

State of Karnataka Vs. Vasant

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Court : Karnataka

Decided On : Jan-29-1991

Reported in : ILR1991KAR1646

Judge : B.P. Singh and ;B.P. Krishnan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173, 251, 252, 281 and 313

Appeal No. : CrI. Appeal No. 113 of 1987

Appellant : State of Karnataka

Respondent : Vasant

Advocate for Def. : A.Y.N. Gupta, Adv.

Advocate for Pet/Ap. : S.R. Bannurmath, Addl. SPP

Disposition : Appeal allowed

Judgement :

Krishnan, J.

1. This appeal preferred by the State under Section 377 of the Cr.P.C. is directed against the sentence awarded by J.M.F.C., Bhatkai, in C.C.No.1358/1986 whereby the learned Magistrate sentenced the accused on his alleged plea of guilt for

offences under Sections 279, 304A IPC and Section 116 read with Section 89(B) of Motor Vehicles Act, to pay a fine of Rs. 350/- in default to undergo simple imprisonment for one month. The respondent herein was prosecuted by Bhatkal Police under Sections 279, 304A IPC and Section 89(B) read with Section 116 of Motor Vehicles Act that on . 21-9-1986 at 2.30 P.M. he (accused) drove Car No.MZH 4432 on Bhatkal Honnavar Road in a rash or negligent manner, so as to endanger human life and dashed against one Subbanna Shetty and caused his death and further, he did not report the matter to the nearest police station. The accused appeared before the lower Court on 19-11-1986 and thereafter, copies of documents referred to in Section 173 Code of Criminal Procedure (for short 'the Code') were furnished to him and his plea of guilt was recorded and on the basis of such plea he was sentenced as mentioned already. All these proceedings have taken place on one and the same day, viz., 19-11-1986. The State being aggrieved by the inadequacy of sentence has preferred this appeal seeking enhancement of the same.

2. That in an appeal of this kind, the aspect whether the learned Magistrate was right in convicting the accused could also be gone into was not disputed by the learned Additional State Public Prosecutor. The records of the lower Court indicate that the plea of guilt recorded by the learned Magistrate is vitiated on more than one ground. In the first instance it may be pointed out that immediately after appearance of the accused, the copies of the documents were furnished to him and without any lapse of time the accusation was read over to him and his plea was recorded. The furnishing of copies of documents referred to in Section 173 of the Code is not just an empty formality. That is meant for giving an opportunity to the accused to acquaint himself with the facts of the case and thereafter, make up his mind in that regard. The way in which the proceedings have gone on in the present case, clearly demonstrate that the accused was deprived of this opportunity of getting himself acquainted with the facts of the case put forward against him. This is covered directly by an authority of this Court reported in STATE OF KARNATAKA v. MALLAPPA SH1DLINGAPPA 1980(1) KLJ 182

3. The records indicate that the accused a resident of Kollapur has signed the plea in Marathi language. There is nothing on record to indicate that accused knew

Kannada or gave the answer in reply to the question posed to him in Kannada. Section 252 of the Code enjoins that the plea shall be recorded as nearly as possible in the words used by the accused. When on the face of it, there is no material to hold that accused knew Kannada, it may have to be held that the answer recorded by the learned Magistrate is not as nearly as possible in the language of the accused. In a decision of this Court reported in *AITHAPPA CHANNAN v. STATE OF MYSORE* 1972(1) Mys.LJ. 425 it has been pointed out that the violation of this provision of recording the plea as nearly as possible in the same words of the accused is an infirmity which vitiates the same.

4. Apart from the above said infirmities there is yet another glaring infirmity in the case. Section 281 of the Code deals with the aspect as to how the record of examination of accused has to be made. Sub-sections (4) and (5) of this Section read as hereunder:

'The record shall be shown or read to the accused, or if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(5) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.'

There is nothing in the records of the present case to show that after the plea was recorded, it was read over to the accused or if he did not understand the language in which it was written, it was interpreted to him and, thereafter he was given the liberty to explain or add to his answer. That these provisions have not been complied with by the learned Magistrate could not be disputed by the learned Additional State Public Prosecutor. But what he contended was that Section 281 of the Code has no application to a case where the plea of the accused is recorded under Section 251 of the Code. It was urged by him that Section 251 is a special provision and Section 281 is a general provision and the general provision has no application where special provision has been made. When it was put to him whether recording of the plea of the accused at the stage of Section 251 of the

Code amounts to recording the statement of the accused or not, he was fair enough to admit that it amounts to examination of the accused. If that be so and when there is nothing in Section 251 to indicate that the provisions in Section 281 will have no application when the plea is recorded under the former section, it is difficult for us to say that the general provision made under Section 281 has no application. This argument could have prevailed if there was any inconsistency between the special provision and the general provision.

5. The learned Additional State Public Prosecutor urged that Section 281 of the Code applies to a case of examination of the accused under Section 313 of the Code and not at a pre trial stage as Section 251 of the Code. The mandate of Section 281 is in the interest of the accused to make him understand the answer recorded by the Court is apparent on the face of it. It may be seen that on the sole basis of an answer given by an accused under Section 313 of the Code, there is no scope for the Court to convict the accused, whereas there is such a scope in respect of a plea of guilt recorded under Section 251 of the Code. If such a safeguard has been provided in respect of the answers recorded under Section 313 of the Code, it appears to us that it would be futile to contend that such a safeguard has not been provided in respect of the recording of the plea under Section 251 of the Code. Therefore, we are of the considered opinion that there is no substance in the contention of the learned Additional State Public Prosecutor that the provisions of Section 281 of the Code are not attracted at the time of recording of the plea of the accused under Section 251 of the Code. If that be so and when the learned Magistrate has not complied with Sub-sections (4) and (5) of Section 281 of the Code, it is clear that the answer recorded by the learned Magistrate cannot be construed as a plea of guilt of the accused and could not have formed the basis for convicting him for the offence with which he had been charged. Therefore, it is clear that both the conviction and the sentence awarded should be set aside and the case should be remitted back to the learned Magistrate to record the plea of the accused after following the procedure prescribed under law and thereafter, dispose of the case according to law.

6. In the result, the conviction and sentence awarded by the learned Magistrate are set aside and the case is remitted back to his file with a direction to dispose of

the case according to law, in the light of the observations made above. The appeal is allowed only to the extent indicated above.

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