(1967) 03 GAU CK 0003

Gauhati High Court (Kohima Bench)

Case No: None

Harendra Nath Das	APPELLANT
Vs	
State of Assam	RESPONDENT

Date of Decision: March 18, 1967

Citation: AIR 1967 Guw 56 : (1967) CriLJ 1099

Hon'ble Judges: C.S. Nayudu, C.J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

C.S. Nayudu, C.J.
The conviction of the petitioner and the sentence passed against him u/s 4 of the Assam Liquor Prohibition Act, 1952 (Assam Act I of 1953), hereinafter referred to as the Act, as amended by the Assam Liquor Prohibition (Amendment) Act, 1963 (Assam Act No. XI of 1963), hereinafter referred to as the Amending Act, is questioned in this revision petition.

2. The prosecution case appears to be that when the accused was seen by the Inspector of Police at Goreswar Outpost, which is within the area where prohibition is in force under the aforesaid Act, he was found exhibiting, according to the prosecution, symptoms similar to those exhibited by a person who had taken liquor. These symptoms consisted of talking irrationally, having reddish eyes and smelling of what smelt like liquor from the mouth.

3. It is not disputed that none of the known scientific methods of investigation had been followed in this case, namely the examination of stomach contents of the accused person or the examination of his blood or urine. The prosecution contented themselves with the superficial examination by P. W. 4, the doctor. Even this witness apparently conceded in his evidence in cross-examination that symptoms similar to those manifested by the accused at the time of the examination could also be found in a person who takes medicines containing alcohol, such as B. G. Phos, The

question for consideration in this revision is whether the conviction of the petitioner has been validly and properly and in accordance with law, reached, and whether the conviction can stand. It would be useful to refer to the relevant provisions of the Act before the point is examined in detail. Section 3 of the Act lays down as follows:

3. No person shall -

(l) * * * *

(2) * * * *

(3) consume liquor except on a prescription from a registered medical practitioner;

...

Section 4 of the Act lays down that who-ever contravenes the provisions of Section 3 shall be punished with imprisonment of either description for a term which may extend to two years and also with fine which may extend to one thousand rupees. This section has been amended by the Amending Act and the amended section is in the following term:

Whoever contravenes the provisions of Section 3 of this Act, shall be punished with imprisonment for a term which may extend to two years but not less than three months and also with fine which may extend to one thousand rupees but not less than one hundred rupees.

There is a proviso to the section with which we are not concerned, as the petitioner is well over 21 years of age. ''Liquor'' has been defined in Section 2(3) of the Act and is in the following term:

''Liquor'' means any intoxicating liquid and includes all liquid consisting of or containing alcohol, also tari and pachwai in any form and any substance which the State Government may, by notification, declare to be liquor for the purposes of the Act.

Explanation.- This definition shall not apply to any toilet preparation or medicine containing alcohol.

It would also be useful and necessary to refer to Section 3-A of the Amending Act, which is as follows:

Whenever any person is found in a state of drunkenness within a prohibited area, the Court shall presume that the person has consumed liquor within the prohibited area.

4. The validity, maintainability or otherwise of the conviction in this case would have to be" judged in the light of the provisions of the Act, the general principles of criminal jurisprudence and the effect of Section 3-A of the Amending Act thereon. Having regard to the merits of the case, as none of the scientific methods open to

the prosecution to follow had been adopted, they lost the opportunity of proving that liquor was present in the stomach contents of the petitioner or it got itself transferred into the urine and blood of the petitioner. These tests are more or less infallible and could be safely relied on as proof of the fact that liquor as such had entered the body of the petitioner. In other words, that the petitioner had consumed liquor, which is an offence u/s 8 and punishable u/s 4 of the Act. Having regard to the evidence in this case of the doctor who admits that symptoms are consistent with the conclusion that these have been produced by reason of the accused having taken some medicine containing alcohol, the doubt which exists has remained unresolved and under the well-known principles of criminal jurisprudence which has been handed over to us from centuries, the accused is entitled to the benefit of doubt. In this context it would be useful to refer to the decision of the Supreme Court in the case of Behram Khurshed Pesikaka Vs. The State of Bombay, wherein their Lordships observed as follows:

