
(1975) 12 GUJ CK 0001
In the Gujarat High Court

State of Gujarat and Another

APPELLANT

Vs

Bhupendra Kumar Hargovin Das Shah

RESPONDENT

Date of Decision : 02-12-1975

Acts Referred:

Bombay Motor Vehicles Act, 1939 — Section 112, 116
Bombay Motor Vehicles Tax Act, 1958 — Section 112, 116, 78
Penal Code, 1860 (IPC) — Section 304A, 304A

Citation : (1976) 17 GLR 1002

Hon'ble Judges : A.N. Surti, J

Bench : Single Bench

Judgement

A.N. Surti, J.—Both the aforesaid proceedings are directed for the enhancement of sentence passed by the learned metropolitan Magistrate, 9th Court, Ahmedabad in Criminal Case No. 64 of 1975, wherein the learned Magistrate directed that the respondent-accused should suffer imprisonment till rising of the court and to pay a fine of Rs. 2500/- in default to suffer simple imprisonment for two months for commission of offences punishable u/s 304-A of the Indian Penal Code and Sections 78 read with Section 112 and 116 of the Bombay Motor Vehicles Act, 1939.

2. A few relevant facts giving rise to these two proceedings may be stated in brief:

3. In substance, the prosecution alleged that on August 1, 1974 at about 7-30 P.M. The respondent-accused was driving his car bearing No. GJR. 8511 on Subhash Bridge, Ahmedabad, and at that time, he collided the car by driving the same rashly and negligently with a scooter driven by deceased Ravi Sharma. After the deceased fell down from the scooter, he was obviously severely injured, and was removed to the Civil Hospital in Ahmedabad soon thereafter in an Ambulance Van. It may be mentioned at this stage that on the night in question, the victim died.

4. About the alleged offence, the necessary complaint was filed by one

Pyarasingh Chandansing Arora soon after the commission of the alleged offence. The police in-charge of the investigation reached the scene of offence at about 8.15. p.m. and made the usual panchnama of the scene of offence. Suffice it to state for the disposal of the two present proceedings that even the necessary panchnama was also prepared in course of the investigation immediately.

5. Prosecution essentially rested its case on the evidence of the three eye witnesses. The complainant in the case was following the car of the accused, as at the relevant time, he was driving his autoricksha. Obviously he was the best natural witness.

6. The second eye witness was one Chunilal who was driving the truck at the relevant time and the same was coming from the opposite direction, and he also actually witnessed the incident in question. He was the second best natural witness who could have deposed about the circumstances and the manner in which the alleged offence took place. The third best eye witness was the injured witness who was actually sitting in the rear seat of the scooter which was driven by the deceased.

7. This was a case of three eye witnesses who had seen the alleged incident. Police must have collected the evidence from other witnesses also.

8. Before the learned Magistrate the necessary charge-sheet was submitted by the police on January 15, 1975 and the learned Magistrate framed the necessary charge against the respondent-accused on February 19, 1975 against the respondent-accused for the commission of the alleged offences.

9. On 19th February, 1975, the respondent-accused pleaded guilty and the learned Magistrate, having accepted the plea of guilty convicted and sentenced the respondent-accused only to suffer imprisonment till rising of the court and to pay a fine of Rs. 2500/- in default to suffer simple imprisonment for two months. It is under these circumstances that the complainant filed an application for enhancement of sentence on May 12, 1975 in this Court.

10. On August 29, 1975 the state also filed an appeal for enhancement of sentence. It is under these circumstances that these two proceedings are placed before me for disposal.

11. At the time of the hearing of these two proceedings Mr. A.D. Shah, learned advocate appearing for the respondent-accused made a statement at the bar that the learned trial Magistrate, in course of the discussion with the advocate of the respondent-accused in the trial Court, gave an impression to him that he was inclined to show mercy and would only impose the sentence of fine. When such a statement was made by the learned advocate for the respondent-accused, I told him to file in this Court the necessary affidavit of the advocate who was in charge of the matter before the learned Magistrate.

12. Mr. Shah produced before me the affidavit of Mr. Shirishchandra H. Desai, an advocate practising in the city and who had appeared on behalf of the

respondent-accused before the learned Magistrate. The material portion of his affidavit is in the following words:

During the discussion with The Hon"ble Court about the quantum of fine, I gathered the impression that The Hon"ble Court was inclined to show mercy and would only impose sentence of fine. Hence I advised the accused to plead guilty.

13. After I perused the aforesaid affidavit of Shirish Chandra H. Desai, I sent a copy of the aforesaid affidavit to the learned Magistrate and called for his report in regard to the aforesaid portion of the Advocate's affidavit.

