

(IN REVISION.)

1943

Present : Jayetileke J.

JAILABDEEN, Applicant, and MENON, Respondent.

M. C. Matala, 10,424.

Master and servant—Master's liability for acts of Servant—Explosives Ordinance (Cap. 140) s. 23 (2).

Where a licensee to sell explosives by retail is charged under section 23 (2) of the Explosives Ordinance he is liable for the acts of his servant, who exposed explosives for sale in contravention of its provisions.

THIS was an application to revise a conviction by the Magistrate of Matala.

H. W. Thambiah, for accused-appellant, petitioner.

N. Nadarasa, C.C., for Crown, respondent.

February 18, 1943. JAYETILEKE J.—

This is a prosecution under the Explosives Ordinance (Cap. 140). The accused had a licence to sell explosives by retail at premises No. 65, Main street, Matale. He was convicted under section 23(2) of having exposed for sale 2 pounds 14 ounces of gunpowder and 17 pounds 11 ounces of fuses contrary to the provisions of section 23(2) of the Ordinance and sentenced to pay a fine of Rs. 20.

The inspector found the gunpowder on a counter and the fuses on a shelf in the shop when he entered it on August 23, 1942. The accused was not present on the premises at the time.

Mr. Thambiah contended that the accused cannot be made criminally responsible for the acts of his salesman.

The principle of law which governs this question is thus laid down by Channell J. in *Pearks, Gunston and Tee, Ltd. v. Ward*¹ at page 11 :—

“By the general principles of the criminal law, if a matter is made a criminal offence, it is essential that there should be something in the nature of *mens rea*, and, therefore, in ordinary cases a corporation cannot be guilty of a criminal offence, nor can a master be liable criminally for an offence committed by his servant. But there are exceptions to this rule in the case of *quasi-criminal* offences, as they may be termed, that is to say, where certain acts are forbidden by law under a penalty, possibly even under a personal penalty, such as imprisonment, at any rate in default of payment of a fine”

This judgment was cited with approval in *Mousell Bros., Limited v. London and North Western Railway Co.*². In the course of his judgment Lord Reading C.J. said at page 843 :—“It follows that where the act forbidden is one of the character described by Channell J. the principal is liable for the doing of the forbidden act by the servant.”

The Explosives Ordinance was enacted “for the prevention of accidents by explosives”. Section 25 clearly lays down that it shall not be lawful for any person to sell explosives unless he shall have previously obtained a licence from the Government Agent of the District in which he proposes to sell such explosives. The Government Agent is given the power to refuse to issue a licence if the applicant has not provided registered premises for the keeping of explosives. Section 20 provides for the registration of premises for the keeping of explosives for purposes of retail sale. Section 21 makes it an offence for a person to hawk, sell or expose for sale explosives upon any highway, street, public thoroughfare or public place.

The combined effect of section 20, 21 and 25 would be to prohibit the sale of explosives at any place other than the premises registered for keeping the explosives. The material part of the section under which the accused was charged is as follows :—

23. (1) The amount of explosives exposed for sale shall not exceed one pound.
- (2) If any explosive is exposed for sale in contravention of this section, the person exposing it for sale shall be liable to a penalty not exceeding twenty rupees, and all or any part of the explosive so exposed may be forfeited.

¹ (1902) 2 K. B. D. p. 1.

² (1917) 2 K. B. D. p. 836.

The penalty is imposed on the "person who exposes" the explosive for sale. Having regard to the fact that the only person who is entitled to sell explosives is a licensee the conclusion is irresistible that the duty imposed by section 23 (1) is upon him.

The only question then is whether he can be made liable under section 23 (2) for the acts of others.

In *Commissioners of Police v. Cartman*¹, the licensee of a public house was convicted under section 13 of the Licensing Act with having sold intoxicating liquor to a drunken person. The material words of the section are:—"If any licensed person permits drunkenness or any violent, quarrelsome, or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person" The liquor was in fact sold by a servant in the absence of the accused and contrary to his orders. Lord Russell C.J. in the course of his judgment said:—

"It must be remembered that the persons from whom alone intoxicating liquors can be obtained are licensed persons: how do they carry on their business? From the nature of the case it must be largely carried on by others on their behalf; it is true that sometimes the licensee keeps in his own hands the direct control over his own business, but in the great majority of cases it is not so, the actual direct control being deputed to other persons: are the licensees in these latter cases to be liable under this section for the acts of others? In my opinion they are, subject to this qualification, that the acts of the servant must be within the scope of his employment. The scope of the manager's authority in my view receives its limitation from the scope of his employment: authority is given to him to do all acts within the scope of his employment. It makes no difference for the purposes of this section that the licensee has given private orders to his manager not to sell to drunken persons: were it otherwise, the object of the section would be entirely defeated. We may take as an illustration the case of a sporting publican who attends race-meetings all over the country, and leaves a manager in charge of his public-house, is it to be said that there is no remedy under this section if drink is sold by the Manager in charge to any number of drunken persons?"

In *Collman v. Mills*², the licensed occupier of a slaughter-house was convicted under a by-law under the Slaughter-houses (Metropolis) Act of 1874, with having slaughtered certain sheep in the pound attached to the slaughter-house in the view of other sheep.

The material part of the by-law is as follows:—

"An occupier (a) shall not slaughter . . . any animal in any pound . . . other than the slaughter-house, (b) shall not slaughter . . . any animal within public view or within the view of any other animal."

He was not present on the premises at the time and had forbidden his servants to do the acts complained of. It was held that he was liable for the act of his servant, the act having been committed within the general scope of his employment.

¹ (1896) 1 Q.B.D. p. 655.

² (1897) 1 Q.B.D. p. 396.

The nature of the accused's business is such that he cannot reasonably be expected to be on the premises at all hours and that he has to employ servants to conduct it. The acts in respect of which the accused has been charged are such as would ordinarily be performed by a servant in the course of his duties. The language of section 23 (2) suggests that the Legislature intended to make the licensee responsible if his servants exposed explosives for sale in contravention of its provisions.

The construction contended for by Mr. Thambiah will defeat the object of the Ordinance. The accused has, in any opinion, been rightly convicted.

The appeal is dismissed.

Affirmed.
