(2005) 11 GAU CK 0020

Gauhati High Court

Case No: Criminal Reference No. 1 of 2005

State of Mizoram		APPELLANT
	Vs	
Ramengmawia		RESPONDENT

Date of Decision: Nov. 22, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14
- Criminal Procedure Code, 1973 (CrPC) - Section 229, 252, 271, 271(2), 272
- Penal Code, 1860 (IPC) - Section 299, 300, 302, 304

Citation: (2006) CriLJ 1188 : (2006) 1 GLR 745 : (2006) 1 GLT 762

Hon'ble Judges: M.B.K. Singh, J; I.A. Ansari, J

Bench: Division Bench

Advocate: N. Sailo, for the Appellant; C. Lalauzaura, for the Respondent

Judgement

I.A. Ansari, J.

This criminal reference has arisen under Rule 9 of the Rules for the Regulations of the Procedure of Officers appointed to Administer Justice in Lushai Hills, 1937 out of the judgment and order, dated 1.2.2005, passed, in G.R. Case No. 432/2004, by the learned Additional Sessions Judge (ad hoc), Lunglei, whereby accused Ramengmawia stands convicted u/s 302 IPC and sentenced to suffer imprisonment for life.

2. The case against the accused person, as unfolded at the trial, may, in brief, be stated as follows :

On 25.12.2004, the Duty Officer, at Lunglei Police Station, namely, Assistant Sub-Inspector of Police, Shri Lalchhinga, received a telephonic message, at the said Police Station, from Shri R. Sawithanga, VCP, Buarpui, informing him to the effect, inter alia, that Sawikima, aged about 48 years, who had set out of his residence on rambling at about 7.00 O''clock of 24th December, 2004, had not returned home till the dusk and following his disappearance, members of the public had conducted a

search to trace out his whereabouts and, eventually, they had found Sawikima''s hat lying inside the latrine of Sawikima''s grandson, Ramengmawia, they had also found an axe smeared with blood, lying at the verandah of the house of the said Ramengmawia and, on being interrogated, the said Ramengmawia had confessed to have killed his grandfather and he had also disclosed as to where the dead body of Sawikima had been kept hidden. On receipt of the said telephonic message, First Information Report was lodged at the said police station by the said Police Officer, who, later on, visited the house of accused Ramengmawia and prepared a sketch map of the place, where the occurrence had allegedly taken place, and held inquest over the dead body of Sawikima. On completion of investigation, police submitted charge sheet against the accused aforementioned u/s 302 IPC.

3. After the case was committed to the Court of Sessions for trial, the learned trial Court framed a charge u/s 302 IPC against the accused. When the charge, so framed, was read over and explained to the accused, the accused pleaded guilty to the charge. On the basis of the plea of guilt of the accused, the learned trial Court held the accused guilty of the offence charged with convicted him accordingly and passed sentence against him as hereinabove mentioned. It is the conviction and sentence so passed, which have been laid before this Court for confirmation.

4. We have heard Mr. N. Sailo, learned public Prosecutor, Mizoram, and Mr. C. Lalauzaura, learned Amicus Curiae.

5. While considering the present reference, what strikes us is that the entire conviction of the accused u/s 302 IPC rests on the accused person''s plea of guilt. The questions, therefore, which stare at us, most prominently, are : (i) whether it is legally permissible to convict a person of a serious charge, such as, murder on his own plea of guilt and if so, what cautions are required to be applied, for this purpose, by the Court and (ii) whether, in the facts and circumstances of the present case, the plea of guilt, acted upon by the learned Court below, is legally sustainable ?

6. While considering the questions posed above, it may be noted that a Sessions Court''s power to convict an accused on his plea of guilt is embodied in Section 229 of the Code of Criminal Procedure, 1973. This section corresponds to Section 271(2) of the Code of Criminal Procedure, 1898. Though there is slight variation in the language of Section 229 of the present Code, it substantially remains the same as in Section 271(2) of the old Code. According to Section 229, if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict thereon.