14. The learned Magistrate has submitted his report to this Court by his letter dated November 28, 1975. In his report he stated that he is unable to recollect the exact details of the alleged discussion due to lapse of time. He also states in his report that he perused the final order passed by him in the said matter along with the reasons therein. He further states in his report that there must have been some discussion on the question of the quantum of punishment, and that as per the provisions of the New (Amended) Criminal Procedure Code, he must have heard the learned advocate for the accused on the question of sentence and after the plea of guilty was entered.

15. I have carefully considered the affidavit filed by the learned advocate and the report submitted by the learned Magistrate in this Court. Normally, it is the settled practice that higher Court is expected to Act and accept the reports made by the judicial officers in such matters, but in the instant case, the affidavit of the learned Advocate clearly states that he did gather an impression that The Hon"ble court was inclined to show mercy and would only impose the sentence of fine. As stated above, the learned advocate in clearest terms has stated in his affidavit, that because of the aforesaid impression gathered by him in course of the discussion with the learned Magistrate, he advised the respondent-accused to plead guilty. To this portion of the affidavit of the learned advocate, there is no categorical denial by the learned Magistrate. His halting mind to deny emphatically the material portion of the learned Advocate's affidavit can be seen even from the report which he has submitted to this Court. He should have at once stated that he denied to have entered into any such discussion as stated by the learned advocate in his affidavit. The advocate's affidavit clearly shows that there was something in the nature of radical departure from the normal practice which a Magistrate is expected to follow when cases are tried by him, and if that was so it was expected of the learned Magistrate to have denied without the least hesitation as to what was stated by the learned advocate or the same was in the nature of an effort to misguide the higher Court. No such report is submitted by the learned Magistrate to this court, but, in the instant case, apart from the nature of report submitted by the learned Magistrate to this Court in respect of the affidavit of the learned advocate I am more concerned and worried about a fair trial being denied to a citizen in the case before me, prima facie I am convinced that an assurance must have been given by the learned Magistrate to the advocate for the respondent-accused that he would impose a fine of sentence

only. That apprehension of mine gets strengthened from the ultimate order which was passed by the learned Magistrate. In the instant case, where the victim died on the very night in question, there were three natural eye witnesses prima-facie, I do not see any justification as to why one day's simple imprisonment and a fine of Rs. 2500/- were awarded to the respondent accused by way of punishment. This sort of punishment is also indicative of the fact that the learned Magistrate must have given an assurance to the respondent's advocate that he would impose a nominal fine only for the commission of the alleged offence.

16. I need hardly emphasise the importance and significance of a fair trial both to a citizen and to the state.

17. The moment, a fair trial is denied to either of them, it is the duty of this Court to see that a fair trial is given both to the State and to a citizen. This is a case where an impression is created in the mind of accused, that if he pleaded guilty, even for the commission of serious offences, he would go practically scot-free having obtained an order of lighter punishment against him. I need hardly emphasise that, in such serious offences, if lighter punishment is imposed on any citizen, it hardly reforms a citizen or causes any deterrent effect in the minds of the offenders. It is needless to emphasise that by such lighter punishment, even the purpose of the penal provision contained in Section 304-A of the Indian penal code and the motor vehicles Act would be, completely frustrated.

18. What had happened in the court of the learned Magistrate is certainly deplorable but surely, as observed about without entering much into the affidavits filed by the learned advocates in this Court, suffice it to state that, even if a title of assurance is given to a citizen by any Magistrate that lighter punishment would be imposed on him for pleading guilty to the alleged offences and if, in pursuance to that, if a citizen pleads guilty before learned Magistrate, I am satisfied that the same would amount to the denial of a fair trial to a citizen, and this court, cannot and should not countenance any application for enhancement of sentence. It is significant to note that, in the instant case, firstly an application for enhancement of sentence was filed by the complainant, a private party, on May 12, 1975 and it is only thereafter, that on August 29, 1975 an application for enhancement of sentence was filed by the state, if the sentence is enhanced under the circumstances stated above, the same would obviously result into gross abuse of the process of the court and a citizen may be compelled to embrace imprisonment without an impression that he had a fair and I need hardly emphasise that the essence of our Criminal jurisprudence is that nobody's liberty can be deprived of, unless, he has been given a fair and dispassionate trial at the hands of our magistracy. As a result of the aforesaid discussion, I set aside the order passed by the learned Magistrate and direct that this case should be tried by any other Magistrate as expeditiously as possible. I wish to make it clear, that my any of the observations in course of this judgment, should not affect the fair and detached appreciation of evidence given by the prosecution witnesses in the new trial which should be held by any other

Magistrate. With these observations, I dismiss the appeal filed by the state and discharge the rule issued by this Court in the Criminal Revision Application.