

(1982) 07 GAU CK 0002
In the Gauhati High Court
Case No : Criminal Appeal No. 54 of 1979

Bharat Teli & Ors.

APPELLANT

Vs

State of Meghalaya & Anr.

RESPONDENT

Date of Decision : 28-07-1982

Acts Referred:

Criminal Procedure Code, 1973 — Section 252

Criminal Procedure Code, 1973 (CrPC) — Section 252

Citation : (1982) 1 GLR 766

Hon'ble Judges : B.L.Hansaria, J

Bench : Single Bench

Advocate : A.Sarma, B.B.Narzary, N.Das, S.C.Das, S.N.Koch, Advocates
appearing for Parties

Judgement

1. The petty offence under Section 123 of the Motor Vehicle Act which resulted in sentencing the appellants in a petty way (a collective fine of Rs. 250) has thrown up a big question for determination by this Court. The question posed by Sri Das, the learned counsel for the appellants is related to the validity of the trial in the absence of recording of their plea of guilt in accordance with section 252 of the Code of Criminal procedure. The offence alleged was that there was violation of Section 123 of the M. V. Act as Bus No. MLT593 was carrying a number of people on top of the bus and some others were hanging on back of the bus. This was on 28.11.78. On the next day the A.D.M received the offence report and transferred the case to the Assistant to Deputy Commissioner for trial. The learned A.O.C. passed the following order:

"Case received by transfer. Accused Bharat Teli and Birathson Sangma present. Accused Bidya Devi is represented Rajinder Singh. They plead guilty voluntarily to the offence which was explained to them. They are convicted under Section 123 M. V. Act and sentenced to pay a fine of Rs. 150/ collectively, in default of R. I. for 2 months.

The permit of the vehicle is suspended for one month. Hand over the seized

documents to O. T. O for necessary action."

Feeling aggrieved at this order of conviction and sentence an appeal was preferred which has been rejected.

2. Shri Das has urged that the violation of Section 252 is writ large in as much as it is the admitted position that the plea of guilt was not recorded "as nearly as possible in the words used by the accused". This had perhaps happened according to the learned appellate court due to inadvertance. The learned Deputy commissioner has also said that as the petitioners were charged with petty offence serious view of the violation should not be taken in the larger interest of justice and for the sake of speedy disposal of cases. Shri Das submits that the requirement of section 252 which has been held to be mandatory by the Supreme Court in *Mahant Kaushalya Das vs. The State of Madras*, AIR 1966 SC 22 does not depend whether the offence is petty or serious. I have been referred in this connection to *Edward" Boykin Jr. vs. State of Alabama*, AIR 1970 USSC 10 wherein it was held that several constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a criminal trial. According to this judgment the plea of guilty is more than a confession as it is itself a conviction and what remains is to give judgment and determine punishment and so it must be determined whether the plea is voluntarily made. Therefore, ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover up of unconstitutionally.

3. According the learned Public prosecutor, Meghalaya, the Code of Criminal procedure only applies in its spirit in Tura and as such we should not plant technical rules of the Code in the trial of cases in that area. I would not think that the requirement of section 252 can be said to be technical inasmuch as a person exposes himself to conviction on his pleading guilty. The safeguard provided in Section 252, namely, that the plea must be recorded as nearly as possible in the words used by the accused is a wholesome provision and any departure from this would not be in the interest of justice as superior courts must know what question was put to the accused and what was his real answer, to decide for itself if the plea of guilt was really so. Reference may be made in connection to *Mukandi Lal vs. State*, AIR 1952 Allahabad 212 which was approved by the supreme Court in the aforesaid decision and which has held that by not recording the admission of the accused as nearly as may be in his own words and by merely recording Magistrate's own conclusion from that statement in the words "pleads guilty" is not a record of any statement but is only a record of conclusion from a statement and by doing so a Magistrate deprives the superior court from examining the validity of his conclusion. The fact that the offence was petty is not relevant for this purpose as conviction in a petty offence may also carry stigma and may affect persons in many ways. Concern for speedy disposal, another reason ascribed by the learned Deputy commissioner, is misplaced, as recording of the plea of guilt in the language of the accused cannot stand in the way of quick disposal, because the time taken in this exercise in a

petty offence based on simple facts would be very short some minutes only What is sacrificed on the other hand by not complying with this requirement is the constitutional right against compulsory self incrimination and the legal right to confront one's accusers.

4. In view of the above, I would held that the trial in the present case was vitiated due to nonrecording of the plea of guilt by the accused In their own words as nearly as possible. Conviction awarded in such a trial cannot be upheld and is set aside. As the matter relates to the year 1978 and is connected with a petty offence, interest of justice does not demand Public prosecutor.

5. The appeal is, therefore, allowed by acquitting the appellants. Fine, if realised shall be refunded. Seized document shall be returned from whom seized.