7. A careful analysis of the provisions of Section 229 Cr.PC makes it clear that though there is no legal impediment, on the part of the Court of Sessions, to convict a person on his own plea of guilt, discretion does vest in the Court to convict or not to convict an accused based entirely on his plea of guilt. Since no discretion can be exercised by a Court arbitrarily, the exercise of the discretion to convict or not to convict an accused on his plea of guilt can also not be arbitrary and is, in fact,

governed by sound judicial principles and precedents.

8. What also needs to be borne in mind is that ordinarily, for a common man, killing of a person is murder; whereas in law, murder is an offence strenuously defined u/s 300 read with Section 299 IPC. A killing, in only specified circumstances, can amount to murder. For a layman, therefore, to plead guilty to the charge of murder does not necessarily mean that his plea of guilt is to the charge of murder, for, his plea of guilt may, unknowingly and in reality, be to his act of killing, which, in law, may or may not amount to murder. To put it differently, the plea of guilt of an accused may, thus, be a plea to the accusation of killing, which may or may not, eventually, amount to murder, for, to a common man, there is no difference between the act of killing and murder. Therefore, to decide the nature of the offence, the Court should have before it the details of the occurrence, the motive and the circumstances under which the act was done and for this purpose, it is not only desirable, but essential that the entire evidence be placed before the Court unless the circumstances of the case and the plea of guilt of the accused indicate otherwise enabling the Court to dispense with the requirement of obtaining evidence before it and to act entirely on the plea of guilt of the accused.

9. Coupled with the above, it is of immense importance to note that though the offence of ''murder'' is a mixed question, of fact and law and while a layman may plead guilty to a charge of murder due to the fact that he does not know the law, a man, who knows the law, may not plead guilty in similar circumstances. The man, thus, who has no knowledge of law, may suffer. Though an illiterate and poor man stands in an utterly disadvantageous position vis-a-vis a literate and moneyed man, Article 14 of our Constitution does not discriminate between a literate and an illiterate accused or between a rich and a poor person as an accused. This dichothamy of inherent disadvantage, which a literate and poor person, as an accused suffers, vis-a-vis a literate and rich person as an accused, needs to be, therefore, resolved. Consequently, imperative it is for the Sessions Court, before whom an accused pleads guilty to a charge of such serious an offence as murder, that the Judge makes all endeavours to satisfy himself that the accused admits the facts or ingredients constituting the offence. The plea of the accused must, therefore, be clear, unambiguous and unequivocal and the Court must be satisfied that the accused has understood the nature of the allegations made against him and admits them accordingly. The Court must act with caution and circumspection before accepting the plea or before acting upon such a plea.

10. More than a century ago, the Allahabad High Court in Queen Empress v. Bhadu ILR (1896) All. 120, held as follows :

In this country, it is dangerous to assume that a prisoner of this class understands what are the ingredients of the offence u/s 302 of the Indian Panel Code, and what are the matters which might reduce the act committed, to an offence u/s 304. Even in England, it used to be the practice of some judges, and probably is still, although

they were not bound to do so, to advise persons pleading guilty to a capital offence to plead not guilty and stand their trial.

The accused is charged with a capital offence, and it need hardly be pointed out that the usual practice in such cases is not to accept the plea of guilty, but to proceed to record evidence and base the order of conviction or acquittal according to the reliability or unreliability of that evidence.

11. Expressing similar view as in Bhadu (supra), the Allahabad High Court in Dalli Vs. Emperor, held as thus, "In a case of murder, it has long been the practice not to accept the plea of guilty. After all murder is a mixed question of fact and law and unless Court is perfectly satisfied that the accused knew exactly what was necessarily implied by this plea of guilty, the case should be tried."

12. The decision in Dalli (supra) was followed in Mt. Purnama Devi Vs. Ram Prasad and Another, wherein the Court observed and held as follows :

The rule is that when an accused is on his trial on a capital charge, it is not expedient that the Court should convict him even upon a plea of guilty entered before the trial Court itself. As a matter of practice the Court should in its discretion, put such a plea on one side and proceed to record and consider the evidence, in order to satisfy itself, not merely of the guilt of the accused but of the precise nature of the offence committed and the appropriate punishment for the same.

