

Narayanan Nair Vs. State

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Court : Kerala

Decided On : Nov-30-1951

Reported in : 1952CriLJ1095

Judge : Govinda Pillai, J.

Appellant : Narayanan Nair

Respondent : State

Judgement :

ORDER

Govinda Pillai, J.

1. The accused was charged for an offence under Section 9 of the Travancore Prohibition Act, VII (7) of 1123, in that he was found in a state of intoxication in the public road, just in front of the State Transport Garrage at Meenakshipuram in Nagercoil. This was at about 1 a.m. on the night of 18.6.1124. At that period, the place in question was declared to be a prohibition area; and any one found in an intoxicating condition was liable to be tried and convicted for an offence under Section 9 of the Prohibition Act. The accused is the Superintendent of Fisheries. He was on his way to Muttam, to conduct an enquiry into the official irregularities of the Sub-Inspector of Fisheries there. That Sub-Inspector is P.W. 5.

The prosecution case was that the accused had taken brandy at Trivandrum, that he then travelled by bus to Nagercoil in the company of P. W. 5 and D.Ws. 1 and 3, that at the pertinent time in question he was seen standing at the gate of Raghuvilas Hotel in Meenakshipuram, smoking a cigarette, that P. W. 8, a Head Constable attached to the Kottar Police Station, came there with a constable, took the accused in custody at about 12.50 A.M. and took him to the Police Station. He was produced before P. W. 7, the Inspector of Police, with the report Ex. C.P. W. 7 drew up Ex. A Mahazar noting down the physical conditions and peculiarities he observed on the person of the accused and produced him for examination before the Medical Officer, P. W. 6. P. W. 6 examined him at 1-10 A.M. and issued Ex. B, medical certificate.

The case was then registered, investigated and charged before the First Class Magistrate of Kottar. The learned Magistrate, after trial, convicted the accused for the offence under Section 9, and sentenced him to pay a fine of Rs. 50. In default, he was to undergo simple imprisonment for one month. He appealed against this decision before the Sessions Court of Nagercoil. The appeal was heard by the Additional Sessions Judge, Nagercoil, and he, though with some hesitation, agreed with the conclusions arrived at by the Magistrate and confirmed the conviction and sentence. The accused has, therefore, come up in revision.

2. If the decision of the case rested entirely on an appreciation of evidence, there would be no occasion for this Court to interfere in revision. But, after hearing the arguments of both sides and carefully going through the records in this case, it appeared that there was matter for serious consideration of this Courts The charge is, as mentioned already, for an offence under Section 9 of Act VII(7) of 1123. Section 9 says:

Whoever is found in a state of intoxication in any public place and whoever not having been permitted to consume any intoxicating drug in pursuance of this Act, is found in. a state of intoxication in any private place, shall be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both.

In order, therefore, to arrest the accused, he must have been in a state of intoxication while he was in Nagercoil on the night of 16.6.1124. Intoxication or state of intoxication is not defined in the Act and so, we have to look to its meaning through authorized English dictionaries. In the Encyclopedia Britanica, 'Intoxication' is defined to be as poisoning, whether by drug or liquor or other toxic substances and hence, the condition of the nervous system produced by excessive drinking of alcohol. In the absence of any specific definition of the word in the statute in which the term is used, the word 'intoxication' applies only to the excessive use of intoxicating liquors or drugs.

What is mentioned in the section is that, If any one is seen in a state of intoxication' in al prohibition area, he is said to have committed an offence. The state of intoxication may be taken to be practically equivalent to a state of drunkenness, so that the person intoxicated WU incapable of knowing the consequences of be action. By reason of intoxication, if a person is capable of knowing the nature of the ad done, at the time he was under the influence of the alcohol, his act is not considered to be an offence under the Penal Code (vide Section 74 of the Travancore Penal Code).

So, what is necessary to be found out in this case is whether the accused was in the state of intoxication when he was said to have been taken to custody by P. W. 8. I shall refer later on to the extremely suspicious circumstances under which P. W. 8 himself, a head constable in mufty, came and took the accused into custody. P.W. 7, the Inspector of Police who investigated the case, had sworn in clear terms that his investigation revealed that the accused had taken brandy while he was in Trivandrum and before he got into the bus for Nagercoil. This bus started from Trivandrum at about 8 P.M. and it was an ordinary bug. It reached Meenakshipuram at 11-15 P.M. that day. It was at 12-50 the same night that P.W. 8 was said to have seen the accused standing at the gate of the Raghuvilas Hotel smoking a cigarette. So, not less than five hours must have elapsed since he had taken the brandy.

