BOMBAY HIGH COURT

State

Vs.

Rangrao Bala

Criminal Appeal No. 1064 of 1951

(Rajadhyaksha and Vyas, JJ.)

18.12.1951

JUDGMENT

Vyas, J.

1. This is an appeal by the State of Bombay against the judgment of the learned Sessions Judge of Satara acquitting the three original accused persons of an offence under Section 66 (b) of the Bombay Prohibition Act, 1949 (Bom XXV of 1949.)

2. Shortly stated, the facts of the case of the prosecution are as follows : Accused Rangrao and Bhagwan are residents of the village Rahimatpur in Satara District, and accused Yeshwant is a resident of Tukaichiwadi, also a village in the same District. The Sub-Inspector of Police, Koregaon, received information that these three accused persons were consuming liquor. He took panchas with himself and proceeded to Rahimatpur on November 2, 1950, for making a search of the house of the accused. When he went up to the house of the accused Rangrao, he was met at the door-way by the accused's wife. He asked her to call accused Nos. 1 and 2. She immediately went in and gave information to the accused that the police had come. Without waiting for her to return to the doorway, the Sub-Inspector made his way along with the panchas into the house and found Rangrao, Bhagwan and Yeshwant sitting together with two cups and a big bottle before them. Seeing the police and the panchas, Bhagwan, accused No. 2, concealed the bottle in his 'dhoti'. There was a scuffle between him and accused No. 1 on the one hand and the police on the other hand to get at the bottle. Eventually the possession of the bottle was taken by the police from accused No. 2 in the presence of the panchas. A search of the house was also made and a tin and an empty bottle were recovered as a result of it. The three accused persons were sent to the Rahimatpur Dispensary for examination. They were examined by the Medical Officer in charge of the Dispensary at Rahimatpur and from the symptoms exhibited by the three accused the Medical Officer came to the conclusion that they had taken alcohol in some form. The two bottles, the tin and the cups, referred to above, were attached after making a

panchanama. The big bottle was sent to the Excise Inspector for examination and his certificate is to the effect that there was country liquor in it. After the usual investigation was over, the prosecution was launched against the accused and a complaint was filed by the Sub-Inspector. The learned trial Magistrate convicted all the three accused of an offence under Section 66 (b) of the Bombay Prohibition Act, an offence of having consumed liquor, and sentenced them to suffer fifteen days' rigorous imprisonment each and pay a fine of Rs. 150/- or in default to suffer further two months' rigorous imprisonment each. The accused appealed to the Sessions Court at Satara, and the learned Sessions Judge reversed the judgment of the learned trial Magistrate and ordered the accused to be acquitted. This is an appeal by the State of Bombay against that order of acquittal.

3. Now, the principal grounds on which the learned Sessions Judge set aside the conviction of the accused were :

> (1) There was no direct evidence that the accused had consumed liquor;
> (2) It is not sufficient for the prosecution to prove that the accused had consumed liquor. It must further prove that the liquor consumed was prohibited liquor, i.e., liquor which the law did not permit one to drink. It is not for the accused to prove that the liquor consumed by them, assuming that it is found that liquor was consumed by them, was not prohibited liquor. In this case the prosecution had failed to prove that the accused had consumed liquor which was prohibited liquor;
> (3) The definition of the term "to drink" in Section 2, Sub-Section (12) of the Bombay Prohibition Act, 1949, suggests that the Act envisages difference between consumption of liquor and drinking of liquor.

To quote the learned Judge's words, he has observed :

> "The word "consume' in Section 66 cannot be regarded to be equivalent to 'drink.' Hence the drinking cannot be regarded to be an offence under Section 66 (b) of the Bombay Prohibition Act....I think there is great force in the argument on behalf of the appellants that mere drinking of liquor is not regarded to be an offence under the Act."

4. Now, dealing with the third ground first, it is clear to us that the learned Sessions Judge has arrived at the startling and erroneous conclusion that "mere drinking of liquor is not regarded to be an offence under the Act" by reason of a misapprehension of the terms "to drink" and "to consume" and by misappreciation of the object of the Act which is to promote and enforce and carry into effect the policy of prohibition. From the fact that Section 66 (b) of the Act uses the words "consumes, uses, possesses or transports" and does not use the word "drinks" and from the further fact that the word "drinking" is used in Section 84, the learned Judge has concluded that the mere drinking of liquor is not regarded as an offence under the Act. Now, the learned Judge is entirely wrong in this view of his. The widest known form of consuming liquor is by drinking