13. The Calcutta High Court, as early as in the year 1885, in Netai Lusker v. Queen Empress ILR Cal. 410, and the Bombay High Court in Emperor v. Chinia Bhika Koli (1906) Cri. LJ 337, echoed similar views as of the Allahabad High Court in Bhadu (supra) and Dalli (supra). In Netai Luskar (supra), an accused person, in answer to a charge of murder, stated that he had killed his wife; but that he had done so in consequence of his having discovered her involved in an act of adultery on the previous day. In the face of such facts, the Court, in Netai Luskar (supra), observed "We think the whole statement must be taken, together; and being so taken it certainly is not equivalent to a plea of guilty upon the charge of murder u/s 302 of the Penal Code. The explanation to the first exception in Section 300 of the Indian Penal Code states that the question "whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact;" and by Section 299 of the Code of Criminal Procedure "it is the duty of the Jury to decide all questions which, according to law, are to be deemed questions of fact." We think, then, that this case should have been tried out, and the verdict of the Jury taken on the plea raised by the accused. We accordingly set aside the sentence passed by the Sessions Judge, and direct that the accused Netai Luskar be tried on the charges on which he was committed to the Court of Sessions.

14. In Emperor v. Chinia Bhika Koli (supra) too, Sir Lawrence Jenkins, CJ, speaking for the Court, observed and held, "It is not in accordance with the usual practice to accept a plea of guilty in a case, where the natural sequence would be a sentence of

death."

15. The learned Chief Justice proceeded further to say, "A man may plead that he hit someone who thereby died, and that he did if for the purpose of taking away the ornaments of the person injured without necessarily admitting that he committed murder, for, murder under the Penal Code requires a certain intention or certain knowledge."

The law, thus, leaves it to the discretion of the Presiding Judge in each particular case to determine whether despite the plea of guilt, it is or it is not desirable to act upon the plea.

16. In Queen Empress v. Chinna Pavuchi ILR (1900) Mad. 151, the Madras High Court, taking the same view as had been taken by the Allahabad, Bombay and Calcutta High Courts, observed : ''The Code (Section 271) only says that ''the plea shall be recorded, and he may be convicted thereon.'' "As a matter of practice the Sessions trials especially in murder cases many Judges, as we think very properly, prefer not to act on the plea of guilty, but proceed to take the evidence just as if the plea had been one of the not guilty, and decided the case upon the whole evidence, including the accused''s plea."

17. That the High Court of Calcutta remained in favour of the practice of not convicting an accused basing entirely on his own plea of guilt is clearly discernible from the observations made in Hasarudding Mohommad v. Emperor AIR 1928 Cal 775, which run as follows :

We desire to observe that we cannot too strongly impress upon the learned Sessions Judge that in case u/s 302 IPC, it is undesirable to accept a plea of guilty and to bring the trial to an end thereon. The trial of an accused person does not necessarily end if he pleads guilty but evidence may and should be taken in cases of murder as if the plea had been one of not guilty and the case decided upon the whole of the evidence including the accused''s plea.

18. That the Bombay High Court too, largely, remained wedded to the view, which it had taken in Chinia Bhika Koli (supra), is glaringly noticeable from the fact that in Emperor v. Luxmya Shidappa (1917) 19 BLR 356 reacting to the reference of death imposed following conviction of the accused for offence of murder u/s 302 IPC, Bachelor, J, speaking for the Court, observed, "This is a case of some peculiarity inasmuch as the appellant has been convicted a murder on his own plea and has been sentenced to death, there being no evidence recorded in the Court of Sessions. The learned Judge below has explained very carefully and fully why he adopted the course of convicting the accused on his own plea, and it seems to me clear from the judgment that the learned Judge gave the matter much consideration and acted as he thought for the vest in the circumstances of some novelty. Nor can it be said, at least in my opinion, that the learned Sessions Judge was definitely wrong in any point of law. Probably if his attention had been called to the practice of the Courts in