There was absolutely no case or suggestion that the accused had brought any brandy and took it in Nagercoil, just before he was taken into custody. There was

no necessity to speculate on that point, as the prosecution had no such case. The poisoning by alcohol is dealt with exhaustively in Taylor's Medical Jurisprudence, Volume 11, pages 535 and 536, 1948 edition. The relevant portion is quoted below:

Ethyl alcohol is produced by the fermenting action of yeast on sugars, and is concentrated by distillation. The percentage of absolute alcohol in various beverages is approximately as under, taking round figures without regard for precise accuracy:

Spirits, such as whisky, brandy, gin and rum, contain about 40 per cent of alcohol.

Fortified wines, such as port and sherry, contain about 20 per cent of alcohol.

Natural wines, such as claret and burgundy, contain about 10 per cent alcohol.

Strong beer contains about 5 per cent of alcohol

A 'large whisky', which should be half a gill (2 ounces), contains therefore 1 ounce, or 30 c.cm., of absolute alcohol, and the same amount will be present in a pint of strong ale, half a pint of claret, or a quarter of a pint of port.

The absorption of alcohol from the stomach and small intestine begins soon after ingestion. The rate of absorption is dependent upon a number of factors, the most important being the presence or absence of food in the stomach. Food delays absorption and the delay is most marked in the presence of fat and protein (Haggard and Greenberg, 1934; Mellanby, 1919). The concentration of alcohol is important, and generally the stronger the drink the more rapid is its effect. Absorption is usually complete within the first hour, so that after a single dose the maximum concentration in the blood is reached within the same period. After absorption, the alcohol is distributed more or less evenly throughout the tissues, with the exception of the bones and fat. Thus by estimating the amount of alcohol in the blood it is possible to calculate the approximate total quantity in the body at that time and the minimum quantity which must have been ingested.

About 90 per cent of the alcohol absorbed is oxidised and the remaining 10 per cent is excreted, mainly by the kidneys and the lungs. At no stage in its oxidation is alcohol stored in the tissues and its disappearance from the blood takes place at a fairly uniform rate, which for rough calculation may be placed at 10 c.cm. per hour (o. 185 c.cm. per kg. of body weight (Mellanby, 1919). It thus takes about three hours for the blood to be cleared of alcohol after the ingestion of a single large whisky. The excretion by the kidney is of importance in that at the time of secretion the urine has a similar concentration as that in the plasma at the same time, though higher than that in the blood as a whole, the ratio being approximately

The concentration in the blood varies however, increasing during absorption and then decreasing with oxidation. It follows, then that the concentration of alcohol in a given sample of urine will correspond with the average concentration in the blood during the time the urine has been collecting in the bladder (Smith and Stewart, 1932). If the concentrations in the urine and blood are estimated some time after ingestion, when the alcohol in the blood has fallen through oxidation, it may be found that the urine alcohol is at a higher level. Urine examination may, therefore, be used instead of blood examination and gives a reasonably accurate idea of the total alcohol in the body.

A considerable number, of investigations have been made in an endeavor to correlate the alcoholic concentration in the blood with the behavior of the individual.

It is generally agreed that with concentrations below 0.05 per cent, there is little change to be observed on clinical examination; at 0.10 per cent a number shows mild symptoms and quite possibly some more decided symptoms. Between this level and 0.2 per cent the number showing decided symptoms of intoxication increases, and at the latter figure it is to be expected that practically all will be diagnosed clinically. The critical concentration seems to be at or about the 0.15 level and any person with this amount in his blood can be considered to have imbibed a dangerous amount of alcohol. With increasing concentrations the symptoms become more intense and at concentrations beyond 0.2 per cent up to

0.5 per cent there is likely to be marked incoordination, coma and possibly death.

Knowing that the concentration in the blood is the same as that in the tissues, we may translate these percentages into amounts drunk as follows. When the amount in the blood is equal to 0.15 per cent, the person has ingested as a minimum within a few hours of the test 1.5 c.c. of absolute alcohol per kilogramme of body weight. In a man of ten stones this would amount to about 34 ounces of absolute alcohol, or about he gills of whisky at proof.

'Effects of Alcohol'. The only acute effect of alcohol which is of any interest is its effect on the central nervous system. Its first effect appears to be a depression of the highest evolutionary centres, the centres regulating the conduct, judgment, and self-criticism. It passes progressively downwards through the centres of earlier evolutionary origin until the motor centres are reached, and finally it depresses and paralyzes the vital centres in the medulla.

There is first a feeling of well-being and a certain slight excitation. The actions, speech and emotions are less restrained, due to a lowering of the inhibition normally exercised by the higher centers of the brain. With this there is increased confidence and a certain carelessness of consequences. This implies a lack of self-control, which is one of the first things observed after alcohol, and which is a constant feature of alcoholic poisoning.

