to 1·30 and that the

[1] *(1950) 2 A. E. R. 458.*

accused appellant had sold this tin for 98 cents which was only 8 cents in excess of the controlled price. The learned magistrate in considering the matter of sentence stated that he was bound by the amending Act of 1966 to impose a sentence of imprisonment. I find however, that the offence was committed at a time when the Emergency Regulation which made the provisions of Section 325 of the Criminal Procedure Code inapplicable had not yet been made. I accordingly set aside the conviction and sentence and acting under s. 325 of the Criminal Procedure Code, I direct that the accused-appellant be warned and discharged and that he be ordered to pay a sum of Rupees five-hundred (Rs. 500) as Crown costs.

Accused dealt with under s. 325 of Criminal Procedure Code.