such circumstances, he would have acted otherwise. That practice is defined by Sir Lawrence Jenkins C.J. and Mr. Justice Russell in Emperor v. Chinia Bhika where it is laid down that "it is not in accordance with the usual practice to accept a plea of guilty in a case where the natural sequence would be a sentence of death." The learned Judge below points to Section 271 of the Criminal Procedure Code and observes quite correctly that he was bound to record the accused''s plea of guilty. The section, however, though it directs that the plea shall be recorded, does not direct that the accused shall be convicted thereon, but only that he may be so convicted, that is to say it is left to the discretion of the presiding Judge in each particular case to determine whether in spite of the plea it is or is not desirable to enter upon the evidence. In the case before us the practical difficulty as entailed by the accused''s conviction on his mere plea is obvious. For the question which we have to determine is, assuming that the appellant is guilty of the murder whether the sentence of death should or should not be enforce. Now that is a question which could only be answered when the circumstances of the crime are known to us, and the circumstances of this crime are not known to us. It may be that there are cases of murder where the circumstances would be so clear that a Bench of this Court would have not difficulty in confirming the capital sentence of the accused mere plea of guilty. But this is not such a case."

19. In Emperor v. Abdul Kader Allarakhia 49 BLR 25, a Special Bench set aside the conviction u/s 302 IPC and remanded the case for re-trial. While so remanding the case, Sir Leonard Stone, C.J., however, observed, "Speaking for myself, I see no reason why, if proper safeguards are taken, such a plea should not be accepted. Such safeguards must include the accused''s representation by counsel who must be in a position to answer the questions of the Court, with regard to whether the accused knows what he is doing and the consequences of his plea and also a medical report or medical evidence upon him (see James Robert Vent).

Unless such safeguards are taken and unless the learned Judge is prepared to accept a plea of guilty, the proper course is to tell the accused that he should "claim to be tried" and if he refuses to claim to be tried, to record the plea of "does not plead" (see Section 272 of the Criminal Procedure Code).

20. Similar views, as indicated above, have been expressed in Achar Sanghar v. Emperor AIR 1934 Sind 204, Abdul Kader v. Emperor AIR 1947 Bom ., Laldin Vs. The State, and In Re: Gavisiddappa AIR 1968 Karn 145. (see also Ram Kumar v. State of U.P. 1988 Cri.LJ 1267 and Ramesan Vs. State of Kerala,

21. What emerges from the above discussion, held as a whole, is that majority of the High Courts are of the view that the Court should not, ordinarily, act upon the plea of guilty of the accused in serious offences, such as murder, and that in such cases, the decision shall be rendered after the entire evidence is presented before the Court. There are, however, glimpses of the view, even in the decisions cited above, that there is no absolute bar under the law in acting upon entirely on the plea of

guilt of the accused if the facts and circumstances of a case so justify provided that if the Court takes all precautions necessary to ensure that the plea offered by the accused is voluntary and that the accused understands the offence with which he is charged with and the accused admits the facts and/or the ingredients constituting the offence. The practice adopted by the various High Courts in not acting upon solely on the plea of guilt of an accused in the cases of serious offences, such as murder, is a rule of caution and prudence. Though ignorance of law is not an excuse, there is no principle of law that everyone must be presumed to know the law. The Court cannot, therefore, presume that the accused knows the law that he has the freedom not to plead guilty or that the accused knows as to what the penal definition of ''murder'' is. Clarified the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, thus, "it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement : there is no such maxim known to the law."