When the narcosis has penetrated more deeply the sense perceptions and skilled movements are affected. The increased loss of the inhibitory action of the higher centers causes an alternation in the conduct of the individual according to the dictates of his inherent desires and emotions.

This accounts for the fact that an individual may become morose, gay, irritable, excitable, pugnacious, sleepy, and so on, according to the dominant impulses which have been unleashed by the drug. The reaction times are somewhat lengthened, and there is a certain clumsiness and incoordination in the finer and more skilled movements shown by slight alteration in speech and in the finer finger movements.

This passes into a third stage, where the motor and sensory cells are deeply affected: speech becomes thick and slurring; co-ordination is markedly affected, causing the patient to stagger and possibly to fall. Finally a stage is reached where the narcosis affects the whole nervous system, and the patient passes into a state of coma with torturous breathing, indicating a commencing paralysis of the respiratory centre.

The coma gradually lightens into a deep sleep, and the patient, if left alone, usually recovers in eight to ten hours, and wakes up with gastro-intestinal irritation, and usually nausea, vomiting and severe headache. If the coma continues for more than ten hours, the prognosis is bad.

3. The accused was not in any condition of coma when P.W.8 saw him. According to the prosecution, it was also more than five hours since he had taken the liquor. He could not, therefore, have been in a state of intoxication at 12-50 a.m. P.W. 7 himself stated that the accused pleaded before him to let him free. That would not be the condition of a person who was in a state of Intoxication. The tests, to find out whether a person is intoxicated or not, are given at pages 613 and 614 of Modi's Medical Jurisprudence and Toxicology. They are given below:

In order to ascertain whether a particular individual is drunk or not a medical practitioner should bear the following points in mind:

1. The quantity taken is no guide.
2. An aggressive odour of alcohol in the breath, unsteady gait, vacant look, dry and sticky lips, congested eyes, sluggish and dilated pupils, unsteady and thick voice, talks at random and want of perception of the passage of time are the usual signs of drunkenness.
3. Drunkenness does not come within the cognizance of the police, unless the man is dangerous to himself or to his property or that he is annoying or dangerous to others.

A special committee of the British Medical Association was appointed to consider the question of the definition and diagnosis of drunkenness. This committee

arrived at the following conclusions and recommendations in regard to persons accused of being 'drunk':

I. That the word 'drunk' should always be taken to mean that the person concerned was so much under the influence of alcohol as to have lost control of his faculties to such an extent as to render him unable to execute safely the occupation on which he was engaged at the material time.

II. That it is desirable that a medical practitioner should base his opinion on the following considerations:

(a) Whether the person concerned has recently consumed alcohol.

(b) Whether the person concerned is so much under the influence of alcohol as to have lost control of his faculties to such an extent as to render him unable to execute safely the occupation on which he was engaged at the material time.

(c) Whether his state is due, wholly or partially, to a pathological condition which causes symptoms similar to those of alcoholic intoxication, irrespective of the amount of alcohol consumed.

III. That in the absence of any pathological conditions a person is definitely under the influence of alcohol if there is a smell of alcoholic liquor in the breath and/or in the vomited matter (if any) provided there is a combination of all or most of the following groups of signs or symptoms:

(i) A dry and furred tongue, or conversely, excessive salivation.

(ii) Irregularities in behaviour, such as insolence, abusive language, loquacity, excitement or sullenness, and disorder of dress.

(iii) Suffusion of the conjunctivae & reaction of the pupils. The pupils may vary from a state of extreme dilatation to extreme contraction and may be equal or unequal.

In the opinion of many police surgeons when alcohol in toxic quantity has been consumed, the pupil reflex to 'ordinary light' is absent, whereas the pupil will

contract in 'bright light' and remain contracted for an abnormally long time, indicating the delayed reaction of the pupil.

(iv) Loss or confusion of memory, particularly as regards recent events and appreciation of time, (v) Hesitancy and thickness in speech and

impaired articulation.

(vi) Tremors and errors of co-ordination and orientation.

IV. That there is no single test by itself which would justify a medical practitioner in deciding that the amount of alcohol consumed had caused a person to lose control of his faculties to such an extent as to render him unable to execute safely the occupation on which he was engaged at the material time. A correct conclusion can only be arrived at by the result of the consideration of a combination of several tests or observations such as:

General demeanour;

State of the clothing;

Appearance of the conjunctivae;

State of the tongue;

Smell of the breath;

Character of the speech;

Manner of walking, turning sharply, sitting down and arising picking up a pencil or coin from the floor;

Memory of incidents within the previous few hours and estimation of their time intervals;

Reaction of the pupils;

Character of the breathing, especially in regard to hiccup.

