
(1975) 12 GUJ CK 0012
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Mulji Hansraj and Others

RESPONDENT

Date of Decision : 22-12-1975

Acts Referred:

Bombay Prohibition Act, 1949 — Section 65(A), 66 , 66(1)(b), 66(1)(b), 68

Citation : (1976) 17 GLR 625

Hon'ble Judges : A.N. Surti, J

Bench : Single Bench

Judgement

A.N. Surti, J.—These two appeals are directed by the State of Gujarat against the orders of acquittal passed by the Judicial Magistrate, First Class, Kodinar, who acquitted the respondents-accused for the commission of various offences under the Prohibition Act in Summary Cases Nos. 798 and 799 of 1972. It may be mentioned at this stage that the aforesaid two cases before the learned Magistrate were tried together with the consent of the parties, and common evidence was recorded by the learned Magistrate in respect of both the cases.

2. It was alleged that Accused No. 1 was guilty of possession and consumption of liquor u/s 66(1)(b) of the Bombay Prohibition Act, 1949 and also under Sections 65(A), 68, 81 and 84 of the said Act. It was alleged that Accused No. 2 was guilty of committing an offence punishable u/s 66(i)(b) for consumption (and not for possession) and also guilty of other offences punishable under Sections 84, 85(1)(3) and 81 of the said Act. It was further alleged that Accused Nos. 2 to 8 were guilty of consumption of liquor u/s 66(1)(b) of the prohibition Act and also under Sections 84-81 of the said Act.

3. The learned Magistrate acquitted all the accused persons for the commission of the alleged offences. It is under these circumstances that the present two appeals are filed in this court.

4. Mr. G.N. Desai, learned public prosecutor appearing for the state gave to me the narration of the prosecution case which has given rise to the present two

appeals.

5. It was the prosecution case that respondent No. 2 (original Accused No. 2) at the relevant time was working as District Health Officer at Amreli. At that time respondent No. 3 was also working as a doctor under Respondent No. 2 (original Accused No. 2). Prosecution alleged that complaints were received by the District Magistrate that whenever original Accused No. 2 was going out of Amreli for his duties, he was interested in drinking liquor and was attending drinking parties where liquor used to be consumed.

6. On August 1, 1972, the District Magistrate called D.S.P. Amreli and requested him to do the needful in the matter. The D.S.P., Amreli was informed that respondent No. 2 was to visit Kodinar on August 9, 1972. But, it appears that on that day respondent No. 2 did not visit kodinar, but respondent No. 2 went to kodinar on August 3, 1972. In the meanwhile D.S.P., Amreli had contacted the concerned P.S.I., to keep a watch on the Activities of respondent No. 2

7. On the same day, i.e. On August 3, 1972 at about 6-00 P.M. Respondent No. 2 and respondent No. 3 took a Toyato Jeep and went at a distance of 15 km. Away from Kodinar at a place known as "Ghantwad". The prosecution alleged that at that place Accused No. 1 was owning a wadi (agricultural farm) along with other persons. It was further alleged that at about 8-30 P.M. On that day, a drinking party was going on, and P.S.I. who had also taken the assistance of a head constable gave a lightening call to the D.S.P. at Amreli, and informed him, about the aforesaid drinking party. The D.S.P., therefore, intimated the same to the District Magistrate.

8. On that very day, the District Magistrate and the D.S.P. in the company of Dy. S.P. And police men along with panchas went towards the scene of offence, and ultimately, reached the spot known as railway crossing at about 11-30 p.m; during the night hours, and there they met the concerned P.S.I., all these officers stopped their vehicles at the aforesaid spot, at a distance of about one mile away from the scene of offence.

9. At the scene of offence, at 0-30 a.m. during night hours, one police constable jumped on a wall in order to enable the officers to reach the exact spot of the scene of offence. All the officers who were there had Actually reached the spot and hence, realising that the accused persons would be caught and apprehended red-handed by responsible officers, they tried to run away. In course of the search, 5 glasses which were smelling of liquor, 2 empty bottles smelling of liquor, 12 empty soda water bottles, and one full bottle containing liquor were found, and the aforesaid articlers were lying near the spot, where the accused persons were apprehended.