22. Setting at rest the controversy if there is an absolute bar or not in acting upon the plea of guilty of the accused even in a heinous offence, such as murder, it is worth noticing that in State of Maharashtra v. Sukhdeo Singh AIR 1992 SC 2100, the Apex Court held, "... Where the Judge frames the charge, the charge so framed has to be read over and explained to the accused and the accused is required to be asked whether he pleads guilty of the offence charged or claims to the tried. Section 229 next provides that if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. The plain language of this provision shows that if the accused pleads guilty the Judge has to record the plea and thereafter decide whether or not to convict the accused. The plea of guilt tantamounts to an admission of all the facts constituting the offence. It is, therefore, essential that before accepting and acting on the plea the Judge must feel satisfied that the accused admits facts or ingredients constituting the offence. The plea of the accused must, therefore, be clear, unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and circumspection before accepting and acting on the plea of guilt. Once these requirements are satisfied the law permits the Judge trying the case to record a conviction based on the plea of guilt. If, however, the accused does not plead guilty or the learned Judge does not act on his plea he must fix a date for the examination of the witnesses, i.e., the trial of the case. There is nothing in this Chapter which prevents the accused from pleading guilty at any subsequent stage of the trial. But before the trial Judge accepts and acts on that plea he must administer the same caution unto himself. This plea of guilt may also be put forward by the accused in his statement recorded u/s 313 of the Code."

23. From a careful reading of what has been observed and held in Sukhdeo Singh (supra), it is abundantly clear that in law, there is no absolute bar, on the part of the

Court of Sessions, to convict an accused on his plea of guilty; but before the conviction of the accused is based entirely on his plea of guilt, the Court must take care to ensure that the plea of the accused is voluntary, clear, unambiguous and unqualified, that the accused understands the nature of the allegations made against him and admits them and that the accused admits all such facts, which are necessary and essential to constitute the offence.

24. What further logically follows is that the Court must also be satisfied that the facts placed before it in support of the plea of guilt are in themselves sufficient to sustain the offence charged with. In other words, the Court must have before it all such facts, which are essential to constitute the offence and such facts must be admitted by the accused before the plea of guilt of the accused is acted upon or conviction is based thereon.

25. We may hasten to point out that unlike Section 229 Cr.PC, where the Legislature allows the Sessions Court merely to record the plea of guilt of the accused and convict him thereon, Section 252 Cr.PC, which empowers a Magistrate, in the cases, which are triable by summons procedure, to convict the accused on ''his plea of guilty'' requires that a Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict thereon. Unlike Section 252, though Section 229 does not cast any obligation on the Sessions Judge to record the plea of the accused as nearly as possible in the words used by the accused, yet prudence demands that the Court records the plea in the words used by the accused so that the Court confirming conviction and sentence may know what exactly the plea of the accused was.

26. In the case at hand, the record reveals that the learned Court below framed the charge u/s 302 IPC against the accused. The charge was to the effect that the accused had committed murder by killing his grandfather, Sawikima, with an axe. ''The mere killing, it needs to be reiterated, is not necessarily an offence u/s 302 IPC. Imperative it was, therefore, on the part of the learned trial Court, to frame an appropriate charge indicating as to how the offence of murder had been committed by the accused. This apart, there is absolutely no indication from the materials on record that the learned trial Court ever brought to notice of the accused that he had the freedom not to plead guilty to the charge framed against him. The learned trial Court did not make any effort to determine if the accused understood the consequences of pleading guilty to the charge and/or whether the plea of guilty of the accused was free and voluntary or whether the same was influenced by any person or any factor. In fact, not even slightest of endeavours was made by the learned trial Court to determine if the facts on record, as presented before the Court at the stage of recording of the plea of guilt, reflected all the ingredients constituting the offence of murder. Situated thus, we are satisfied that the learned trial Court, in the facts and circumstances of the present case, ought not to have acted upon the plea of guilty of the accused. Coupled with these disquieting

features, it is also imperative to note that the learned trial Court has assigned no reason whatsoever as to why it opted to base conviction of the accused on his plea of guilty.

27. In the result and for the reasons discussed above, this reference fails. The conviction of the accused and the sentence passed against him are hereby set aside and the matter is remanded to the learned trial Court for retrial.

28. Send back the LCRs.