

**In Re: Anjali Devi**

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**Court :** Chennai

**Decided On :** Mar-18-1968

**Reported in :** (1969)1MLJ403

**Appellant :** In Re: Anjali Devi

**Judgement :**

ORDER

**N. Krishnaswamy Reddy, J.**

1. The revision petitioner Anjali Devi, a cine actress has been convicted under Section 4(1)(j) of the Madras Prohibition Act and sentenced to imprisonment till the rising of Court with a fine of Rs. 25 and in default of payment of fine to undergo simple imprisonment for one week by the Sixth Presidency Magistrate, Madras.

2. The revision petitioner along with two others, Anjaneyalu and Kumma Reddi were found made a car, parked at the junction of the Mullikuppam Road and the South Beach Road, with a bottle of ' Haywards ' Brandy and a bottle of 'Vat 69 ' Whisky, at about 11-45 p.m. on 19th September, 1967. Anjaneyalu pleaded guilty in respect of the charges framed against him whereas the revision petitioner as accused-2 and Kumma Reddi as accused-1 who had been tried together were convicted under Section 4 (1) (j). Accused-1 Kumma Reddi admitted that he consumed brandy but denied possession of liquor bottles. The revision petitioner denied possession as well as consumption of liquor.

3. The brief facts of the prosecution case are these : P.W. 2-Dhanaraj, Inspector of Police, Vigilance, Madras, on information proceeded to Mullikuppam Road Oceanic Hotel at about 11-45 p-m. on 19th September, 1967, and found the car APU 8355 parked on the Mullikuppam Road. Kumma Reddi was found seated in the driver's seat. Behind him, on the rear seat, the revision petitioner and Anjaneyalu were seated. By the side of Kumam Reddi, on the front seat there was a green coloured box (M.O.1) in which, ' Haywards ' Brandy bottle (M Order 2) containing 12 ounces, a bottle containing about 6 ounces of 'Vat 69 ' Whisky (M.O. 3), an empty glass tumbler (M.O. 4) and five empty soda water bottles (M.O. 5 series) were found. P.W. 2 arrested all the three persons and seized M Os. 1 to 5. At about 1-30 A.M. the same night, P.W. 1 Dr. Ramachandran, casualty Medical Officer, Government Royapettah Hospital, Madras, examined Kumma Reddi and the revision petitioner. Kumma Reddi admitted before P. W. 1 that he had consumed brandy; but the revision petitioner denied having consumed alcohol. P.W. 1 found the following symptoms on the revision petitioner:

Her eyes were congested, pupils dilated and not reacting to light and her breath was smelling of brandy.

He was of the opinion that she had consumed brandy but not under its influence.

4. The revision petitioner in the Court admitted that she was in the company of the other two persons but denied that she had consumed brandy.

5. It admits of no doubt that the symptoms found by P.W. 1 on the revision petitioner would not suffice to infer that she had consumed brandy As a matter fact the learned Magistrate himself, following the decisions of our High Court and the Supreme Court found that the external symptoms by themselves were not conclusive of the fact of consumption of a prohibited variety of alcohol But he was persuaded by the fact that she was found in the company of two others who admittedly consumed brandy in the car and that bottles of whisky and brandy were found in the same car and that, therefore the revision petitioner could be reasonably inferred to have consumed brandy He has also taken into consideration that the revision petitioner had not stated that she had taken any medicinal preparation containing a fair percentage of alcohol which might have

stimulated the symptoms found on her That he was clearly persuaded by this circumstance can be seen from the observation made by him in his judgment in the following emphatic terms:

But, unlike in these reported cases we have the significant and clinching circumstance that a bottle of brandy and a bottle of whisky (M.O. 2 and M.O.3) had been found by their side in the same car at the time of the arrest of A-1 A-and D.W. 1 There is also the further circumstance that A-1 and D. W. 1 on their own showing, had also consumed brandy and whisky respectively out of M.O. 2 and M.O. 3 at the time. These circumstances, would cumulatively lead but to the one irresistible inference that A-2 also had consumed either brandy out of M.O. 2 or whisky out of M.O. 3, it is immaterial which.

6. It is possible that an inference of this kind may possibly be drawn but however, such inference cannot be irresistible. Because a woman keeps company with persons who consumed liquor with the bottles and other materials by their side it cannot be said that she must also have consumed alcohol. The symptoms found by P.W. 1 on the revision petitioner by themselves are not sufficient to conclude that the petitioner had consumed brandy. The additional circumstance that the revision petitioner was found in company with the other two persons with the liquor bottles by their side could not, in my view, even cumulatively lead to an irresistible inference as observed by the learned Magistrate, that she must have consumed liquor.

7. It will be significant to note that only one glass tumbler was [seized. Normally it could be expected that if three people were drinking, there would be at least three tumblers. It is not the case of P.W. 2 that he saw the revision petitioner and two others actually consuming the liquor.

8. The revision petitioner has taken a consistent stand that she has not consumed liquor. She denied even before P.W. 1 that she had consumed brandy, when two others had admitted it before him. In view of the denial of the revision petitioner, P.W. 1 should have necessarily made scientific tests instead of depending upon the mere smell. He could have taken the blood and urine of the petitioner for analysis to ascertain the presence of alcohol. The Supreme Court in State of

Andhra Pradesh Madiga Boosenna : 1967 CriLJ1398 , observed that merely trusting to the smelling sense of the prohibition officers, and basing a conviction on an opinion expressed by those officers under the circumstances, cannot justify the conviction of the accused and that better proof, by a technical person, who has considered the matter from a scientific point of view, is not only desirable but even necessary.

9. Taking an all round view of the case, I am of the opinion that the evidence let in by the prosecution is not sufficient to hold conclusively that the revision petitioner consumed prohibited alcohol. She will be entitled to the benefit of doubt.

10. The revision case is allowed and the petitioner is acquitted. Fine if paid, will be refunded to her.

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