

THE PEOPLE v PATEL (1968) ZR 169 (HC)

HIGH COURT

WHELAN J

29th NOVEMBER 1968

Flynote and Headnote

[1] Criminal procedure - Guilty plea - Facts not in support of charge - Magistrate's duty

Where there is a plea of guilty and the facts given by the prosecution do not, *prima facie*, support the charge, the magistrate should, under section 187 of the Criminal Procedure Code, ask the prosecution to clarify the facts and, if necessary, amend the plea to one of not guilty.

[2] Criminal procedure - Acquittal - Stage of trial at which magistrate may acquit under section 189 of Criminal Procedure Code - No case made by prosecution.

The magistrate may only acquit the accused under section 189 of the Criminal Procedure Code after all the evidence in support of the charge has been heard.

Statute construed:

Criminal Procedure Code (1965, Cap. 7), ss. 187 (2), 189.

Chaila, State Advocate, for the appellant.

Rosen, for the respondent

WHELAN J

Judgment

Whelan J: On the 10th September, 1968, in the subordinate court of the first class for the Luanshya District, Jiranhabai Govindbhai Patel pleaded not guilty to charge of going armed in public. The case was adjourned for trial, and on the 19th September, 1968, the prosecution called two witnesses. At the conclusion of the evidence of the second witness counsel on behalf of the accused asked the court to put the plea again to the accused. The accused then said that he wished to change his plea to one of guilty. The court recorded plea of guilty, and the public prosecutor then outlined the facts.

The particulars of the offence were that the accused had, on the 7th September, 1968, gone armed in public at Luanshya in fact the two witnesses who had given evidence for the prosecution had deposed to the accused going armed on the 7th September. When, however, the prosecutor outlined the facts it would appear that, according to the court record, he said that on the evening of the 17th September, 1968, the accused had gone armed in public. The accused said at the conclusion of the facts, "Those facts are correct", whereupon the magistrate said: "Facts do not support the charge sheet. There are different dates. The accused is acquitted per section 189 of the C.P.C."

[1] The prosecution has appealed by way of case stated against this ruling of the magistrate that the accused should be acquitted. On behalf of the respondent, counsel for him draws my attention to the provisions of section 187 (2) of the Criminal Procedure Code, which provides that if a person pleads guilty a court shall convict him unless there shall appear to it sufficient cause to the contrary, and submits that because the prosecutor outlined facts alleging that the offence had been committed on the 17th September instead of the 7th September, as stated in the charge, the magistrate was justified in acquitting the respondent. I can see no merit at all in this argument, and indeed it is a matter of surprise to me that counsel, at the trial of the respondent, allowed the magistrate to proceed as he did. In the first place, if the magistrate was not satisfied that the facts supported the charge, he could have asked the prosecutor to clarify the date in case there had been a mistake. If there had been no mistake and the prosecutor was in fact outlining facts which supported the proposition that the event had been committed on a date different from that alleged in the charge, then the appropriate procedure was for the magistrate to amend the respondent's plea to one of not guilty and to hear the case out to its conclusion. [2] That apart, it is only after trial, as is provided for in section 188 of the Criminal Procedure Code, that the provisions of section 189 of the Criminal Procedure Code come into operation. My answer to the question put by the prosecution, namely, "Did the magistrate err in law in acquitting the accused on the grounds that the date given in

the statement of facts was different from that alleged in the particulars of the offence?" is "Yes". The order of the magistrate is set aside, and this case is remitted to him that he may proceed with the trial of the accused according to law.
Appeal allowed.