

1969

Present : Weeramantry, J.

M. H. M. HASSAN, Appellant, and INSPECTOR OF POLICE,
PANADURA, Respondent

S. C. 748/68—M. C. Panadura, 5169

Control of Prices Act—Sections 3 (2) and 4 (1)—Contravention of Price Order of 7th November 1964 relating to sale of beef—Place of offence—Proof as to whether it fell within Kalutara district—Judicial notice—Power of Court to consult appropriate books of reference—Evidence Ordinance, s. 57—Administrative Districts Act (Cap. 392), Schedule 1—Ordinary meaning of “beef”—Whether it includes buffalo meat—Butchers Ordinance (Cap. 272), s. 2.

The accused-appellant was convicted of selling beef at a rate above the maximum controlled price. It was contended on his behalf (1) that there was no proof that the offence was committed within the administrative district of Kalutara to which the relevant Gazette notification applied, and (2) that the prosecution, by failing to eliminate the possibility that what was sold was the flesh of a buffalo, had failed to prove that the item sold was “beef” within the contemplation of the Price Order of 7th November 1964.

Held, (i) that, for the purpose of ascertaining whether the village of Keselwatte, which was the place where the offence was committed, fell within Panadura, section 57 of the Evidence Ordinance empowered the Court to consult, as an appropriate book of reference, the compilation of the Department of Census and Statistics known as An Alphabetical and Numerical List of Villages in the Western Province. Panadura in its turn was within the administrative district of Kalutara, as would appear from the second entry in the first Schedule to the Administrative Districts Act.

(ii) that the ordinary meaning of beef does not exclude the flesh of a Ceylon buffalo.

APPEAL from a judgment of the Magistrate’s Court, Panadura.

Colvin R. de Silva, with *M. T. M. Sivardeen* and *I. S. de Silva*, for the accused-appellant.

Shibly Aziz, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 12, 1969. WEERAMANTRY, J.—

The accused appellant in this case stands charged, under Section 4 (1) of the Control of Prices Act read with Section 3 (2) of the Act, with the sale of beef at a rate above the maximum price fixed in terms of the Act and notified in Government Gazette No. 14,218 of 7.11.64. The accused is alleged to have sold a pound of beef without bones for Re. 1, whereas the maximum controlled price was 90 cents.

The two principal points taken on behalf of the appellant are firstly that there is no proof that the offence was committed within the administrative district of Kalutara to which the relevant Gazette notification applies, and secondly that the prosecution has failed to prove that the item sold was "beef" within the contemplation of the order in question.

The first contention is based on the fact that the stall at which the sale occurred has been described variously in the proceedings as the Keselwatte-Panadura stall and as the Sarikkamulla beef stall. It is submitted for the defence that there is no proof that Keselwatte-Panadura or alternatively Sarikkamulla are places falling within the administrative district of Kalutara.

In support of this contention the appellant submits certain decisions of this Court where appeals have been allowed against convictions on the basis of the failure of the prosecution to prove by affirmative evidence that the place where the offence was committed fell within the area to which the relevant Order applied. In *Jinadasa v. Edirisuriya*¹ the offence was committed at No. 135, Main Street, Deniyaya while in the area of operation of the price order the only reference to Deniyaya was a reference to the V.C. area of Deniyaya. There was no evidence that No. 133, Main Street, Deniyaya, was within the V.C. area of Deniyaya. It was held in that case that the prosecution had failed to prove that the sale took place in an area covered by the Price Order.

Another decision referred to was that in S.C. 1250/61/MC Matara 63947² where Herat J. upheld the point taken for the appellant that there was no direct evidence tendered by the prosecution that the scene of offence, namely, Kotuwegoda, was within the administrative limits of Matara. The Court disapproved of an observation by the Magistrate that he could take judicial notice of this fact from his knowledge of the area. Again in *Hamza Naina v. Inspector of Police, Gampaha*³ the place of offence was "Yakkala, in the Gampaha-Kirindiwela road", whereas the Price Order applied to the Colombo District outside the Municipal Limits of Colombo. It was held that the prosecution had failed to prove that the offence was committed within the Colombo District, as

¹ S.C. 75/1968/M.C. Matara 36840/S.C. Minutes 13/1/69.

