

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CO CHICUYCO, DEFENDANT AND APPELLANT.

G.R. No. 7144. March 23, 1912

Ponente: MAPA, J.

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MAPA, J.:

The complaint charges the herein defendant with a violation of the Weights and Measures Act, committed as follows:

"That the said Chinaman, Co Chicuyco, the accused, did, on or before the 10th of January, 1910, in the pueblo of Bautista of the Province of Pangasinan, alter with fraudulent intent a cavan measure of 25 liters bearing the tag number 493-895, after it had been officially sealed, so that said cavan represents a larger measure than it really is; an act constituting such violation of the Weights and Measures Act as is defined and punished by section 30 of Act No. 1519, and executed within the jurisdiction of this Court of First Instance; in violation of law."

The case having come to trial, the court, upon the evidence submitted, sentenced the defendant to the penalty of three months' imprisonment and a fine of P200, or to the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs of the trial. The defendant appealed from this judgment.

It is a proven fact that the measure which is alleged to have been altered and which constitutes the subject of the crime charged in the present case, was officially inspected and sealed in or about the month of February, 1909. When this measure was inspected by the official sealer of weights and measures, Rafael Puzon, on January 10, 1910, it was found to be larger by about 2 millimeters than the official standard and consequently had a greater capacity than it should have had in accordance with the said standard. This excess was formed, as is stated in the Attorney-General's brief, by a kind of calzo or chock about 2 millimeters in thickness placed between the base or bottom and the boards of its four sides, so that, by means of this chock, the said bottom was lowered and the measure acquired a greater depth, which may be represented by 2 millimeters multiplied by the four sides of its base.

The real question to decide, in our opinion, is whether the measure was, at the time it was inspected and sealed, what it is at the present time, or whether, on the contrary, the chock which represents the excess in its capacity was put in after the measure had been officially sealed. To begin with, there is no positive evidence that the latter was the case. It has not been proved in a certain and positive manner that, when the said measure was sealed, it did not already have the chock it now has; the prosecution merely presumes or deduces this fact, from the very fact that the measure has a greater capacity than the official standard. It appears that this deduction is founded on the presumption that every measure officially inspected and sealed is or ought to be exactly equal to the official standard; but, aside from the fact that it is unlawful to convict anybody on a mere presumption based on another presumption, it is a fact that this presumption of the prosecution has been destroyed by the evidence to the contrary presented by the defense.

That evidence consists in a measure of 25 liters' capacity, sealed by the municipal treasurer of Bautista several months prior to the trial of the case. It was shown to the said treasurer, who testified that it had actually been sealed by himself and that he did not observe in it the least sign of alteration; that is, that said measure then had the same appearance and was exactly in the same condition as when he sealed it. But when this measure was examined by the treasurer himself in the presence of the court, it was found to be greater in capacity by about 2 millimeters than the official standard (just like the measure here in question), which demonstrates one of two things: , either that not all the measures sealed have exactly, on being sealed, the capacity they should have in conformity with the official standard, which might very well occur through carelessness or neglect on the part of the persons concerned in the operation, especially when the difference is small or insignificant; or that, the contrary being the case, they may undergo, as in fact they do sometimes, an alteration in their capacity through the natural phenomenon of the expansion of the wood, for example, without man's intervention, such alteration, therefore, not being chargeable to anyone.

The court says in the judgment appealed from that this evidence is in no manner decisive for the reason that the measure presented by the defense is as illegal as that on which the complaint is based and, consequently, like the latter, might have been tampered with. This point of view in the judgment does not appear to us to be correct. It is not a question here of setting up mere conjectures or possibilities; this case has no concern with what might have been done, but with what was really and actually done in connection with the measure in question, and on this point the testimony of the municipal treasurer is positive to the effect that no alteration whatever was made in the condition and materials of the said measure. And as to the latter being illegal, if by this word is meant that the measure has a greater capacity than that prescribed by law, it is not a good reason for not giving the evidence its due weight, inasmuch as the purpose of that evidence is precisely to prove that such illegality can and in fact does exist through no fault whatever imputable to the possessor of the measure said to be illegal.

Moreover, it is proven by the uncontradicted testimony of one witness that the chock with which the measure in question was provided, was put in before the latter was officially sealed. This witness is the carpenter who made or manufactured the said measure. He testified that it was he who put in the chock referred to, and that he did so in the office of the municipal president of Bautista, by the order of one Garcia and in the latter's presence. He added that the measure was then, at the time he was testifying, exactly in the same condition as when he put in the chock and that it showed no sign whatever of alteration. This Garcia, to whom the witness alluded and who is now deputy provincial treasurer of Pangasinan, was the inspector of weights and measures at the time when the measure herein concerned was sealed, and he corroborates in a way the testimony given by the witness, for he stated that several Chinamen had presented to him measures of 75 and 25 liters, the capacity of which was less than that of the standard measure; that, in order to correct the shortage, he had permitted these Chinamen to put in chocks, and that it was the preceding witness who put in the chocks in his presence in the office of the president of the municipality, but he was unable to state exactly whether the measure concerned in this case was one of those so fixed.

In view of the foregoing facts, we can not hold that it has been proven that the defendant did fraudulently alter the measure herein concerned, after it had been sealed, which is the act expressly charged against him in the complaint.

Therefore, the judgment appealed from is reversed and the defendant acquitted, with the costs of both instances de oficio. So ordered.

Arellano, C. J., Johnson, Carson, Moreland, and Trent, JJ., concur.

TORRES, J., dissenting:

I am of the opinion that the judgment should be affirmed.

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