

SHYAM SUNDAR s/o SHIU RAM

and

REGINAM

Mr. A.B. Ali for the Appellant

Mr. R. Lindsay for the Respondent

JUDGMENT

Appellant was charged in the Labasa Magistrate's Court on two counts, on the first count with selling liquor as an off-licensee outside the authorised opening hours and on the second count with allowing the consumption of liquor by customers in adjoining premises of the licensee. Appellant was acquitted on the second count but convicted on the first count and was sentenced to a fine of \$50 or in default three months' imprisonment.

Appellant has appealed against his conviction on several grounds to which I will refer later in this judgment.

Several witnesses gave evidence for the prosecution. Jag Prasad s/o Sampat said that at between 5 p.m. and 6.30 p.m. on 16th January 1979 he went to appellant's shop and bought six bottles of beer for \$5.40. He was there with three others, Ranjit (P.W.2), Devi Prasad (P.W.3) and Suruj Pal (P.W.4). Ranjit who bought quarter bottle rum gave evidence which materially confirmed P.W.1's evidence. Devi Prasad gave evidence to the same effect. Suruj Pal said he bought two bottles of beer also from appellant on the same evening.

Emosi Time (P.W.5) said he went to appellant's shop on the evening of 16th January 1979 in response to an invitation

from appellant who was Manager of their soccer club. He said the members of the team were invited by the appellant to his place. He said when he went there four Indians were drinking in appellant's premises and he recognised P.W.1, P.W.2, and P.W.3.

Appellant's premises were raided by the police later in the evening and as a result appellant was taken to Wainikoro police post where he was interviewed by Detective Corporal Amrit Lal. Part of the interview was as follows:

- "Q. For how many years have you been staying here?
A. Since 1960.
Q. On whose name do you have the liquor licence?
A. On my name.
Q. Since how many years do you have liquor licence?
A. Since 1970.
Q. Do you know what time you are not permitted to sell liquor on Saturdays?
A. Yes, Sir.
Q. Today 16/6/79 what time to what time you are supposed to sell liquor?
A. From 8 a.m. to 1 p.m. liquor are sold."

At his trial appellant gave an unsworn statement as follows:-

"Police came to my house and arrested me and six others - Jag Prasad, Ranjit, Devi Prasad, Suruj Pal, Emosi and Setariki. We were then taken individually to police barrack. My son for first time came home qualified as doctor. That is all."

The first ground of appeal avers that there was no independent evidence to corroborate the evidence of the four prosecution witnesses.

The assumption in this ground of appeal is that P.W.1.,

P.W.2, P.W.3 and P.W.4 were accomplices whose evidence had to be corroborated.

On the facts of the case it is difficult to accept Counsel's contention on the question of corroboration. The facts show that the witnesses concerned went to appellant's shop on their own volition and pursuant to their own desire to have alcoholic drinks. They had travelled from their homes about six miles away and obviously acted quite independently of the appellant when they bought drinks from him. The fact that they paid the full going price for the drink ruled out in my view any suggestion of collusion. For this reason I am satisfied that the learned Magistrate had ample basis for not treating those prosecution witnesses as accomplices whose evidence required to be corroborated. Accomplices are "persons who are participes criminis in respect of the actual crime charged" (see Davies v. Director of Public Prosecutions) (1954) 1 All E.R. 507 at 513. As pointed out these witnesses had to pay for their drinks at the full price so that it could not reasonably be suggested that they had a particular reason for assisting the appellant to break the law relating to off licences. In my view the evidence points strongly to the fact that they were innocent purchasers of liquor from the appellant (see Hari Narayan Singh v. R. 6 F.L.R. 95). This ground of appeal must therefore fail.

In his second ground of appeal the appellant claims that there was no evidence that the premises in question were licensed.


I can find no substance in this ground of appeal because it is clear from the admissions made by appellant during his cautioned interview to which reference has already been made that the appellant in fact held a licence over the premises in question in his name. In his unsworn statement appellant did not mention that the licence on the premises was not in his name. Indeed he could not very well assert

this because to do so would be tantamount to his admitting to a criminal offence.

The rest of the grounds of appeal relied on avers that the learned Magistrate erred in convicting the appellant without properly analysing the evidence by P.W.5 which conflicted with that given by the rest of the prosecution witnesses.

P.W.5 as is clear from the recital of evidence already given went to appellant's premises on his own and in response to a social invitation from the appellant himself. He had nothing to do with the activities of the other prosecution witnesses. His evidence confirmed the fact that they were drinking liquor in appellant's premises on the evening in question. His evidence was in no way contradictory to other prosecution evidence. This ground of appeal also fails.

For the reasons given this appeal is dismissed.



(T.U. Tuivaga)
Chief Justice

Suva,
16th April 1981.