

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARCEIA VICENTE, DEFENDANT AND APPELLANT.

G.R. No. 11422. December 05, 1916

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant in this case was convicted in the court below of a violation of section 181 of Act No. 2339, which is as follows:

"Any person who with fraudulent intent alters any scale or balance, weight or measure after it is officially sealed, or who knowingly uses any false scale or balance, weight or measure, whether sealed or not, shall be punished by a fine of not less than two hundred pesos nor more than four thousand pesos or by imprisonment for not less than three months nor more than two years, or by both such fine and imprisonment, in the discretion of the court.

"Any person who fraudulently gives short weight or measure in the making of a sale, or who fraudulently takes excessive weight or measure in the making of a purchase, or who, assuming to determine truly the weight or measure of any article bought or sold by weight or measure, fraudulently misrepresents the weight or measure thereof, shall be punished by a fine of not less than fifty pesos nor more than two thousand pesos or by imprisonment for not less than three months nor more than two years, or by both such fine and imprisonment in the discretion of the court; and any violation of this paragraph by an employee having authority to determine weight or measure in sales or purchases effected in behalf of his employer shall be prima facie evidence of the guilt of such employer also."

The commission of the crime is charged in the complaint as follows:

"That the said accused, on and before the 24th of October, 1914, in the municipality of San Nicolas, Province of Pangasinan, knowingly, willfully, maliciously and criminally, did use a one-decilitre measure that was false or which appeared to have been altered after it had been officially sealed; an act which constitutes said violation of the Weights and Measures Act, committed within the jurisdiction of this Court of First Instance and in violation of law." (Sec. 181, Act No. 2339.)

The trial judge says in his opinion that :

"The accused was caught in possession of the measure Exhibit A presented in evidence in this case. This measure was noticeably altered and diminished, and the defendant, knowing of this alteration, used the measure in her business, thereby defrauding the purchasing public."

The evidence of record conclusively establishes this finding and leaves no room for doubt as to the guilt of the accused of the offense with which she was charged and convicted in the court below.

The witness Felipe Quebral, an agent of the Bureau of Internal Revenue, testified that:

"La mitad de la medida se ha disminuido ya por la herrumbre." (Half of the measure had rusted away.)

The accused admitted that this Exhibit A lacked something of full measure as a result of being rusted away at the edges, although she would not admit that it fell short of being a full measure by as much as one-half. It is clear, nevertheless, that the measure used by the accused and submitted to the court below as Exhibit A fell substantially short of being the full measure it purported to be.

Counsel for the accused suggests that from all the evidence of record it would appear that the measure used by the accused had not been intentionally altered by her, and that the diminution in size resulted from the rusting away of the metal sides. He contends that it could not have been the intention of the Legislature to impose the penalty prescribed for the use of false measures in every case in which some physical change takes place in the original form and content of the measure as the result of natural causes. ' He insists that, in the very nature of things, physical change, in greater or lesser degree is incident to the use of all measures, and that under a strict interpretation of the statute great wrong and injustice would be done by the prosecution and conviction of persons charged with the use of false measures, unless that term be understood to apply only to those cases in which there has been a willful alteration of the measure. We are of opinion, however, that the word "false measure" as used in the statute is intended to include measures of any kind which fall short of the standard, without regard to the cause which produces that result.

Doubtless it is true, as contended by counsel, that physical changes are always incident to the use of weights and measures, and a conviction based upon a change of this kind so slight in extent as not to attract the attention of the person using the measure or to affect appreciably the content of the measure, could not be sustained; but where, as in the case at bar there is a diminution in the content of the measure so substantial in degree as to raise a question whether it amounted or not to one-half of the content, there is no room for contentions based upon the unreasonableness of the application of the law.

We find no error in the proceedings and the judgment entered in the court below convicting and sentencing the defendant and appellant should, therefore, be affirmed, with the costs of this instance against her. So ordered.

Torres, Johnson, Moreland, Trent, and Araullo, JJ., concur.

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