² S.C. 1250/61/M.C. Matara 64397/S.C. Minutes 14/6/62.

³ (1968) 72 N. L. R. 166 ; 75 C.L.W. 90.

the Sub-Inspector of Police had admitted that he could not speak to the limits of the Colombo District. The Court observed that the Magistrate was not justified in presuming that the stall in question was within the Colombo District as the judicial districts of Ceylon with which the Magistrate might have been familiar did not correspond to the administrative districts of Ceylon as set out in the Administrative Districts Act No. 4 of 1955, Cap. 392. This case cited with approval another judgment of this Court in *Mendis v. Jayawardena*¹ where de Kretser J. arrived at a similar conclusion.

For reasons which I shall immediately mention it does not appear that any one of these decisions can assist the appellant in this case.

Though the description Sarikkamulla stall as well as the description Keselwatte-Panadura stall are found in the evidence in this case, it would appear that these are not descriptions of different stalls but of one and the same stall. Thus Inspector Rasanayagam speaks of the Sarikkamulla beef stall and says that he saw the decoy Jamis and Police Sergeant Saputantri at the beef-stall-meaning thereby the Sarikkamulla stall. Jamis speaks of the Sarikkamulla stall to which he proceeded on the instructions of the Inspector. Sergeant Saputantri on the other hand speaks of having proceeded to the Keselwatte-Panadura meat stall with Jamis on the instructions of Inspector Rasanayagam. The learned Magistrate as well, who presumably knows the area, has understood the evidence of all these witnesses to relate to the same stall, and has analysed their evidence on this basis. In a careful and comprehensive order he has made no reference to any contention that the descriptions relate to different stalls and it may therefore be safely assumed that no such suggestion was urged by the defence even at the stage of addresses. There can be no doubt then that the stall which Rasanayagam and James were referring to is the identical stall referred to by Saputantri and I must therefore conclude that this same stall is known by both descriptions. It follows that the evidence of Sergeant Saputantri constituted evidentiary material before the court indicating that the stall is situate in Panadura, and if further proof were wanting that Keselwatte is situate in Panadura, this is provided by a compilation of the Department of Census and Statistics known as An Alphabetical and Numerical List of Villages in the Western Province, to which the Crown has referred me. This work shows that the village of Keselwatte falls within Panadura. It is a work published by authority and an appropriate book of reference which in terms of section 57 this court may consult and act upon if indeed that were necessary.

Now Panadura in its turn is within the administrative district of Kalutara, as would appear from the second entry in the first Schedule to the Administrative Districts Act No. 24 of 1955, Cap. 392, and there is thus conclusive proof in this case that the beef stall in question falls within the administrative district of Kalutara.

For all these reasons I consider that there is sufficient material to satisfy the Court that the sale occurred within the area proclaimed.

¹ S.C.543/68/M.C. Avissawella 80838/S.C. Minutes 23.10.68.

This suffices to distinguish the present case from the decisions cited in each of which there was no evidence showing the connection between the place of offence and the district proclaimed. A given place in Deniyaya could not be presumed to be within the V.C. area of Deniyaya or a place on the Gampaha-Kirindiwela road to be within the Colombo District in the absence of evidence to such effect or proof by alternative means.

I pass now to the second question urged on behalf of the appellant, namely that there is no proof adduced by the prosecution that the subject matter of the sale was "beef".

It has been strenuously urged at the argument of this appeal that the prosecution has failed to exclude the possibility that the meat sold is buffalo meat, a species of meat which is often sold in butchers' shops as beef, and that so long as such a reasonable possibility exists, there can be no conviction of this offence.

