

State of Mysore Vs. Billavara Kukappa

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Court : Karnataka

Decided On : Jul-27-1960

Reported in : AIR1960Kant312; AIR1960Mys312; 1960CriLJ1475; ILR1960KAR987

Judge : M. Sadasivayya and ;Ahmed Ali Khan, JJ.

Acts : Coorg prohibition Act, 1956 - Sections 3(1) and 4

Appeal No. : Criminal Appeal No. 275 of 1958

Appellant : State of Mysore

Respondent : Billavara Kukappa

Judgement :

Sadasivayya, J.

(1) In this appeal by the State, we are concerned with the correctness of an order of acquittal in a prosecution for an alleged offence under Section 4 of the Coorg prohibition Act, 1956. On the night of 16-3-1958, the accused was seen to be staggering about and not able to walk properly, near a Cinema Theatre at Conicoppal. He was taken to the Civil Assistant Surgeon who examined him and was at the opinion that the accused was intoxicated. He found that the breath of the accused was smelling of liquor, that the accused was unsteady in his speech

and gait, that his speech was incoherent and that his pupils were contracted.

He issued the certificate Ex. P-1 in which he stated that for these reasons, he was of the opinion that the accused was intoxicated and was completely under the influence of alcohol. The accused who had pleaded not guilty, stated in the course of his examination, that he had drunk ginger beer and he denied that he was in a state of intoxication. The accused who had pleaded not guilty, stated in the course of his examination, that he had drunk ginger beer and he denied that he was in a state of intoxication. The learned Magistrate took the view that each of the symptoms found in the accused could have been due to some cause other than the consuming of liquor. He has stated in the course of his judgment that, at the most, the accused might have been found in a drunken state but that he (the Magistrate) was not convinced that the accused was in a state of intoxication, at that time.

As pointed out by Sri Santosh the learned High Court Government Pleader appearing for the State it was open to the Magistrate, under the provisions of Section 246 of the Commissioner. P. C. to have convicted the accused, on the proved facts of the case, for an offence punishable under Section 3(1)(j) of the Coorg Prohibition Act, 1956. Section 3(1)(j) states that who even consumes or buys liquor or any intoxicating drug, consumes or buys liquor or any intoxicating drug, shall be punished with imprisonment up to one year or with fine extending to rupees two thousand, or with both. The learned Magistrate has also considered Section 3(1)(j) of the said Act. But, he has stated that the fact that the accused was smelling of alcohol, might have been due to the consumption of ginger essence.

(2) Now, what has been urged before us by the learned High Court Government Pleader on behalf of the State, is that the learned Magistrate was entirely wrong in his approach to the case. It is pointed out, that each of the symptoms spoken to by P.W. 1, has been taken into consideration separately and explained away by the Magistrate. It is urged by Sri Santosh that the learned Magistrate ought to have taken into consideration the cumulative effect of all these symptoms. In support of this contention, Sri Santosh has brought to our notice a decision of Balakrishna

Ayyar J. of the Madras High Court, reported in : AIR1955 Mad92 , In re Mahammad Sultan, in which his Lordship has pointed out that what should be taken into consideration is the co-existence of a number of symptoms. In that case also, the doctor had found the following symptoms:

(1) Smell of liquor in the mouth,

(2) pupils dilated,

(3) eyes red and

(4) pulse excited.

In that case also, the argument had been advanced that each of these symptoms might be attributed to some innocent cause. His Lordship did not accept that argument and he stated as follows:

'No doubt, each individual symptom might be ascribed to a separate cause. But the significant fact is that all the symptoms co-existed at the same time and their cumulative significance is extremely important. One particular symptom may be evidence of one disease. A second symptom may be evidence of another disease. But the co-existence of a number of symptoms are sufficient to identify the particular disease.'

In our opinion, in the present case, the co-existence of all the symptoms which have been spoken to by P.W. 1, together with his opinion to the effect that the accused was under the influence of alcohol, was enough to establish that the accused had consumed liquor, even if the same may not have been enough to establish that the accused was in a state of intoxication. Therefore, the Magistrate was clearly in error in not having convicted the accused for an offence punishable under Section (3)(j) of the Coorg Prohibition Act.

(3) More than two years have already passed since the Magistrate acquitted the accused. In a decision reported in 1955 Mad WN 1049, Public Prosecutor v. M. Gangadhara Shetty where many of the circumstances were similar to those in the present case, the court took into consideration the fact that considerable time had

elapsed after the acquittal and was therefore, content merely to point out the error committed by the lower Court, and did not go to the extent of interfering with the acquittal. In this case also, it appears to us, that it is sufficient that we have pointed out the error committed by the Magistrate and that the interests of justice do not require our setting aside the order of acquittal. Hence we decline to interfere with the acquittal, after the lapse of so much of time. With these observations, the appeal is dismissed.

(4) Appeal dismissed.

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