

A

RAKESH CHAND

v.

REGINAM

B

[SUPREME COURT, (Grant, C., J.) 14 September 1979]

Appellate Jurisdiction

Criminal Law—Liquor Act—principal in second degree convicted of aiding and abetting

C

Conviction for selling liquor, contrary to the provisions governing an off-licence referred to in Liquor Ordinance s.47. The Court found that the first accused was vicariously liable as a principal in the first degree. The appellant sought leave to appeal against his conviction. Appellant alleged he was not a licensee within the meaning of the Liquor Ordinance. By s.47 only the licensee can be convicted as a principal in the first degree. However, by s.21 of the Penal Code, the Magistrate held the appellant was a principal in the second degree and therefore liable as an aider and abetter.

D

Held: He was rightly convicted under the provisions of the Penal Code s.21(1). Such an aider and abetter may actually be charged as one who actually committed the offence.

E

Although it was not necessary that an aider and abetter knew an offence was being committed, it was necessary, even in a case of strict liability to prove he was aware of the circumstances which constituted the offence.

Leave to appeal refused.

Cases referred to:

F

Griffiths v. Studebaker Ltd. (1924) 1 K.B. 102.

Ross v. Moss (1965) 3 All E.R. 145.

GRANT, C. J.:

Judgment

G

On the 12th July 1979 at Suva Magistrates Court the applicant together with his mother (hereinafter called the first accused) were jointly convicted after trial of selling liquor in contravention of the provisions governing an off-licence contrary to section 47 of the Liquor Ordinance, the first accused being fined \$30 and the applicant \$10.

H

Subsection 1 (a) of section 47 of the Liquor Ordinance provides that liquor may be sold at the premises specified in an off-licence between 8 a.m. and 6 p.m. on week days, and subsection 3 provides that any licensee who sells liquor at licensed premises in contravention thereof shall be guilty of an offence.

The brief facts as found by the trial Magistrate are that on Friday the 9th March 1979 at approximately 7.30 p.m. the applicant sold three bottles of beer at a shop in respect of which the first accused, his mother, was the holder of an off-licence. A

There is no doubt that the first accused was vicariously liable as a principal in the first degree for the sale of the liquor in contravention of the provisions governing the off-licence and no appeal against her conviction has been presented.

However leave to appeal is sought under the provisions of section 290(2) of the Criminal Procedure Code on behalf of the applicant, on the grounds that he was not a licensee within the Liquor Ordinance and therefore one of the essential ingredients of the offence was missing. B

Certainly by the wording of subsection 3 of section 47 of the Liquor Ordinance it is only the licensee who can be liable as a principal in the first degree; but the trial Magistrate held that the applicant was a principal in the second degree and rightly convicted him of aiding and abetting the licensee under the provisions of section 21 (1) (c) of the Penal Code, which is declaratory of the common law and which provides that every person who aids or abets another person in committing an offence is deemed to have taken part in its commission and to be guilty of the offence, and may be charged with actually committing it. C

The application of this principle is well illustrated by *Griffiths v. Studebakers Ltd.* (1924) 1 K.B. 102 and *Ross v. Moss* (1965) 3 All E.R. 145, in the former a servant of a licensee, and in the latter a licensee's father and two other persons, being convicted of aiding and abetting the licensee in contravening the provisions governing the licence. D

The legal position is so clear that I see no reason to enlarge upon it other than to point out that, although for the purpose of establishing guilt as a principal in the second degree it is not necessary to prove that the aider and abettor knew an offence was being committed (ignorance of the law being no defence) it is necessary, even in a case such as this to aiding and abetting an offence of strict liability, to prove that he was aware of the circumstances which constituted the offence. The trial Magistrate found that these circumstances were within the knowledge of the applicant and this finding has not been challenged. Indeed on the facts of the case it is not open to challenge, particularly as the applicant falsely denied selling the beer, a denial he would not have made had he not known of the existence of an off-licence restricted to the sale of liquor to 6 p.m. E F

No good cause having been shewn for leave to appeal to be granted, the appeal is disallowed.

Leave to appeal refused. G

H