This submission is made in view of the report of the Government Analyst which states that the production was found upon analysis to be beef within the meaning of that term in the Butchers Ordinance. A perusal of the Butchers Ordinance shows however that the word beef as therein used includes the flesh of any of the animals which in the Ordinance are denoted by the term "cattle"¹. The word "cattle" is explained in section 2 of that Ordinance as including oxen, bulls, cows, calves and *tame buffaloes*. The only expert evidence before Court thus leaves open the possibility that the flesh in question is that of a buffalo and it is for that reason that the contention is advanced that the prosecution by failing to eliminate that possibility, has failed to prove that what was sold was beef.

It is necessary to note that the Price Order, which appears in Government Gazette No. 14,218 of 7th November 1964, directs among other matters that for the purpose of that order the expression "beef" does not include imported beef whether frozen, salt or chilled or any form of offal. Beyond that explanation the order does not seek to propound a definition of the expression "beef". Indeed on this matter later orders such as the order produced by the defence and marked D4 do attempt a definition of beef and specify that beef shall mean the flesh of neat cattle or buffaloes and shall exclude any form of offal.

We have no such definition to guide us in regard to the present Price Order and we can therefore only proceed on the basis that the expression "beef" must be given the normal meaning which it bears in the English language. It is necessary then to ascertain whether the ordinary meaning of beef would exclude the meat of buffaloes.

The Oxford Dictionary defines beef as the flesh of an ox, bull or cow, used as food. The word also has certain extended meanings and is applied in this extended meaning to the flesh of any animal "of the ox kind". Is then the buffalo an animal of the ox kind?

¹ Section 24.

Turning now to the meaning of the word "buffalo" one sees from the same Dictionary that the word, though properly denoting a kind of antelope, is the name of several species of oxen. According to the Dictionary it is applied to the animal *bos bubalus* originally a native of India, inhabiting most of Europe, Southern Europe and Northern Africa, which, the Dictionary observes, is tamed in India, Italy and elsewhere.

Now, the question before us is whether the Ceylon buffalo falls within the description of buffalo or *bos bubalus* which according to the Oxford Dictionary is a species of oxen, and thus an animal of the ox tribe, whose flesh would be beef.

The expression *bos bubalus* being a scientific term it becomes necessary for the ascertainment of its true meaning to consult appropriate works of reference, which this Court is entitled to do in terms of section 57 of the Evidence Ordinance¹. I am assisted on this matter by the case of *Annakumaru Pillai v. Muthupayal*² where to ascertain the meaning of the word "chanks" the Court referred *inter alia* to the Encyclopaedia Britannica and Emerson Tennent's Ceylon.

I consider therefore that I would be entitled to seek further guidance on these matters from the Encyclopaedia Britannica and also from standard works on the fauna of Ceylon of which W. W. A. Phillip's Treatise on the Mammals of Ceylon is perhaps the most comprehensive and authoritative.

The Encyclopaedia Britannica while stating that *bubalus* (the buffalo) is a member of the ox family, goes on to describe as a variety of *bubalus* the Indian buffalo which it states is larger than the ox, less docile, and is employed as a draught animal. One learns from the same Encyclopaedia that the animal *bubalus* belongs to the sub-family *bovinae* of the mammal family known as *bovidae*.

W. W. A. Phillips in his treatise on the mammals of Ceylon³ states that the family *bovidae* is subdivided into several divisions—*bovinae* (the cattle) *caprinae* (the sheep and goats) and so forth. The sub-family *bovinae* though represented in India by three genera is represented in Ceylon by only one—the *bubalus bubalis*, commonly termed the buffalo.

All this material indicates that the buffalo of Ceylon is the animal *bubalus* which is scientifically grouped as a member of the ox family, and is therefore an animal of the ox kind. Consequently its flesh would be "beef" as defined in the Oxford Dictionary and, in the absence of a definition in the Price Order, would be "beef" for the purposes of that Order. It follows that even if the prosecution has failed to eliminate the possibility that the article sold was buffalo meat, it has still proved that it is "beef" for the purposes of the Order in question.

For these reasons the appeal must fail and it is accordingly dismissed.

Appeal dismissed.

¹ See *Menon v. Lentin*, (1941) 43 N. L. R. 34 at 35 ; 22 C.L.W. 24 at 25.

² (1904) J.L.R. 27 Madras 551 D.B.

³ p. 318.