

(1966) 02 GUJ CK 0010
In the Gujarat High Court
Case No : Criminal Appeal No. 788 of 1965

Chhotu

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-02-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 356(2), 361(1), 362(2), 537

Citation : AIR 1967 Guj 115 : (1967) CriLJ 765 : (1966) GLR 1015

Hon'ble Judges : N.G. Shelat, J

Bench : Single Bench

Advocate : H.P. Sompura, for the Appellant; H.M. Choksi, Govt. Pleader, for the Respondent

Judgement

(1 to 9) * * * * *

(10) Mr. Sompura, then contended that the learned Sessions Judge has not complied with the provisions contained in Ss. 356(2) and 361 of the Criminal procedure Code. His grievance is that the evidence of Dr. Thomas Ex. 72 has been recorded only in English.; the accused knew only Gujarati and since it does not appear about the translation of his evidence having been explained to him in Gujarati, the trial according to him, is vitiated in law. That according to him, would be a breach of Cl., (2) of s. 356 of the Criminal Procedure Code. The other objection taken by him is that as contemplated in Cl.(1) of S. 361 of the Criminal Procedure Code, whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him. That having not been done, the learned Sessions Judge had committed an error of law and such an error is not curable under S. 537 of the Criminal Procedure Code. It should, therefore, be held that the trial is vitiated.

(11) If we turn to Clause (2) of S. 356 of the Criminal Procedure Code, we find that when the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand or cause it

to be taken down in writing in that language from his dictation in open Court and unless the accused is familiar with English or the other language of the Court in English, an authenticated translation of such evidence in the language of the Court shall form part of the record. It is true that the evidence has been recorded in English. The language of the Court is Gujarati. The accused did not know English. It is not said that any illegality is committed by the Court with regard to the taking down of the evidence of Dr. Thomas in English. What is said is that no authenticated translation of such evidence has been on record. It does appear that there is no authenticated translation of such evidence in the language of the Court. But that can hardly be said to be such an illegality which is not curable u/s 537 of the Criminal Procedure Code. It is merely an irregularity if at all, and on that basis there can arise no question of any prejudice to the accused. I shall presently show that the question of prejudice to the accused has not arisen at all in the circumstances of the case.

(11a) Turning then to the other contention raised by Mr. Sompura, if we turn to Clause (1) of S. 361 what is required is that if any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in Open Court in a language understood by him. Clause (2) provides that if he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language. His argument was two-fold. One is that the accused cannot be said to have been represented by a pleader in the sense that the pleader who appeared for him was appointed by the Court and not a pleader engaged by him. According to him, he should, therefore, be treated as an accused present in person and not represented by a lawyer and that way in case the deposition of Dr. Thomas was not interpreted to him in open Court in Gujarati, prejudice can easily be said to have been caused to him. He would not in those circumstances be able to give suitable instructions to the pleader appearing for him for the purpose of cross-examination. In this connection, he sought support to such a proposition from a decision in the case of Mathai Thommen Vs. State, . The observation relied upon by him run thus:

"Even if it is considered that Cls. (1) and (2) of S. 361 are mutually exclusive, the duty cast by S. 361(1) cannot be avoided when the pleader is engaged by the Court, for the pleader who is referred to in Clause (2) as the person by whom the accused appears must be one who has been engaged by him and is competent to represent him and not a pleader who has been engaged by the Court. There can be no nexus between the accused and the pleader engaged by the Court for the purpose of preventing a possible miscarriage of justice. Often the pleader engaged by the Court acts with out sufficient instructions."

Then the High Court has said that:

"Whether the accused has been prejudiced or not by the omission to interpret the evidence to him must depend upon the facts and circumstances of each case. It is always safe to interpret to the accused the evidence given by the witnesses

in languages other than the Court language or a language understood by him (accused)."

It was then held on the facts of that case that:

"Prejudice was caused to the accused by the omission to interpret the doctor's evidence in a language understood by the accused."

Now, in the first place, it is clear on a plain reading of Cls. (1) and (2) of S. 361 that they appear to be mutually exclusive and are independent of each other. The first clause refers to the accused and his presence in person before the Court. Thereby it obviously excludes a case where a person such as the accused is represented by a pleader. When such is the case, as provided in that clause, the evidence if recorded in a language not understood by the accused has got to be interpreted to him in open Court. Not having done so would render the proceedings vitiated though no doubt that would again depend upon as to whether any prejudice has come to be caused to the accused. Normally, one would no doubt think that he would stand to suffer in his defence if he was not able to understand the nature of the evidence recorded against him in the Court. Then comes Clause (2) which deals with a case where an accused person is represented by a pleader. When a pleader appears for him, it should make no difference whether he is engaged actually by the accused himself or that on account of his inability to engage any lawyer as expressed by him that he is being provided with a pleader at the cost of the State and such an appointment is made by the Court. Such a pleader is being provided with the case papers. The word "appears" can hardly be understood to restrict its meaning to a pleader engaged by the accused. That includes any pleader appearing in Court on his behalf. Therefore, when such a pleader whether appointed by the Court for the accused or one engaged by the accused himself, appears in Court and the evidence of a witness such as Dr. Thomas was recorded in English which he understood quite well, there was no question of interpreting the evidence in Gujarati. Clause (2) casts a duty on the Court to interpret the same in that language provided even the pleader appearing for the accused did not understand the language in which the evidence of the witness was recorded on that case. Both the clauses are, thus, mutually exclusive and made to meet two different contingencies - one when the accused is present in Court and not represented by any lawyer, and the other when he is represented by a lawyer. In my opinion, there was hardly any necessity to interpret the evidence of Dr. Thomas in Gujarati and if at all the accused wanted to know as to what the witness had said in English, his pleader would have been able to explain to him. The pleader appearing for him in the case, does not become the pleader any the less than the one engaged by him and he would not, I am sure, behave in a manner as to jeopardize or affect the interests of the accused much though he does not happen to have been engaged by him. It would be even open to the pleader to seek instructions with regard to any medical evidence recorded in English and I am sure no Court would stop him from getting such suitable

instructions from him even in the midst of a trial. Besides, if that position were to be hold good, which I think, does not, it depends upon the circumstances of each case to find out whether any prejudice had come to be caused to the defence of the accused. In the present case, it is not that the pleader who appeared for him at the trial was appointed only 2 or 3 days before the trial began, as was in Kerala Case, and it cannot be said that he fell any the slightest difficulty in cross-examining the witnesses. In fact all the witnesses have been cross-examined at considerable length. All that could have been done obviously with due instructions available from the accused himself. Not only that, but there is no grievance made by the accused even at the time of the trial or later in the memo of appeal sent by him though no doubt from Jail. In the Kerala Case relied upon by Mr. Sompura, such a point was even raised by the accused and there existed special circumstances in which the Court found that there was prejudice caused to the accused. That point has, therefore, no substance and the trial cannot be vitiated on any such considerations.

(12) Appeal dismissed.