

State of Gujarat Vs. Ukaji Devaji

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Court : Gujarat

Decided On : Sep-22-1961

Reported in : AIR1962Guj84; (1962)0GLR1

Judge : K.T. Desai, C.J.,; J.M. Shelat and; M.R. Mody, JJ.

Acts : [Bombay Prohibition Act, 1949](#) - Sections 85 and 85(1)(3)

Appeal No. : Criminal Appeal No. 620 of 1960

Appellant : State of Gujarat

Respondent : Ukaji Devaji

Advocate for Def. : G.S. Barot, Adv.

Advocate for Pet/Ap. : B.R. Sompura, Asstt. Govt. Pleader

Judgement :

Desai, C.J.

1. The question referred to this Full Bench is as follows : --

'Whether the expression 'found drunk' used in Section 85(1)(3) of the Bombay Prohibition Act has the same meaning as that assigned in Section 2(12) of the Act'.

Section 85 of the [Bombay Prohibition Act, 1949](#), to the extent that is relevant, provides as follows : --85 (1). -- Whoever in any street or thoroughfare or public place or in any place to which the public have or are permitted to have access:

(1) is drunk and incapable of taking care of himself, or

(2) behaves in a disorderly manner under influence of drink, or

(3) is found drunk but who is not the holder of permit granted under the provisions of this Act or is not eligible to hold a permit under Sections 40, 41, 46 or 46-A shall, on conviction, be punished:--

(i) for an offence under Clause (1) or Clause (3), (a) for a first offence, with imprisonment which may extend to one month and with fine which may extend to two hundred rupees;

(ii) for an offence under Clause (2);--(a) for a first offence, with imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees;

2. In prosecution for an offence under Subsection (1) it shall be presumed until the contrary is proved that the person accused of the said offence has drunk liquor or consumed any other Intoxicant for the purpose of being intoxicated and not for a medicinal purpose.'

Section 2(12) of the Act, referred to in the question, runs as follows:

'(2) In this Act, unless there is anything repugnant in the subject or context,--

(12) 'to drink' with its grammatical variations, means to drink liquor or to consume any intoxicating drug.'

Having considered the provisions- of Section 85(1)(3) and Section 2(12), we feel that the question as framed does not bring out the real point in controversy,

Section 85(1)(3) refers to a person who in any street or thoroughfare or public place or in any place to which the public have or are permitted to have access, is found drunk. In enacting Section 85(1)(3) the Legislature intended to deal with persons who had drunk liquor or consumed any intoxicating drug. A reference to Section 2(12) is necessary to import the element of having drunk liquor or consumed any intoxicating drug whilst considering whether an offence has or has not been committed under Section 85(1)(3). Having read the judgment Of the referring Bench, we find that the question that was really intended to be referred to us for decision was:

'Whether the expression 'is found drunk' in Section 85(1)(3) of the Bombay Prohibition Act, 1940, means found overcome or intoxicated by liquor or any intoxicating drug as construed in *State v. Trimbak* ILR (1955) Bombay 924, or merely found to have drunk, liquor or consumed any intoxicating drug?'

We accordingly reframe the question as above. (2) Before dealing with the provisions contained in Section 85(1)(3), it would not be out of place to refer to some of the other provisions of the Act and consider the scheme of the Act. By Section 13 it has been provided inter alia that no person shall consume or use liquor. By Section 14 it is provided inter alia 'that no person shall consume or use any intoxicating drug. By Section 22A it is provided that no person Other than a registered medical practitioner shall issue any prescription for any intoxicating liquor. It is further provided that no registered medical practitioner shall prescribe such intoxicating liquor unless he believes in good faith after careful medical examination of the person for whose use such prescription is sought, that the use of such intoxicating liquor by such person is necessary and will afford relief to him from some known ailment. By Section 35 it is provided that the State Government may, by rules or an order in writing, authorise an officer to grant licences to the managers of hotels to sell foreign liquor to the holders of permits granted under the Act. It is further provided that such licences would be issued on the conditions therein set out. One of the conditions is that the consumption of liquor sold shall