liquor and therefore it cannot be contended with any force that consuming liquor is something quite different from drinking liquor and would not include drinking liquor. Under Section 66 (b) the consumption of any intoxicant is made penal, and if we turn to Section 2, Sub-Section (22) of the Act, we find that the term "intoxicant" means any liquor, intoxicating drug, etc. Thus, there is no doubt that the consumption of liquor is made punishable under Section 66 (b) and, as we just said, the widest and best known form of consuming liquor is to drink liquor. There is, thus, no doubt that "mere drinking of liquor" is also an offence under the Act. It would appear that the learned Judge has not appreciated the scope of Sections 66 (b), 84 and 85 of the Act. Under Section 66 (b), drinking of liquor without permission, irrespective of the place where drinking is done, is made punishable. Under Section 84, what is made penal is being found drunk or drinking in a common drinking house. There is a world of difference between "drinking liquor" and "getting drunk" or "being found drunk", and what is made punishable under Section 84 is not merely drinking of liquor, which of course is made penal under another Section (S. 66 (b)), but being found drunk or drinking in a common drinking house. Section 85 provides penalty for being found drunk and incapable of taking care of one's self in a street, thoroughfare or public place. It would thus be seen that it is not correct to say that mere drinking of liquor is not punishable under the Act.

5. Mr. Gokhale appearing for the original accused persons has contended before us that there is a difference between "drinking liquor" and "consuming liquor", and that what is punishable by Section 66 (b) of the Act is consumption of liquor and not drinking of liquor. According to Mr. Gokhale's submission, the difference between drinking liquor and consuming liquor lies in the fact that consumption would mean taking on a large scale or taking for commercial purposes. We are afraid it is impossible for us to accept this construction of the term "consume." There is nothing in the language of Section 66 (b) or in the language of any other section in the Act to suggest that the term "consume" is used in the Act in the sense of use for commercial purposes or use on a large scale, and we are convinced that under Section 66 (b), an individual who consumes liquor on any scale whatsoever, small or large, without a permit, license, pass, etc., is liable to be punished. We are not therefore, able to endorse the view of the learned Sessions Judge that mere drinking is not an offence under the Act.

6. Dealing next with ground No. (2) of the three grounds mentioned by the learned Judge for acquitting the accused, it is to be noted that all that the prosecution has to prove for bringing home a charge under Section 66 (b) of the Act to an accused person is that he has drunk liquor (we are not referring here to cases of use, possession or transport of liquor nor to other intoxicants) in contravention of a permit, pass, license or authorization. Once that burden is discharged by the prosecution, i.e., once it is proved by the prosecution that a person has drunk or consumed liquor without a permit, it is for that person to show that the liquor drunk by him was not prohibited liquor, but was alcohol or liquor which he is permitted by law to take e.g., medicated alcohol. The prosecution is not to discharge the burden of the accused, and if in answer to a charge of drinking liquor without a permit the accused suggests that the liquor which

was drunk by him was not liquor in a prohibited form or was alcohol in a medicated form, he must show it. The prosecution cannot possibly prove that no form of medicated alcohol was taken by the accused. There are evidently numerous forms of medicated alcohol and it is impossible for the prosecution, on the very face of things, to exclude all those forms. For instance, if the prosecution were to lead evidence to show that the accused had not taken medicated alcohol in the form of B. G. Phos, the accused would contend that he had taken it in some other form. If the prosecution were to lead evidence that the accused had not taken it in the form of Winedex, the accused would say that he had taken it in the form of Waterbury's Compound or Hall's Wine. These are only two instances to show how it is impossible for the prosecution to exclude all forms of medicated alcohol. Therefore, in our opinion, there is no doubt that once the prosecution has discharged the onus which is upon it to prove that the accused person had consumed liquor, it would be for the accused to show that the liquor which was taken by him was liquor in the form of a medicated alcohol in other words, not prohibited liquor. Accordingly, it is impossible for us to endorse the approach which the learned Sessions Judge has made on the question of onus of proof.

7. Lastly, in regard to ground No. (1) of the three grounds mentioned above, it is to be remembered that the learned Sessions Judge has taken the view that there is no direct evidence in the case to show that liquor was drunk by the accused persons. In this connection, it is to be remembered that the medical officer who examined the condition of the three accused persons on the very date, i.e., on November 2, 1950, came to the conclusion that all the accused showed signs of having taken alcohol in some form. Their breath smelt of liquor and their pupils were dilated. The medical officer's view was that alcohol appeared to have been taken by the accused about two hours before they were sent to him. This material on the record together with the evidence of the panchas and the police-officers as to the circumstances under which the accused persons were found when the raid was made, leaves no doubt in our minds that all the accused persons had drunk liquor and had thereby committed an offence under Section 66 (b) of the Bombay Prohibition Act. In this context, it would not be out of place to refer to the certificate given by the Excise Inspector on November 6, 1950, i.e. only four days after the detection of the offence by the police. According to that certificate, the big bottle which was seized from the possession of accused No. 2 at the raid had contained liquor.

