
(1995) 04 GUJ CK 0002
In the Gujarat High Court

Kalidas Dhulabhai Vaghela

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-04-1995

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66(1)(b), 66(1)(b) , 66(1)(b)

Citation : (1996) 2 GLR 372

Hon'ble Judges : D.G. Karia, J

Bench : Single Bench

Judgement

D.G. Karia, J.—This Criminal Revision Application is directed against the judgment and order of conviction dated March 2. 1990 dismissing the appeal of the petitioner herein and confirming the judgment rendered in Criminal Case No. 2244 of 1987 by the learned Judicial. Magistrate, First Class, Jambusar, holding the petitioner guilty for the offence punishable under Sections 66(1)(b) and 85(1) (3) of the Bombay Prohibition Act. It was alleged that on August 17, 1987 at about 6-30 p.m. the accused was found in the compound of the Police Station in Jambusar in drunken condition and was abusing. The accused was, therefore, arrested and was then sent for medical examination, after preparing necessary Panchnama. The Medical Officer, having collected sample, sealed the phial containing said blood and sent it to the Chemical Analyser. The, Chemical Analyser reported that the blood contained 0.1173 per cent alcohol. The accused was thus charge-sheeted for the aforesaid offences; The accused pleaded not guilty.

2. The learned Judicial Magistrate, First Class, Jambusar, having recorded and appreciated the prosecution evidence, found the petitioner to be guilty for the offence punishable u/s 66(1)(b) of the Bombay Prohibition Act and sentenced him to suffer rigorous imprisonment for three months and to pay a fine of Rs. 500/ -, in default of payment of fine, to undergo rigorous imprisonment for 15 days. The learned Magistrate, however, acquitted the petitioner for the offence under Sections 85(1) and (3) of the Bombay Prohibition Act.

3. The petitioner preferred appeal, being Criminal Appeal No. 42 of 1989 in the Sessions Court at Bharuch, against the aforesaid judgment and order of conviction. The learned Sessions Judge, Bharuch, by his aforesaid judgment and order, ordered to dismiss the appeal; The petitioner has, therefore, preferred the present Criminal Revision Application.

4. Mr. A.D. Shah, learned Advocate appearing for the petitioner, having referred to and relied upon the evidence of P.W. 3, Dr. Patel contended that the Doctor, who is said to have collected and forwarded the blood of the accused, has not complied with Rule 4 of the Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959 ("the said Rules of 1959", for short). On perusal of the cross-examination of P.W. 3, Dr. Patel, what Dr. Patel has deposed is that the syringe was cleaned and sterilised by the Hospital peon under his supervision. He also admitted that the phial was prepared in advance with anti-coagulant and preservative.

5. It is now settled law that the provisions of Rule 4 of the said Rules of 1959 are mandatory. Rule 4 of the said Rules of 1959 provides manner-of collection and forwarding of blood. It reads as under:

4. Manner of collection and forwarding of blood: (i) The Registered Medical Practitioner shall use a syringe for the collection of the blood of the person produced before him under Rule 3. The syringe shall be sterilized by putting in boiling; water before it is used for the aforesaid purpose. He shall clean with sterilized water and swab the skin surface of that part of such person's body from which he intends to withdraw the blood. No alcohol shall be touched at any stage while withdrawing blood from the body of the person. He shall withdraw not less than 5 cc of venous blood in the syringe from the body of the person. The blood collected in the syringe shall then be transferred into a phial containing anti-coagulant and preservative and the phial shall then be shaken vigorously to dissolve the anti-coagulant and preservative in the blood. The phial shall be labelled and its cap sealed by means of sealing was with the official seal or the monogram of the Registered Medical Practitioner.

(2) The sample blood collected in the phial in the manner stated in Sub-rule (1) shall be forwarded for test to the Testing Officer either by post or with a special messenger so as to reach him within seven days from the date of its collection. It shall be accompanied by a forwarding letter in Form "B" which shall bear a facsimile of the seal or monogram used for sealing the phial of the sample blood.

6. It is clear on plain reading of the aforesaid Rule 4 that the blood is to be collected in the syringe and to be transferred into phial containing anti-coagulant and preservative and it has to be done by the doctor. It is not clear from the material on record as to at what point of time the anti-coagulant and preservative were added in the prepared phial which was given to P.W. 3 for the purpose of collection of blood of the accused. This is grave infirmity in the process of collecting the blood of the accused. It is, therefore, in clear breach of

the above Rule 4. It is also clear from the evidence on record that the anti-coagulant and the preservative which had to be added were not added by the doctor himself.

7. As observed above, the doctor admitted that he had received a ready phial containing anti-coagulant and preservative. There is no evidence or other material on record to show as to who in fact put anti-coagulant and preservative in the phial and at what time it was so placed in the phial. The doctor has also admitted that the syringe was made clear and sterilized by the Hospital peon. Rule 4 of the said Rules of 1959, inter alia, requires that the blood collected in the syringe shall be transferred into phial containing anticoagulant and preservative. Admittedly, this was not done by the doctor. This is in violation of the mandatory provisions contained in the said Rule 4. This infirmity is of fatal nature and vitiates the order of conviction.

8. Mr. S.T. Mehta, learned Additional Public Prosecutor, invited my attention to para 9 of the judgment of the appellate Court, wherein it is recorded that the doctor added the preservative in the phial. However, on perusal of the cross-examination of P.W. 3, Dr. Patel, this is clear misreading of the evidence on record. Under the circumstances, the order of conviction cannot be sustained.

9. In the result, the Criminal Revision Application is allowed. The impugned judgment and order of conviction and sentence is quashed. The petitioner-accused is acquitted of the offence punishable u/s 66(1)(b) of the Bombay Prohibition Act. Fine, if paid by the petitioner-accused is ordered to be refunded. Bail-bonds shall stand cancelled. Rule is accordingly made absolute.