

Jawar Arjan

Vs

State of Gujarat

Criminal Appeal No. 111 of 1972

(Syed M. Fazal Ali, O. Chinnappa Reddy JJ)

28.02.1979

JUDGMENT

FAZAL ALI, J. -

1. In this appeal by special leave, the appellant has been convicted under Section 66(1) (b) read with Section 181 of the Bombay Prohibition Act. The prosecution case has been fully detailed in the judgment of the courts below and it is not necessary for us to repeat the same all over again. The appellant was a rickshaw driver who had carried the accused 2 in his rickshaw. On search of the rickshaw some balloons kept in a bag containing illicit liquor were found. Apart from the passenger who was the owner of these article the appellant was also convicted as having the conscious knowledge of the fact that the bag contained prohibited articles. It is true that both the courts below have held that the accused had conscious knowledge of the fact that the articles contained illicit liquor. This inference appears to have been based largely on the information which the Police derived from its sources which indicated that the appellant in collusion with the second accused were trying to take away the articles. This information, however, being inadmissible, cannot be used against the appellant because there is no evidence to show that the appellant was asked to put these articles in the dicky of the rickshaw. Nor there is anything to show that the bag containing the balloons was so clearly visible so as to lead to the inference therefrom that the bag contained illicit liquor. It appears from the prosecution case itself that the articles were kept in a bag which was closed and they were put into the dicky of the rickshaw. The appellant was merely a rickshaw driver. He cannot be imputed with the knowledge of the procession of the article merely because the passenger put those articles in the dicky of that rickshaw. For these reasons therefore, We are fully satisfied that there is no legal evidence to connect the accused with the crime. Accordingly, the appeal is allowed and the order of the High Court is set aside. The appellant will now be discharged from the bail bonds.

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