8. Now, in respect of the above mentioned evidence on the question of drinking by the accused, Mr. Gokhale for the original accused persons has drawn our attention to the evidence of the Medical Officer and to the certificate given by him and has made certain comments with which we must deal. One of the comments made by Mr. Gokhale in respect of the medical evidence was that whereas the certificates were given by the doctor on November 2, 1950, his evidence was recorded in the Court more than two months thereafter on January 18, 1951, and therefore it would not be possible for him to remember what exactly the condition of the three persons was on November 2, 1950. In his evidence the Medical Officer has deposed that the pupils of the three men were dilated and that the mouths of the three men were smelling liquor. He has gone

on to say that he could not depose whether the alcohol to which a reference was made in the three certificates given by him was medicated alcohol or otherwise. He has admitted in his evidence that he had taken notes of examination of the three persons, but the said notes were not produced by him in his evidence. He has then admitted that he has not taken any special training in order to find out whether alcohol is taken by a person or not, but he has deposed that he could speak about it by experience. Now, it is true that the notes of examination of the three accused as made by the Medical Officer on November 2, 1950, were not produced by him at the time of his evidence. But then it is to be remembered that he was not asked to produce those notes. If the defense had doubted whether he had taken any notes, or if the defense had felt that the result of the medical examination might have been in favor of the accused, it was up to the defense to call for the notes of the Medical Officer, but that was not done. No doubt, it is true that the certificates given by this witness also did not specify in what particular form alcohol was taken, but, in our opinion, it was not necessary to specify that point. Section 66 (b) of the Bombay Prohibition Act makes penal a consumption of intoxicant and an intoxicant means, amongst other things, liquor, and alcohol in any form is certainly liquor. Therefore, for the purpose of the present prosecution, it was sufficient for the prosecution to lead evidence to show that alcohol was taken by the accused, and if it was the case of the accused that it was taken in a medicated form, it was up to them to prove it, as we have pointed out above. In our opinion, the certificates given by the Medical Officer on the very day constitute sufficient proof that alcohol was taken by all the accused on that date.

9. Speaking about the evidence of the panchas who have been examined in this case, Mr. Gokhale's argument was that these were not panchas taken from the village of Rahimatpur itself, but were taken from Koregaon, a town situated eight miles away from Rahimatpur. It was contended by Mr. Gokhale that this was in violation of the provisions of Section 103 of the Code of Criminal Procedure. We have given a careful thought to this contention of Mr. Gokhale. However, if we turn to the evidence of the panch Shankar, we find that he, at any rate, was an independent panch, and no matter whether he was taken from Koregaon or anywhere else, his evidence would certainly inspire the confidence of the Court. He has deposed that this was the first time that he was appearing in a Court as a witness and that he did not even know the Sub-Inspector Rege previously. These statements were not sought to be challenged in the cross-examination of the witness and therefore we must take them to be true, and taking them to be true, it would follow that the witness is an independent person, not subject to the influence of the police-officer who took him as a panch. If we rely on his evidence, it is quite clear that when the raid was made, two cups were lying in front of the three accused and a big bottle was in possession of accused No. 2 which was sought to be hidden by him in his 'dhoti.' If we turn to the evidence of the other panch, namely, Kisan, we find that he is a motor driver, but that, by itself, in our opinion, is not a circumstance to discard his testimony. It is to be noted in particular about this man's evidence that he does say that the accused were drinking wine at the time of the raid. In our opinion, there is no reason to discard that statement from his evidence, and if we read it in conjunction with the medical certificates given in this case, there is no doubt that on the date in

question the three accused had drunk or consumed liquor. Therefore, on the question of fact also, we are unable to agree with the learned Sessions Judge that it is not proved by the prosecution that the accused had drunk liquor.

10. For the above-mentioned reasons, we are of the opinion that this appeal filed by the State of Bombay must be allowed and the order of acquittal passed by the learned Sessions Judge in favor of the accused persons must be set aside. We convict all the accused of an offence under Section 66 (b) of the Bombay Prohibition Act, and looking to the fact that this is the first conviction of the accused, we propose to give them the benefit of Section 92 of the Act. Accordingly, while convicting all the accused under Section 66 (b) of the Bombay Prohibition Act, we, instead of sentencing them to any term of imprisonment, direct that they be released on their executing bonds with one surety each for Rs. 100 to appear and receive sentence when called upon during a period of one year and in the meantime to keep the peace and be of good behaviour. The accused must appear before the trial Court within a period of fifteen days from today in order to execute the bonds.

Appeal allowed.