10. Thereafter, at about 1-00 a.m. on the night in question, accused persons were taken away at Amreli Hospital. The District Magistrate informed about the incident in question to the Civil Surgeon. The Civil Surgeon, Dr. Dhawan directed his subordinate Dr. D.B. Sheth to examine the accused persons and to take their

venous blood.

11. On August 4, 1972, accused persons were released on bail.

12. Shortly stated on the aforesaid facts, it was alleged that Accused No. 1 was guilty of possessing and consuming liquor and as such was guilty of committing the offence punishable u/s 66(1)(b) of the Bombay Prohibition Act, 1949. On these very facts, it was alleged that rest of the accused persons (Accused Nos. 2 to 8) were guilty of merely consuming liquor. The charge against Accused No. 2 to 8 on the "same facts" for possession of liquor was not levelled against them by the prosecution, nor the same was put to them.

13. For the disposal of the present two appeals, suffice it to state that the learned Magistrate took the view that the venous blood which was taken from the bodies of Accused Nos. 1 to 8 (except Accused No. 2) indicated that the percentage of alcohol was less than 0.05 percent, and that, the venous blood taken from the body of Accused No. 2 was more than the statutory limit provided u/s 66 of the Bombay Prohibition Act, 1949. The learned Magistrate also took the view that there were breaches of statutory rules namely, the Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959 when the venous blood was taken from the body of Accused No. 2 and hence, acquitted all the accused persons for the alleged offences of consuming of liquor. He also acquitted Accused No. 1 of the prosecution allegation that he was possessing alcohol, not on any cogent grounds, but, gave to him the benefit of doubt.

14. The learned Magistrate also acquitted other accused persons for the commission of the other offences as mentioned by him in the impugned judgment.

15. As stated above, after the acquittal order, the state has preferred the aforesaid two appeals.

16. Before I proceed to consider the case of the appellant led by the prosecution, I must bear in mind that the decision under challenge is the one which has resulted into the acquittal of the accused. The guiding principles governing the exercise of the High Court's appellate jurisdiction are well settled. The appellate court while dealing with an appeal against an order of acquittal has full power to review at large the evidence on which the order of acquittal was founded and to reach a conclusion that upon that evidence, the order of acquittal should be reversed. But in exercising its power, the appellate court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact made by a judge who had the advantage of seeing the witnesses whose finding would not certainly be disturbed if two reasonable conclusions can be reached on the basis of the evidence on record, Vide *Samson Hyam Kemkar Vs. State of*

