

(1983) 07 GUJ CK 0013
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Rana Babubhai Vardhram

RESPONDENT

Date of Decision : 26-07-1983

Acts Referred:

Motor Vehicles Act, 1988 — Section 112, 112, 116, 116
Penal Code, 1860 (IPC) — Section 279, 279, 337, 337

Citation : (1984) 1 GLR 77

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Judgement

A.S. Qureshi, J.—In this appeal the State of Gujarat is challenging the order of acquittal dated 14th September, 1979 passed by the learned Judicial Magistrate, First Class, Kalol in Criminal Summary Case No. 2047 of 1978, acquitting the accused of the offence punishable u/s 279, 337 of the Indian Penal Code and Section 112 and 116 of the Motor Vehicle Act. The respondent was the original accused. He was charged for rash and negligent driving of his motor truck No. GTB 5572 and thereby causing an accident in which Scooter No. GRA 2087 was badly damaged and the complainant who was riding it was slightly injured. The accident is said to have occurred on 31st May, 1978 at about 8-00 p.m. After the charge-sheet was filed and the case was fixed for recording evidence, the prosecution witnesses failed to turn out and the matter was adjourned from time to time for a period of about six months. Although the complainant was served with the summons to remain present on 14th September, 1979 neither the complainant remained present in the court, nor his witnesses were present on that day. Hence the learned Magistrate discharged complaint and passed the impugned order of acquittal.

2. It has been time and again stated that it is for the prosecution to proceed with the complaint diligently. The court is not bound to grant adjournment after adjournment on account of the failure of the prosecution to keep its witnesses present. On the day on which the learned Magistrate discharged the complaint even the complainant was not present though summons were served on him for

attendance on that day. In the circumstances the learned Magistrate was justified in passing the order which he did. It may be that the prosecution may not be able to ensure the attendance of its witnesses on account of either non-availability or reluctance of the witnesses to come forward and give deposition in court.

3. In such circumstances, it would be proper and fair on the part of the prosecution to tell the court frankly that evidence is not available to proceed with the matter and thus seek an order of discharge from the court. If the prosecution fails to do so, the court would be justified in passing the order of discharge of the complaint and the acquittal of the accused. Thus, there is no substance in this appeal and hence it is dismissed.