

State of Gujarat Vs. Babusing Fatesing

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Court : Gujarat

Decided On : Sep-14-1976

Reported in : (1977)18GLR365

Judge : N.H. Bhatt, J.

Appellant : State of Gujarat

Respondent : Babusing Fatesing

Judgement :

N.H. Bhatt, J.

1. This is the State's appeal under Section 377 of the Criminal Procedure Code for enhancement of the sentence.

2. The facts of the case are that in criminal case no. 376 of 1974 before the Metropolitan Magistrate, 9th Court, Ahmedabad, the present respondent-the original accused had come to be prosecuted for offences under Section 279 and 304A of the I.P.C. and offences under Sections 112 and 116 of the Motor Vehicles Act. The charge, ex, 2, framed against the accused was that on 3.10.74 at about 3.00 P.M. the accused had driven his motor truck No. GTA 1622 on the public road outside Raipur Gate in a manner so rash and negligent as to endanger human life and that by that act, he had caused the death of one labourer Ramaji Naranji. The statement of the accused, ex. 3, shows that on the day following the

day of the framing of the charge, that is on 4.11.74, the accused pleaded not guilty to the charge and had claimed to be tried. Thereafter on 15.3.75 the formal informant one Nalhusing Keshavji, who was the companion of the deceased, had come to be examined as a witness and his deposition is to be found at Ex. 4. The witness was cross-examined also and the rojnama shows that the case was adjourned for recording further evidence. On 20.3.75, the day on which the further evidence was recorded, nothing of the sort was done, but the accused gave an application, which is numbered as M/9 and which the learned Magistrate has called as purshis of the accused for pleading guilty. It is to be noted that some other advocate had appeared for the accused that day and he had advised him to plead guilty and the learned Magistrate readily accepted the said plea and proceeded to convict the accused of all the offences with which he had come to be charged. Acting on that plea, the learned Magistrate however, gave the benefit of the salutary provisions of the Probation of Offenders Act and bound him over for the period of two years and directed him to furnish his personal bond and a surety bond both in the sum of Rs. 100/-. He also placed the accused under the supervision of the Probation Officer. The learned Magistrate did not appreciate in any way the evidence of the solitary witness and he has simply passed the short order of conviction and sentence. It is, therefore, obvious that the learned Magistrate has acted on the belated plea of guilty by the accused.

3. The procedure adopted by the learned Magistrate is curious and uncalled for by law. The only stage when the accused can plead guilty is the stage when he is called upon to plead guilty and at this stage the accused had in very clear terms stated that he did not plead guilty. The only course then open to the Magistrate was to take a decision on merits and he should not have acted on such a plea of guilty. The fact that this plea is followed by an order of release on probation smacks of a sort of a promise that if the accused accepted the charge, he would be leniently dealt with, but this sort of practice deserves to be discouraged very clearly and emphatically.

4. This High Court has on an occasion to deal with such a situation and the case is the case of *Kishorchandra Bhanushanker v. Bhavnagar Municipality* 10 G.L.R. p. 866. The view which I have stated above was expressed there also. Even apart from

the judicial precedent, the procedural law is too clear to be tinkered with. Such short-cuts ultimately reflect adversely on the fair name of the administration. In that reported case, this High Court has observed as follows:

Before the Magistrate can act under Section 342 of the Criminal Procedure Code, there must be evidence led by the prosecution on record and this evidence should be such as to prove circumstances which involve accused, directly or indirectly in the commission of crime. It is not proper for the Magistrate to put, in the absence of any prosecution evidence, any question to the accused in order to obtain an admission of the commission of the offence from the accused, and thereafter to convict him on the basis of such a statement. Once the accused had denied the commission of the offence in his plea made under Section 243 of the Criminal Procedure Code, the Magistrate is in duty bound to proceed with the recording of the evidence of the complainant and his witnesses and so long as no evidence has been offered on behalf of the prosecution, it is not competent to him to run to the accused and to put any questions to him under Section 342 of the Code

There is one earlier judgment also of this High Court to the same effect and it is the case of Jayanti Laxman v. The State of Gujarat 5 G.L.R. p. 648. In that case, it has been observed as follows:

The stage of convicting an accused person on his plea of guilty comes when the charge is read over to the accused. If at that stage, the accused pleads not guilty, he cannot be convicted without recording evidence and without appreciating evidence which is recorded. What an accused says subsequent to the charge does not amount to a plea under Section 412 of the Criminal Procedure Code.

5. The result is that the conviction of the accused-respondent and his bonds will be required to be set aside. As there is no real trial, the case is remanded to the Chief Metropolitan Magistrate, who will deal' with the case either himself or transfer it to any other Metropolitan Magistrate other than the Magistrate who had disposed it of by this impugned judgment.