

IN THE SUPREME COURT OF FIJI

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Appellate Jurisdiction

Labasa Criminal Appeal No.12 of 1977

ABDUL SAMAD
s/o Raza Hussain

Appellant

v

REGINAM

Respondent

Mr. M. Sadiq for the Appellant
Mr. M. Jennings for the Respondent

JUDGMENT

The appellant was on 3rd November, 1977 convicted in the Savusavu Magistrate's Court on a charge of using incorrect measure in a fuel bowser for trade contrary to Sections 22(1) and 28(1) of the Weight and Measures Ordinance and was fined \$95.

The particulars of the offence were that between the 19th and 20th May, 1977 at Savusavu the appellant used for trade an incorrect measure in a fuel bowser.

The appellant appeals against his conviction and sentence on four grounds, two of which were not pursued at the hearing leaving the following grounds to be argued, namely -

- (1) that the learned Magistrate erred in law and in fact in accepting the evidence of Brij Bhadur Prasad in the absence of corroboration; and
- (2) that verdict of finding by the learned Magistrate is unreasonable and cannot be supported having regard to the evidence as a whole.

The facts as found by the learned Magistrate were as follows. On 3rd February, 1977 Brij Bhadur Prasad (P.W.1), a Weight and Measures Officer for the Northern Division, inspected and tested a Morris Hodstrom Limited flow meter petrol bowser (pump) at Savusavu. He found that the petrol bowser gave $3\frac{1}{2}$ fluid ounces less than one gallon per gallon. 160 fluid ounces make up one gallon. As a result of his finding, P.W.1 removed the lead seal on the pump and issued a rejection notice to the appellant. On 6th April, 1977

Following a further visit to Savusavu, P.W.1 found the pump had not been repaired, and a rejection notice was again issued to the appellant. On 19th May, 1977 following another visit of inspection to Savusavu, P.W.1 found it necessary to issue another rejection notice in respect of the same bowser. However, despite the rejection notice which was issued in the morning, the pump was used for trade later that morning. Use of the pump was not only observed by P.W.1 but also by Parmanand Singh s/o Tej Bhadur (P.W.2).

Counsel for the appellant complained that P.W.1's evidence lacked corroboration and ought not to have been accepted. In point of law corroboration was not necessary. There was no obligation on the learned Magistrate to look for it. However, so far as trade with a short-measured pump is concerned, there is ample corroboration in the evidence of P.W.2.

On the facts as outlined above it is quite clear that the appellant had been using the petrol pump, the subject of a current rejection notice for giving short measure. His conviction was clearly justified.

In the result the appeal against conviction is dismissed.

With regard to the appeal against sentence, counsel for the respondent conceded that the learned Magistrate was wrong in imposing a fine in excess of the maximum prescribed under the Ordinance, namely \$40. The sentence imposed in the Court below is therefore set aside and in lieu thereof a fine of \$30 or in default one month's imprisonment is substituted. There will be no order as to costs.

Sgd. T.U. Tuivaga
JUDGE

Suva,
7th April, 1978