not be allowed in any of the rooms of the hotel to which any member of the public has access. Sections 40, 40A, 41, 46, 46A and 47 refer to permits which may be granted to persons for consumption of foreign liquor- Section 40B provides for the granting of an emergency permit for the use or consumption of brandy, rum or champagne Or any other kind of liquor to any person for his own use or consumption or to any head of a household for the use of his household for medicinal use on emergent occasions. One of the provisos to Section 40B provides for allowing the use or consumption of such liquor by any other person for medicinal purposes on emergent occasions. Section 43 provides that no holder of a permit granted under any of the provisions of the Act other than Section 40B shall drink in a public place or in the rooms of a hotel or institution to which the public may have access. It is further provided that no holder of a permit granted under Section 40A, that is for the purpose of health, shall allow the use or consumption of any part of the quantity held by him to any other person Section 44 provides for the grant of a licence to a club to sell foreign liquor to its members holding permits. Such a licence could only be granted subject to the condition that no liquor would be served in any room of the club to which the public had access at the time where any person who did not hold such permit was present. By Section 48 provision is made for the grant of permits for the consumption or use of intoxicating drugs and opium. Section 66 by Clause (1) provides that whoever in contravention of the provisions of the Act or of any rule, regulation or order made, or of any licence, permit, pass or authorisation issued there under, consumes, uses, possesses or transports any intoxicant (other than opium or hemp) shall, on conviction, be punished for a first offence with imprisonment for a term which may extend to six months and with fine which may extend to one thousand rupees. By Section 75A it is provided inter alia that any person who in contravention of the provisions of Section 43 drinks in a public place or in the rooms of a hotel or institution to which the public may have access shall be punished with imprisonment which may extend to six months or with fine which may extend to Rs. 1000/- or with both. By Section 84 it is provided as follows:

'Whoever is found drunk or drinking in a common drinking house or is found there present for the purpose of drinking shall on conviction be punished with fine which may extend to five hundred rupees. Any person found in a common drinking house

during any drinking therein shall be presumed, until the contrary is proved, to 'have been there for the purpose of drinking.'

Then comes Section 85 which we have referred to earlier. From the provisions of the Act and its scheme, it is clear that the Legislature has prohibited the drinking of liquor or consumption of any intoxicating drug without a permit. Even where a permit is granted it has prohibited the drinking of liquor or the consumption of any intoxicating drug in a public place Or in the rooms of a hotel or institution to which the public may have access. An exception is made in connection with medicinal use on emergent Occasions by holder of a permit under Section 40B. The object of the Legislature seems to be not merely that persons should not drink except under a permit, but even when they drink under A permit, they may not do so publicly. When we come to Section 85(1), clause (1) and (2), deal with cases where a person may have drunk liquor or consumed an intoxicating drug whether under a permit or without a permit. Clause (3) deals with the case of a person who has drunk liquor or consumed an intoxicating drug who is not' the holder of a permit or who is not eligible to hold a permit. Section 85 is intended 'to cover persons in any street or thoroughfare or public place or in any place to which the public have or are permitted to have access. When we turn to sub-section (2) we find a rule of presumption. It is laid down that a person accused of any offence under the provisions contained in. Section 85(1) shall be presumed to have drunk liquor or consumed any other intoxicant 'for the purpose of being intoxicated and not for a medicinal purpose' until the contrary is proved. A section which provides for anything being presumed in connection with an offence can only relate to that which constitutes an ingredient of the offence or which, if established, may result in the offence not being committed. Having that in mind, the Legislature has provided that it shall be presumed that a person who is accused of an offence under Section 85(1) has not drunk liquor or consumed any other intoxicant for a medicinal purpose. The object of such a presumption is clear and that is, to negative a defence that may be available to a person who has drunk liquor or consumed any other intoxicant unless the contrary is established. The object of the presumption that a person accused of such offence has drunk liquor or consumed any other intoxicant 'for the purpose of being intoxicated' however can only be to facilitate the prosecution in establishing an ingredient of the offence. But for such