V. That the following are the tests, upon which taken by themselves, little stress should be laid in deciding whether or not a person is under the influence of alcohol:

Presence of tachycardia (rapid pulse);

Repetition of set words or phrases;

Character of handwriting;

Walking along a straight line;

Failure of convergence of the eyes.

In this case P.W. 6 to whom the accused had been taken had, even if what he said was true, subjected the accused only to a very perfunctory examination. The certificate, Ex. B, given by P.W. 6, stated that the accused was in a state of drunkenness for the following reasons, viz., smell of brandy from nose, redness of his eyes, very rapid pulse, and tremors of his hands. These findings are absolutely insufficient to hold that the accused was in a state of intoxication. Seeing the delicate position in which P.W. 7 (the Inspector of Police) and P. W. 6 (the Medical Officer) were put, they attempted to improve upon what they had stated in the earlier records. I do not think that it was proper on their part to resort to such methods, even though this was one of the earliest cases in the prohibition area.

In Ex. C, the report, P.W. 3 stated that the accused was standing unconscious after drinking brandy; (I saw him standing unconscious after drinking brandy). The same idea was repeated in Ex. A (Mahazar) prepared at 1 a.m. by P.W. 7 and the Medical Officer's certificate (Ex. B) was only a reproduction of what the Inspector and the Head-constable had mentioned in Exs. A and C. The examination by the Medical Officer was perfunctory and it would be extremely dangerous to act on the findings from such examination to see whether a person committed an offence or not.

4. There appears to have been considerable development in the shaping of this case, as the trial advanced. The prosecution wanted, in any event, to get a

conviction in the case. The defence was that, while the accused was sleeping in room No. 14 of Raghuvilas Hotel, run by P.W. 4, P.W. 8 and another constable woke him up and took him to the police station. That was exactly what D.W. 1, who was the Divisional Inspector of Fisheries and who had accompanied the accused to Nagercoil, stated in his evidence. The Courts below brushed aside his evidence as interested. I do not think that such comment is called for in the circumstances of this case.

It was true that D.W. 1 was a senior officer in the accuser's department. That did not mean that he should perjure against his own conscience to support his superior. He is a graduate and he is the immediate man to be benefited, in case the accused loses his job. His evidence could, therefore, be safely acted upon, particularly when it was seen that it was corroborated by the testimony of P.W. 5, who was not expected to be on cordial terms with the accused who had gone there on that particular day to enquire into certain official irregularities alleged against him. It has also to be stated that though the version, that was given by P. W. 1 in the earlier portion of the chief examination, was that he saw the accused coming from the hotel with two or three persons and that he was then taken away by the police, the later development in the case was that P.W. 8 met the accused when he was seen near the gate of the hotel smoking a cigarette, which would not be the condition of a man who was in a state of intoxication.

5. Again, it would be seen that there was an attempt on the part of the prosecution to disprove the statement of D.W. 1 and P.W. 5 by an allegation that the accused was not even given admission to room No. 14 of the Hotel. P.W. 2, an employee in the said hotel, at first mentioned that the hotel manager (P.W. 4) did not give him a room as he was found drunk and that he was, therefore, forced to sit on a bench in the verandah of the hotel. But there was the receipt, Ex. 1, issued for letting out room No. 14 in the upstairs to the accused and his parties. When P.W. 2 was shown this, he was forced to admit that it was in his handwriting, that the accused had gone to room No. 14 to lie down, that he had taken a cool drink from the hotel to the accused as desired by him, and that for some time the accused was lying in the room. P.W. 4 was also induced to state that the accused was not given any room in the hotel. But he was forced to admit Ex. 1 and the fact that the room had

been let out to the accused and his friends. Such a development was intended to disprove the defence that the police took the accused from the room and not from the road.

6. It has also to be mentioned here that it was irregular for P.W. 8 to arrest the accused and take him to the police station. The charge against the accused was that he was found in a state of Intoxication In the public road. If that be so the accused could not be infested unless he refused to give his address to the police when demanded. There was no such case that the arrest was because of the accused's refusal to give his address. The whole proceedings were, therefore, vitiated by Illegality; and the prosecution was unable to answer or justify the acts of its officers on the night in question. All these put together would show that the prosecution had failed to prove that, when the accused was taken to custody by P.W. 8, he was in a state of intoxication. The conviction entered by the Courts below was, therefore, wrong; and it has to be set aside.

7. The result is that the conviction and sentence against the accused by the trial Court and confirmed by the appellate Court are set aside and the accused acquitted of the charge framed against him and for which he was tried. If the fine has been realised from the accused, it will be refunded to him.

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