

SUPREME COURT OF INDIA

Maharaj Prithvisinghji Bhimsinghji

Vs.

State of Bombay

Crl.A.No.189 of 1956

(S. J. Imam, J. L. Kapur and K. N. Wanchoo, JJ.)

09.12.1959

JUDGEMENT

IMAM, J.:

1. The appellant was tried by a Magistrate of 1st Class of Abu Road for an offence punishable under Ss. 65(a) and 66(b) of the Bombay Prohibition Act, 1949 (Bombay Act XXV of 1949), hereinafter referred to as the Act. His servant Gangaram Makarji, accused No. 2, was also tried along with him under the aforesaid sections. A third accused in the case was the driver of the jeep car but the Magistrate did not frame any charge against him. He was accordingly discharged. The appellant was sentenced by the Magistrate to 6 months' S. I and a fine of Rs. 500 under S. 65(a) of the Act and to 3 months' S. I. and a fine of Rs. 500 under S. 66(b) of the Act. The sentences of imprisonment were directed to run concurrently. His servant Gangaram Makarji was sentenced to one month's S. I. and a fine of Rs. 100 under S. 65(a) of the Act and to 15 days' S. I. and a fine of Rs. 100 under S. 66(b) of the Act. the sentences of imprisonment were directed to run concurrently.

2. The appellant appealed to the Sessions Judge of Mehsana against his conviction and sentence. The Additional Sessions Judge, who heard the appeal, allowed it and set aside the conviction and sentence of the appellant. Against this order of acquittal the State of Bombay appealed to the Bombay High Court and that Court allowed the appeal, set aside the order of acquittal and convicted the appellant under Ss. 65(a) and 66(b) of the Act and restored the order of conviction and sentence passed by the Magistrate. The appellant obtained special leave to appeal against his conviction and sentence.

3. The facts established that the appellant and his servant Gangaram Makarji travelled from Delhi to Abu Road by the 201 UP train from Delhi which reached Abu Road at 3.45 p. m. on February 1, 1954. The appellant travelled in a 1st Class compartment while his servant travelled in a servants' compartment. At Abu Road station the appellant detrained and his servant took out his luggage and followed his master to the 1st Class waiting room. After sometime the appellant's luggage was loaded into the trailer attached to a jeep car the driver of which was the discharged accused No. 3. Sometime later, the appellant got into the jeep and when the jeep was about to start, Jamedar Shri Sheikh stopped it in order to make a search in connection with a suspected offence. The appellant asked his servant Gangaram Makarji to produce the keys. The luggage was thereafter searched. On search 76 bottles of foreign liquor were found in the trunks belonging to the accused as well as two half consumed bottles, one of which was in an attache case. The appellant, his servant Gangaram Makarji and the driver of the jeep were arrested. On these facts, it is the case of the prosecution that

offences under Ss. 65(a) and 66(b) of the act were committed by the appellant.

4. The appellant admits the ownership of the luggage but his case was that he did not know the existence of these numerous bottles of foreign liquor in his trunks or his attache case, which has sometimes been described as a suit-case. His case was that his servant Gangaram Makarji always packed and unpacked his trunks and that he himself had nothing to do with it in this respect. His case further was that a man in his position and upbringing never looked to these matters personally and that his servant attended to the work of packing and unpacking his luggage and even assisted him in putting on and taking off his clothes and that his servant accompanied him wherever he goes. His servant at all times kept the keys of his boxes as well as his money. In paragraph 5 of the written statement the appellant stated that he apprehended that his servant must have brought these bottles for some purpose but without his knowledge and consent and that had he known of it he would have never allowed him to do such a foolish act.

5. The defence of Gangaram Makarji, the servant, was that he had bought these bottles of liquor for one Punmaji Devaji who had given him a thousand rupees to purchase liquor, which was to be handed over to Punmaji a Sirohi Road Station within the State of Rajasthan outside the area where the act applied. At Sirohi Road station he went into the compartment where the appellant was, thinking that his master would be still asleep, in order to take out the bottles from the trunks and hand them over to Punmaji Devaji. As, however, his master, the appellant, was awake he enquired from him as to why he was opening the box and what he wanted. He became nervous and did not take out the bottles and closed the box and sent away the man who had come to take them. His intention was that after leaving Abu Road and reaching his home he would send the bottles of liquor at his convenience to the person for whom they were purchased. This defence of Gangaram Makarji was not accepted by the Magistrate who convicted him.