The bare circumstance that a citizen accused of an offence u/s 66(b) (of the Bombay Prohibition Act corresponding to the present provision of the Act) is smelling of alcohol is compatible both with the innocence, as well as his guilt. It is a neutral circumstance, the smell of alcohol may be due to the fact that the accused had contravened the enforceable part of Section 13(b) of the Prohibition Act. It may well be due also to the fact that he had taken alcohol which fell under the unenforceable and inoperative part of the section. That being so, it is the duty of the prosecution to prove that the alcohol of which he was smelling was such that it came within the category of prohibited alcohols and the onus was not discharged or shifted by merely proving a smell of alcohol.

The onus thus cast on the prosecution may be light or heavy according to the circumstances of each case. The intensity of the, smell itself may be such that it may negative its being of a permissible variety. Expert evidence may prove that consumption in small doses of medicinal or other preparations permitted cannot produce the smell or a state of body or mind amounting to drunkenness. Be that as it may, the question is one of fact, to be decided according to the circumstances of each case. It is open to the accused to prove in defence that what he consumed was not prohibited alcohol, but failure of the defence to prove it cannot lead to his conviction unless it is established to the satisfaction of the judge by the prosecution that the case conies within the enforceable part of Section 13(b), contravention of which alone, is made an offence under the provisions of Section 66 of the Bombay Prohibition Act.

5. In this connection reliance has been placed by Mr. Goswami, the learned Counsel for the petitioner, on a decision of the Andhra Pradesh High Court, in the case of Madiga Boosenna, In re In Re: Madiga Boosenna and Others, wherein the learned Judge who decided the case observed as follows:

When scientific methods are available to prove the fact of alcoholic content of an article, I think the prohibition officers should not be allowed to confine proof of such an article by their mere oral statements, because the primary duty of the prosecution is to exclude every possibility of a doubt or suspicion before they ask for the conviction of a person charged under the Act....

That was a case of possession of liquor. But the observations apply in principle to the cases of consumption of liquor, as both the cases depend on the proof that what is in the possession or what is consumed, is that substance which is declared punishable under the Act.

6. Mr. Goswami took exception to the observations of the learned Sessions Judge to the effect that there is a presumption that the accused had consumed liquor when he was found in a drunken state and that it was for the accused to rebut this presumption. It is clear that the learned Sessions Judge based this observation of his on Section 3-A of the Amending Act. Unfortunately he had added something to the section which is not there, namely that the burden is on the accused to rebut the presumption. In the first place it has to be noticed that in order to invoke this presumption, it has to be established that the accused person was found in a state of drunkenness. Nowhere is the phrase ''state of drunkenness'' defined in the Act. Drunkenness itself, according to the English language, means the state resulting from taking liquor. When the question is whether a person has taken liquor, to say that he should be presumed to have taken liquor because he was in a drunken state, seems to be meaningless, as it would amount to a sort of argument in a circle. This is particularly so when the meaning of the word state of drunkenness'' is not defined in the Act, If it is proved that a man is in a state of drunkenness, it amounts to a proof that he has taken liquor and there is no more necessity of invoking the presumption of the Amending Act. This amendment, in my opinion, becomes otiose and completely unnecessary. Further, if the invoking of this presumption u/s 3-A of the Amending Act may be regarded as inescapable, then it would amount to countering the well-known principle of criminal jurisprudence that the burden of proving the guilt of the accused in the case is on the prosecution and continues to be so until the guilt is established. It is unnecessary to expand this matter farther in view of the observations of their Lordships of the Supreme Court, in the case referred to above.

7. In the result, I am not satisfied that the prosecution in this case have established the charge against the accused and consequently the accused is entitled to be acquitted.

8. I would accordingly allow this petition and quash the conviction and sentence. The accused is discharged from his bail bond and the fine, if realised, shall be refunded.