Maharashtra, and Bhim Singh Rup Singh Vs. State of Maharashtra, . Bearing in mind the aforesaid narration of the prosecution case and being conscious of the powers of this Court when it deals with an appeal against the order of acquittal, I, prima facie, fail to see as to why there was no charge or accusation against Accused Nos. 2 to 8 inasmuch as they possessed liquor in contravention of the provisions contained in Section 66 of the Bombay Prohibition Act, 1949. It is significant to note that when the accused persons were apprehended, all of them were found at one spot in the farm house situated 15 Kilometers away from Kodinar. It is equally significant to note that the police constable had to jump over the wall in order to enable the officers to reach the spot in question namely, the scene of offence. It is equally significant to note that when the search was carried out, 5 glasses smelling of liquor, two empty bottles smelling of liquor, 12 empty soda water bottles and one full bottle containing alcohol were found on the spot. It may be mentioned that when the accused persons were apprehended at such a spot, they might have made an effort to run away, but, they failed in doing so, and ultimately, they were apprehended by the concerned authorities and sent to civil hospital, Amreli at about 4-00 a.m. It is significant to note that on these same facts, Accused No. 1 was charged for possessing liquor, whereas other accused persons were not charged for possessing liquor. This type of glaring and patent inequality, to my mind, must necessarily be corrected at the very initial stage of the hearing of the matter. The alleged facts are common and same against all the accused persons. There is no striking distinguishing feature in the case of Accused No. 1, and the case against Accused Nos. 2 to 8. I am conscious of the fact that Accused No. 1 is the owner of the farm (wadi) and the others had gone to the farm. But in such cases, such a distinction has no significance or importance. Such a thin thread of distinction, if noticed, I am sure, would defeat the very purpose and object of the Bombay Prohibition Act, 1949. If it was alleged by the prosecution that Accused No. 1 was guilty of possessing liquor on the aforesaid facts, and the circumstances of the case, but I fail to see as to why there was no accusation or charge against Accused Nos. 2 to 8 for possessing liquor in contravention of the provisions, of Section 66(1)(b) of the Bombay Prohibition Act, 1949. Whenever "prinking parties" are detected by the police, it is the imperative duty of the prosecution to allege that all the participants of the same are charged with the "possession" of liquor in contravention of the provisions of law contained in Section 66(1)(b) of the Bombay Prohibition Act, 1949. It may be emphasised that in such cases, "possession" of liquor does not only necessarily mean Actual physical conscious possession of the owner or the occupant of the premises". In such case of "drinking parties". It is always open to a participant to stretch his hand and to take the liquor in question for his own use and consumption. But, in all such cases of "drinking parties", the court must be satisfied that the attendant circumstances should clearly indicate that the accused persons are the participants in a "drinking party". In the case before me, why should the accused persons, during the night hours, having gathered together go to a distant farm house? Why should they be found with the aforesaid articles? Why should they

create a situation as a result of which a constable had to jump over a wall? Why should they try to run away when they were apprehended by the responsible officers from Amreli?.

17. In such circumstances, it is the duty of the prosecution to see that all the participants are charged with the commission of the offence viz: of possessing liquor in contravention of the provisions contained in Section 66(1)(b) of the Bombay Prohibition Act, 1949. Unless the prosecution is careful in this behalf, the menace of "drinking parties" cannot be stopped, and no deterrent effect would be caused in the minds of those who exploit the dark hours of a night in a distant farm for arranging or participating in "drinking parties". It is significant to note that all the accused persons were very much near the articles namely, one full bottle containing liquor and other articles as stated above, and these circumstances to my mind, are sufficiently eloquent facts, which, prima facie, are sufficient to frame the necessary charge for the commission of an offence punishable u/s 66(1)(b) "for possession" of liquor in contravention of the provisions of Section 66 of the Bombay Prohibition Act, 1949, particularly, when on the "same facts" Accused No. 1 was charged for having the possession of liquor in contravention of the aforesaid provisions of Section 66(1)(b) of the Act.

18. As a result of my aforesaid discussion, though I am dealing with the appeals against the impugned order of acquittal, I think, the ends of justice do require a proper charge against Accused Nos. 2 to 8 on the facts alleged by the prosecution, and hence, a fair trial must necessarily be given to the state as well as to the accused persons for the commission of the alleged offence punishable u/s 66(1)(b) of the Act inasmuch as Accused Nos. 2 to 8 also prima facie possessed liquor in contravention of the provisions of the Bombay Prohibition Act, 1949. I may also mention that the learned Magistrate has not given any cogent reasons for acquitting Accused No. 1 for the commission of an offence punishable u/s 66(1)(b) of the Bombay Prohibition Act, 1949 (for possession of liquor).

19. I wish to make it absolutely clear that the narration of the prosecution case, or any of my incidental observations in this judgment should not prejudice the mind of the learned Magistrate, when he dispassionately appreciates the evidence led in the case.

Subject to the aforesaid direction, I set aside the impugned order of acquittal, direct the learned Magistrate to take the aforesaid cases on his file and in the light of the aforesaid observations, should dispose of the two cases as expeditiously as possible?