6. The main argument in this Court has been that the facts do not conclusively establish that the appellant had any knowledge as to the existence of the bottles of liquor in his trunks. He had also no knowledge of the half consumed bottle in the attache case. The keys of the trunks and the attache case were always with his servant Gangaram Makarji who was in entire charge of the appellant's luggage and in entire control of it with respect to its packing and unpacking and the appellant never handled his luggage. The appellant cannot be made responsible for anything done by his servant if it was not proved beyond reasonable doubt that he had knowledge of the existence of all this liquor in the trunks and the attache case. His servant Gangaram may have been taking all these bottles to Abu Road for his own purpose and he had put all these bottles of liquor in the luggage of the appellant in the belief that his master's luggage was not likely to be searched whereas if he carried this quantity of liquor separately they might be recovered on a search of his belongings. Gangaram Makarji no doubt made out the story that he had intended to hand over these bottles of liquor to someone at Sirohi Road station where the Act did not apply but that may have been suggested by him in mitigation because the stuff was carried into Abu Road without his intention to take it there. The case of the appellant however, should not be judged in the light of this part of the defence of Gangaram Makarji being rejected. Gangaram Makarji may well have intended to carry the bottles of liquor in the appellant's luggage even to Abu Road in the hope that no one was likely to search his Master's luggage. Indeed, according to Gangaram Makarji's written statement, he was afraid that if he packed these bottles separately his master might come to know about them and he would be in difficulty. He accordingly packed them along with the goods of his master without his knowledge.

7. Several bills showing purchase of liquor were found in the pocket of Gangaram Makarji. These bills would show that Gangaram Makarji did purchase liquor at Delhi before he and his master left

Delhi for Abu Road on the night of January 31, 1954. Whether the purchase by Gangaram Makarji was on behalf of his master or on behalf of Punmaji it is not possible to tell. The Sessions Judge, however, found that Gangaram Makarji must have thought of bringing the bottles of liquor to Danta and make money instead of delivering them at Sirohi Road station and with that view he must have kept them with the appellant's luggage as he must have thought that, the appellant belonging to the princely family of Danta nobody would dare to check his luggage and the bottles would reach Danta safely without detection.

8. The High Court was of the opinion that the most important article which had a bearing on the assessment of the evidence in the case was an attache case or suit-case found on the front seat of the jeep. It contained amongst other things one bottle covered with a handkerchief. Removal of the handkerchief showed the label Gordon's Dry Gin and on opening the cork it smelt of liquor. The liquid within it showed that it was a half consumed bottle. There was also in this attache case a glass wrapped in a white handkerchief and one spectacle case. In one of the trunks was also found a half consumed bottle bearing a similar label. The High Court thought that there was no explanation for the finding of this half consumed bottle of liquor in the attache case. The defence had suggested that this half consumed bottle might have been placed in the attache case by Gangaram Makarji after the train had arrived at Abu Road as he had an opportunity to do this after the arrival of the train there. The High Court, however, rejected the suggestion that Gangaram Makarji entered the 1st Class compartment in which the appellant had travelled as there was no evidence to that effect. It was, however, pointed out on behalf of the appellant that in the memorandum of appeal filed in the High Court by the State of Bombay it was the case of the prosecution that Gangaram Makarji had entered the compartment of the appellant to bring out the luggage. The Sessions Judge was of the opinion that Gangaram Makarji had an opportunity to put this bottle in the attache case when he entered the compartment at Abu Road station and that it was probable that he might have done so as the attache case was not locked, the servant again thinking that nobody would check his master's luggage. The High Court was of the opinion that in this finding of the learned Judge or the inference drawn by the learned Additional Sessions Judge had been based on any positive evidence, even based on the statement of the accused, it would have hesitated in differing from the Sessions Judge on this very crucial issue. It, however, did not accept the opinion of the Sessions Judge because there was no evidence that Gangaram Makarji had actually entered the compartment. As already stated, it was the case of the prosecution that Gangaram Makarji had actually entered the compartment. When a servant takes down the luggage of his master from a railway compartment there would be nothing improbable in his entering the compartment to see if anything belonging to his master was left behind inadvertently. There is, however, a further aspect of the matter which seems to have been overlooked and that is that the luggage including the attache case was taken to the 1st Class waiting room. The evidence is not clear as to what was the interval of time between that and the moment when the appellant got into the jeep but the evidence would show that the Rajmata of Danta had come to Abu Road in that very jeep in order to catch her train for Ajmer. The evidence of Trimbaklal Maganlal, P. W. 5, the Railway Head Ticket Collector, shows that the appellant had seen off some person in a train and then gone back to the waiting room. Assuming that Gangaram Makarji had no opportunity to place a half consumed bottle of alleged liquor in the attache case in the 1st Class compartment when the luggage was being taken out, there could be no doubt that he had an opportunity to do so if he so wished, in the waiting room where the luggage had been taken because the appellant was absent from the waiting room for sometime seeing some person off. It was thereafter that he returned to the waiting room and got into the jeep to leave Abu Road. It is, therefore, not entirely clear that before the discovery of the half consumed bottle in the attache case Gangaram Makarji had no opportunity to place that bottle in the attache case if he had so wished.

