

A

HENRY YEE JOY

v.

B

REGINAM

[COURT OF APPEAL, 1977] Gould V.P., Marsack J.A., Henry J.A.)
12th, 22nd July]

Criminal Jurisdiction

C *Liquor licensing—restaurant licence authorising sale of liquor only if substantial meal consumed—sale of liquor unaccompanied by meal—whether innocent licensee vicariously liable for acts of barman—whether mens rea essential ingredient of offence—Liquor Ordinance (Cap. 167) s.62.*

The appellant was the holder of a restaurant licence which authorised him to sell liquor only if the customer also partook of a substantial cooked meal. Liquor was sold by a barman in the appellant's employ to a customer who did not partake of a meal.

D

Held: 1. Section 62(4) Liquor Ordinance stated that contravention of its provisions by any person made that person and the licensee guilty of an offence.

2. Although there was no evidence establishing mens rea on the part of the appellant, there was a presumption in this type of case that the statute or statutory instrument could only be effectively enforced if those in charge were made responsible. (*Lim Chin Aik v. R.* followed and applied)

E

3. Mens rea was not an essential ingredient of the offence.

Cases referred to:

Sweet v. Parsley [1969] 2 W.L.R. 470; [1969] 1 All E.R. 347.

Attorney-General v. Lockwood [1842] 9 M & W 378.

F

R. v. Liverpool Licensing J.J.s ex parte Tynam [1961] 2 All E.R. 363; [1961] 1 W.L.R. 837.

Lim Chin Aik v. R. [1963] 1 All E.R. 223; [1963] A.C. 160.

Sherras v. De Rutzen [1895] 1 Q.B. 918.

Appeal against the dismissal of an appeal by the Supreme Court against the judgment of the Magistrate's Court convicting the appellant of an offence under the Liquor Ordinance s.62.

G

K. C. Ramrahka for the appellant.

D. Williams for the respondent.

Judgment of the Court (read by Marsack J. A.): [22nd July 1977]

H

This is an appeal from a judgment of the Supreme Court at Suva delivered on the 28th January 1977, dismissing an appeal from a decision of the Magistrate's Court, Suva, dated the 24th September 1976, convicting the appellant of an offence under the Liquor Ordinance, section 62 and imposing a fine of \$75 for that offence.

As the judgment of the Supreme Court was on appeal from the Magistrate's Court, then this present appeal is limited to questions of law only: Court of Appeal Ordinance Section 22(1). A

The basic facts may be shortly stated. The appellant is the holder of a restaurant licence under the Liquor Ordinance Cap. 167, in respect of the Wan-Q Restaurant in Suva. On the 8th April 1976 a customer named Smith went to the bar in the restaurant about mid-day and there drank six large bottles of beer before 2.00 p.m. The beer was supplied to him by the barman. Smith then left the restaurant without partaking of a meal. B

The relevant provisions of Section 62 of the Liquor Ordinance are as follows:

“62(1) (a) A restaurant licence shall authorise—the sale of supply of liquor on the licenced premises during the permitted hours to, and the consumption on such premises of liquor by, any person who during the permitted hours on that day or night partakes of a substantial cooked meal on the licensed premises.” C

“(4) Without prejudice to any liability under the provisions of section 76 of this Ordinance, in the event of any contravention of any of the preceding provisions of this section by any person, the licensee and such person shall be guilty of an offence and on conviction shall be liable to a fine not exceeding fifty pounds in the case of the licensee and twenty pounds in the case of any other person.” D

The sole ground of appeal argued by Mr Ramrakha was set out in these words:

“The learned trial Judge ought to have held the circumstances that *mens rea* was an essential ingredient of the offence.” E

It is thus clear that the only question for determination by this Court is whether or not section 62(4) imposes an absolute liability on the licensee in the event of such a breach, whether or not he was a party to the supply of liquor to the person concerned or whether or not he knew of the action taken by his barman. In the course of his argument, Mr Ramrakha cited the judgment of the House of Lords in *Sweet v. Parsley* [1969] 2 W.L.R. 470 in which it was held: F

“*Mens rea* is an essential ingredient of every offence unless some reason can be found for holding that it is not necessary, and the Court ought not to hold that an offence is an absolute offence unless it appears that that must have been the intention of Parliament.”

In the course of that judgment Lord Reid says at p. 473: G

“Our first duty is to consider the words of the Act: If they show a clear intention to create an absolute offence that is an end of the matter. But such cases are very rare.”

Lord Reid later quotes with approval the words of Alderson B. in *Attorney-General v. Lockwood* (1842) 9 M & W 378, 398:

“The rule of law, I take it, upon the construction of all statutes, and therefore applicable to the construction of this, is, whether they be penal or remedial, to construe them according to the plain, literal, and grammatical H

A meaning of the words in which they are expressed, unless that construction leads to a plain and clear contradiction of the apparent purpose of the Act, or to some palpable and evident absurdity.”

B Mr Ramrakha stresses that if the relevant section imposes absolute liability it would inevitably lead at times to the conviction of an innocent licensee who not only knew nothing of what his barman had done, but in fact had given strict instructions to his barman that he was on no account to supply liquor to any person not partaking of a meal.

It is true that this might possibly happen. But at the same time it is the duty of the Court to interpret the legislation strictly in accordance with the wording of the statute concerned, always provided that such interpretation is entirely consistent with the intention of Parliament as is made clear in the statute itself.

C In our opinion, the intention of the legislature in the relevant section of the Liquor Ordinance is that the grant of a restaurant licence should permit the sale of liquor on the premises only as an ancillary to the provision of meals. As is said in *R. v. Liverpool Licensing Justices* [1961] 2 All E.R. 363 there must be bona fide meals to which the drink is ancillary. It is certainly true that the word “ancillary” is not used in the Liquor Ordinance as it is in the English statute, but the object of the section is obviously the same.

D Subsection (4) lays it down unequivocally that in the event of any contravention of any provisions of section 62 by any person, the licensee and that person will both be guilty of an offence. In this case, it is conceded that the consumption of six bottles of beer by Smith without his partaking of a meal constituted a contravention of section 62. That being so, there is, in our opinion, no escape from the consequence that the licensee is guilty of an offence.

E There is no evidence establishing mens rea on the part of the appellant in this case. As was said in *Sherras v. De Rutzen* [1895] 1 Q.B. 918 at p. 921:

F “There is a presumption that mens rea is an essential ingredient in a statutory offence, but this presumption is liable to be displaced either by the words of the Statute creating the offence or by the subject-matter with which it deals.”

In certain classes of offences—such as some concerning the revenue and customs—it has been authoritatively laid down that mens rea is not an essential ingredient in the offence. In our respectful opinion the principle to be applied was well set out in the judgment of the Privy Council in *Lim Chin Aik v. Reginam* [1963] 1 All E.R. 223 at p. 228 per Lord Evershed:

G “Where the subject-matter of the statute is the regulation of the public welfare of a particular activity—statutes regulating the sale of food and drink are to be found among the earliest examples—it can be and frequently has been inferred that the legislature intended that such activities should be carried out under conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea.”

H

That is precisely the situation here. The relevant provisions in the Liquor Ordinance can be effectively enforced only if the holder of the licence is made responsible for seeing that those provisions are complied with; and the intention of legislature in that respect has, in our opinion, been made abundantly clear in the wording in subsection (4). A

Accordingly, although Mr Ramrakha has presented a persuasive argument before us, we must hold that *mens rea* is not an essential ingredient of the offence of which the appellant was convicted and the appeal must be dismissed. B

Appeal dismissed.