an intention on the part of the Legislature, the raising of such a presumption would be devoid of meaning. It was urged by Mr. Sompura, the learned Assistant Government Pleader, that the Legislature has used the words 'for the purpose of being intoxicated and not for medicinal purpose' only with a view to negative the ordinary presumption of innocence which would arise in criminal cases. In his submission, the words 'for the purpose of being intoxicated' have been used only to lend emphasis to the words 'and not for medicinal purpose'. We are unable to accept this submission. The Legislature has not merely laid down that it shall be presumed that the liquor or intoxicant WAS consumed not for a medicinal purpose but has further laid down that a positive presumption should be raised that the liquor was drunk or the intoxicant was consumed for the purpose of being intoxicated until the contrary was proved. Such a positive presumption can only be raised with a view to establishing the ingredient of an offence. Such a positive presumption could not have been intended to be raised in vain Reading Section 85 as a whole, the intention of the Legislature appears to be to deal with a person who is in any street or thoroughfare or public place or in a place to which the public have or are permitted to have access and has drunk liquor or consumed any other intoxicant for the purpose of being- intoxicated. We shaft next consider what other requirements must be satisfied before an offence can be said to have been committed under Section 85(1). When we look at Clause (1) of Section 85(1) it is clear that the person concerned must be in an intoxicated state. The words there used are 'is drunk and incapable of taking care of himself The state of intoxication must be such that he must be incapable of taking care of himself. When we turn to Clause (2) of Section- 85(1) it is also clear that the person concerned must be in an intoxicated state. The words there used are 'behaves in a disorderly manner under the influence of drink'. The intoxication must have reached such a stage that the person concerned behaves- in a disorderly manner under, the influence of drink.

3. Then we come to Clause (3). On behalf of the State, the words" is found drunk' appearing therein are -sought to be given a meaning which would obviate the necessity of a person being found intoxicated. It is lirged that the word 'drunk' must be interpreted to mean one who has drunk liquor or consumed any intoxicating drug, having regard to the definition in Section 2(12). It is urged that it is sufficient

if it is established that the offender has drunk liquor or consumed any intoxicating drug, provided the other conditions laid down in the section are fulfilled. It is urged that the very fact of a person having taken such a drink or such an intoxicant is sufficient to bring him within the ambit of the section if such person is in any street or thoroughfare or public place or any place to which the public have or are permitted to have access. If such an argument were to be given effect to, a person who has drunk liquor or consumed any intoxicating drug at any time, say two days, ten days, a month or a year 'before the date on which he is found in a street or thoroughfare or public place or in a place to which the public have or are permitted to have access, would be considered to have committed the offence the moment he steps in a street or thoroughfare or such a place- He would then be committing a fresh offence every time he steps in such street, thoroughfare or place. The section does not lay down any time within which such drink or intoxicant must have been consumed before such person steps in such street, thoroughfare or place. The Legislature has by Section 66(1) made the very consumption of such drink or intoxicant without a permit an offence punishable with imprisonment which may extend to six months or with a fine of Rs. 1000/- or with both for the first offence. The Legislature could not have intended thereafter to take away his freedom of movement for ever and to lay down that whenever he thereafter steps into any street or thoroughfare or such a place he would be committing a fresh offence punishable with imprisonment or fine or with both. The section lays down that he must be 'found drunk', that is, he must be drunk when he is so found in such street, thoroughfare or place, so that he must not only have taken such liquor or intoxicant for the purpose of being intoxicated but he must be under the influence of such liquor or intoxicant when he is so found. It is not sufficient to establish that he had, prior to his being found in a street, thoroughfare or such a place, taken at any time such liquor or intoxicant. The Legislature has used in Clause (3) language which is a little different from that used in Clause (1). In Clause (1) the words used are 'is drunk' and these words are followed by the words 'and incapable of taking care of himself'. In Clause (3) which is intended to provide for a separate offence the words used are 'is found drunk'- Some meaning must be given to the word 'found'- A person who might have taken a drink a week before he is found in a public street or place cannot be said to be 'found drunk'.

The object of the Legislature in enacting Clause (3) is to see that people who have drunk liquor or consumed any intoxicating drug without a permit are not found in any street, thoroughfare or public place or a place to which the public have or are permitted to have access whilst they are under the influence of such liquor or intoxicant. Even where the Legislature has provided for the grant of a licence to hotels or clubs for selling foreign liquor, it has restricted the consumption of foreign liquor to places to which the public have no access. The Legislature, in enacting Clause (3) has sought to punish once again those who have committed a breach of the provisions of the Act by drinking liquor or consuming any intoxicating drug without a permit when they appear in any street, thoroughfare or such a place under the influence of such liquor or intoxicant. The object of the Legislature seems to be to prevent such breaches openly coming to the notice of the public having regard to the influence which such flagrant breaches might produce on the minds of the public. The influence of the drink must be such as to betray the man. Reading the section as a whole it seems to us that the object of the Legislature in using the words 'is found drunk' was to describe the condition of a person who was overcome or intoxicated by liquor or an intoxicating drug. When he is so overcome or intoxicated that he is incapable of taking care of himself he would also be committing an offence under Clause (1). When he is so overcome or intoxicated as to behave in a disorderly manner he would also be committing an offence under Clause (2). Even if he is capable of taking care of himself and does not behave in a disorderly manner he would be covered by Clause (3) if he is overcome or intoxicated by liquor or an intoxicating drug. Clause (3) is wide enough to cover the case of a person who is overcome or intoxicated by liquor or an intoxicating drug whether he is capable of taking care of himself or not and whether he 'behaves in a disorderly manner or not. A Division Bench of the Bombay High Court consisting of Chief Justice Chagla and Mr. Justice S.T. Desai, as he then was, had to deal with a similar problem in the case of 57 Bom LR 541. After referring to Section 85 and the definition 'given in Section 2(12), Chief Justice Chagla in the course of his judgment, observes at page 543 as follows:

'In our Opinion it is impossible to accept the contention of the Advocate General as it was first pressed that the expression 'drunk' in Sub-section (3) of Section 85(1) is synonymous with the expression 'to drink'-'

After referring to the meaning of the expression 'drunk' as given in the Shorter Oxford Dictionary namely 'as overcome by alcoholic liquor or intoxicated' he held that in order to constitute an offence under the provisions of this clause, there must be evidence produced which would induce the 'Court to hold that the offender was overcome by drink or was in a state of intoxication.

4. Our attention was called to the following passage in the judgment of Chief Justice Chagla at page 545 of the report:

'We must frankly confess that even this construction itself would lead to one difficulty and that is that it is difficult to understand why under Sub-section (3) holders of permits are exempted. The Advocate General suggested that if a person was given a permit, he was allowed to drink and therefore his case was taken out of Sub-section (3) of Section 85(1); but we do not understand why if the person is given a permit to drink he should get intoxicated and go to a public place. It almost seems as if permit holders have been looked upon under this section as a favoured class. To be intoxicated in a public place or to be incapable of taking care of oneself while drunk in a public place or behaving in a disorderly manner under the influence of drink in a public place is indefensible whether the act proceeds from a person who has a permit or proceeds from a person who has no permit and who has taken a medicinal preparation.'

Placing reliance upon this passage, the learned Assistant Government Pleader urged that if the result of putting the construction that was placed by the learned Chief Justice upon that clause was to introduce such an anomalous position, there was something wrong with the construction itself. With respect, in our view, in enacting Section 85(1) Clause (3) the Legislature has not given rise to any real anomaly- The intention of the Legislature in enacting Clause (3) was to see that a person who was overcome or intoxicated by liquor or any intoxicating drug who did not hold a permit or who was not eligible to hold a permit under Sections 40, 41, 46 or 46A was not found in a street or through fare or public place or place to which the public had or were permitted to have access. The Legislature was providing for a new offence being committed by a person who had already committed an offence punishable under Section 66(1) by drinking liquor or

consuming an intoxicant without a permit. The Legislature was dealing with the evil of the violations of the new law being flagrantly brought to the notice of the public by the violators themselves. So far as persons holding permits are concerned, if the result of the taking of liquor or the consumption of such drug was to bring them within the ambit Of Clauses (1) and (3), they were intended to be punished. If they did not fall within the ambit of Clauses (1) and (2), the Legislature has thought fit not to constitute their state of being overcome or intoxicated by liquor or any intoxicating drug into a separate offence punishable under Clause (3), having permitted them to consume such liquor or intoxicating drug under a permit, subject to such conditions as may be prescribed.

5. The learned Assistant Government Pleader strongly relied upon the language used in Section 84, and he said that the words 'is found drunk' also appear in Section 84. That no doubt is true. That is a section dealing with persons found in a common drinking house. That section is intended to over those who are found present there for the purpose o drinking, those who are found drinking there and those who are found drunk there. Even in the context of Section 84 those words cannot possibly cover the case of a person who might have drunk liquor or consumed such intoxicant a few days or a week or a month before he is found in such common drinking house. It is not necessary for the purpose of this reference to decide the exact meaning of the words 'is found drunk' used in that section in the context in which they are used and we refrain from doing so. Having regard to the context in which those words are used in Section 85(1), Clause (8), they mean that the person concerned must have been overcome or intoxicated by liquor or an intoxicating drug.

6. Our answer to the question as re-cast by us is that the expression 'is found drunk' in Section 85(1), Clause (3) of the [Bombay Prohibition Act, 1949](#), means is found overcome or intoxicated by liquor or any intoxicating drug.

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