9. It would appear from the finding of the High Court that it would have hesitated to differ from the Sessions Judge on this vital issue whether Gangaram had an opportunity to place the bottle in the attache case were it not for the fact that there was no evidence to show that this accused entered the 1st Class compartment at Abu Road station. What was found in the attache case is the most important aspect of all the circumstances in determining whether the appellant was aware of the existence of so many bottles of liquor in his luggage. If Gangaram had no opportunity to place the bottle in the attache case, whatever may be said about the lack of knowledge on the part of the appellant regarding the contents of the trunks, the attache case being in his personal use during his journey from Delhi to Abu Road, the inference would be that he had knowledge of the existence of the bottle with the label Gordon's Dry Gin on it in his attache case as the probabilities are that he would have used his attache case during the journey, particularly when a leather spectacle case was found in it, without the spectacles, and the appellant had on a pair of spectacles at Abu Road Station. As it has already been stated the opportunity to place the bottle in question in the waiting room at Abu Road station has not been considered by the High Court.

10. Even assuming that this bottle with the label Gordon's Dry gin in the attache case was there to the knowledge of the appellant, the further question which arises for consideration is whether it contained any intoxicant. If it is not established that the contents of this bottle were intoxicant within the meaning of the Act it will be impossible to make use of the finding of the bottle with a label 'Gordon's Dry gin' on it as a circumstance to indicate that the appellant had knowledge of the existence of the numerous bottles of foreign liquor in his trunks. 'Liquor' has been defined in the act under S. 2(24) to include spirits of wine, denatured spirits wine, beer, toddy and all liquids consisting of or containing alcohol and any other intoxicating substance which the State Government may, by notification in the Official Gazette, declare to be liquor for the purposes of the Act. 'Intoxicant', under S. 2(22) of the Act, means any liquor, intoxicating drug, opium or any other substance which the State Government may, by notification in the Official Gazette, declare to be intoxicant. What is prohibited under S. 65(a) is the import or export of any intoxicant or hemp in contravention of the provisions of the Act. Similarly, under S. 66(b) what is punishable is for any one, in contravention of the provisions of the Act, to consume, use, possess or transport any intoxicant or hemp. These sections do not make punishable the mere import or possession of alcohol. All the evidence in the present case to prove that the bottle in the attache case was an intoxicant within the meaning of the Act is the evidence that, on uncorking, the bottle smelt of liquor. The evidence of the District Inspector of Prohibition and Excise, Veljibhai Virsingbai Chodhari, P. W. 8 was that the contents of this bottle were not sufficient to enable a test to be done scientifically and that the test by smell cannot give the percentage of alcohol. There is, therefore, no clear proof that the liquid contained in this bottle found in the attache case was, in the first place, liquor and, in the second place, if liquor, that it was an intoxicant within the meaning of the Act. It is to be remembered that at least upto Sirohi Road station possession and consumption of intoxicating liquor was no offence. If the bottle smelt of alcohol when it was uncorked at Abu road station that would not necessarily prove that the liquid contained therein was, infect, any intoxicant. Even if water or any liquid other than liquor had been poured into a bottle which had recently contained liquor the smell of alcohol would still be there. It seems to us that this aspect of the matter has not been considered by the High Court in assessing the evidence. It is on the assumption that this bottle contained an intoxicant within the meaning of the Act that the High Court came to the conclusion that at least in respect of this bottle the appellant had full knowledge that it contained foreign liquor. Consequently, possession of this bottle and of importing it into an area where the Act applied would in itself be an offence punishable under S. 65(a) and S. 66(b) of the Act and an

inference could be drawn that the appellant was also possessing and importing liquor in contravention of the provisions of the Act. On the other hand, if there is no clear proof that the contents of this bottle were intoxicant within the meaning of the Act the existence of this bottle in the attache case does not necessarily lead to the conclusion that the appellant had knowledge of the existence of the 76 bottles of foreign liquor in his trunks. Indeed, as we read the judgment of the High Court, it is the existence of this bottle in the attache case which has seriously affected its conclusion in drawing an inference against the appellant on the circumstantial evidence in the case.

11. If no adverse inference can be drawn against the appellant from the existence of this bottle in the attache case, then can it be safely inferred that from the mere existence of the 76 bottles of foreign liquor in the trunks of the appellant that he had knowledge of their existence? It has been proved beyond any question that although the ownership of these trunks in the appellant, the entire handling of these trunks, their packing and unpacking, was in the hands of his servant Gangaram Makarji who had in his possession their keys. In one of these trunks the personal belongings of Gangaram Makarji were also found. The likelihood of Gangaram Makarji, taking advantage of his control and possession of his master's luggage, to bring into Abu Road a large quantity of liquor for his own purpose and profit cannot altogether be excluded. Gangaram Makarji may well have calculated that having regard to the status of his master his luggage was unlikely to be searched. In our opinion, the view of the Sessions Judge that Gangaram Makarji might have been bringing the liquor to Danta to make money and that the appellant's luggage would not be searched cannot be said to be entirely unreasonable. The circumstantial evidence in the case is not of that kind from which the only inference that could reasonably be drawn was that the appellant had knowledge of the contents of his luggage and that he had accordingly possessed and imported an intoxicant, in contravention of the provisions of the Act. That being the position it is not possible to convict the appellant.

12. The appeal is accordingly allowed and the conviction and sentence of the appellant are set aside. The fine, if paid, shall be refunded.

Appeal allowed.

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