

APPELLATE CRIMINAL.

Before Cuming J.

ASWINIKUMAR BASU

v.

EMPEROR.*

1930

Dec. 1.

Procedure—Father or guardian, if can be directed to pay the fine imposed on a child—Plea of guilty of a child, how to record—Bengal Children Act (Beng. II of 1922), ss. 20, 25.

When a child or young person, as defined in the Bengal Children Act, is charged with an offence, some attempt should be made to communicate the information to his parent or guardian, in order that he might attend at the proceedings. A direction on the father under section 25 of the Act to pay the fine imposed on the child without such attempt is improper.

When such a person pleads guilty to the offences charged, some effort should be made by the magistrate, in the absence of the accused's parent or guardian or any legal adviser, to explain to the boy what he was charged with and also the meaning of pleading guilty to them. Instead of merely recording a plea of guilty, the magistrate could ascertain from the accused what he has to say and make it clear that he understood what is going on.

CRIMINAL APPEAL by Aswinikumar Basu, the father of the accused.

The material facts appear from the judgment of the Court.

Sureshchandra Talukdar and *Jitendramohan Banerji* for the appellant.

Debendranarayan Bhattacharya for the Crown.

CUMING J. The facts of the case, out of which this appeal has arisen, are briefly these. One Jagadishchandra Basu, a child of 12, was arrested on the 7th of July, 1930. The charge against him apparently was that he caused obstruction in Harrison Road by distributing leaflets. He was further charged under section 12 of the Press Act with publishing a paper which was not in conformity with the rules contained in section 3 of the Press Act, namely, that there did not appear on it the names of

*Criminal Appeal, No. 537 of 1930, against the order of B. K. Mukherji, Presidency Magistrate, Juvenile Court, dated July 15, 1930.

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the printer, the press of printing and the publisher. He was produced before the magistrate on the 8th July. It does not appear that any attempt was made to communicate with his parent or guardian. It was then ordered by the magistrate that a medical officer would examine him on the 10th July. This examination, I understand, was for the purpose of determining his age. On the 10th, he was apparently examined by the medical officer, who declared that he was 12 years old. The order then passed was "To-morrow for evidence. Accused as before. The father or guardian to appear." On the 11th July, the order is "Accused Jagadishchandra Basu pleads guilty to the charge under section 283 of the Indian Penal Code and under section 12 of the Press Act as per details in the police *châlân*, which are read over to him. Summon his father to show cause why he should not pay fine if imposed under section 25, Bengal Children Act. Put up on the 15th July. Accused as before." On the 15th July, 1930, the father of the accused appeared and showed cause, which was not considered satisfactory, and he was directed to pay Rs. 50, the fine imposed upon the accused, under section 25 of the Bengal Children Act. Section 20 of the Bengal Children Act provides that "When a child or young person is charged with any offence, or when a child is brought before a court on an application for an order to send him to an industrial school, his parent or guardian may, in any case, and shall, if he can be found and resides within a reasonable distance and the person so charged or brought before the court is a child, be required to attend at the court before which the case is heard, during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance." Now, it does not appear, in the present case, that any attempt was made to comply with this section of the Act. All we find is that, on the 10th of July, the order is "The father or guardian to appear." It has been suggested that the father was present in court.

Clearly if that were so, the form of order would not have been "The father or guardian to appear." If he had been present in court, the court would obviously have known whether he was father or guardian, for it is a fact which could have been at once ascertained from him. It does not appear, however, that any notice was sent to him to appear or any attempt made to ensure his attendance. The next order which was passed on the 11th July is "Accused Jagadishchandra Basu pleads guilty to the charge under section 283, Indian Penal Code, "and under section 12 of the Press Act." Now when we read this, we must remember that the accused in question was a boy of 12, apparently undefended and with no one to assist him. He pleads guilty. I asked Mr. Bhattacharya as to what the proceedings were in which he pleaded guilty. I was told that the police *châlân* was read over to him and he was asked to say whether he pleaded guilty. What a boy of 12 could understand of the police *châlân* when read to him, I am unable to understand. The charge was of causing obstruction in Harrison Road by distributing leaflets. Whether a boy of 12 can understand the meaning of obstruction or whether a boy of 12 understands the charge under section 12 of the Press Act is, I should think, very doubtful. It is quite clear to me that some effort should have been made by the magistrate, in the absence of the accused's parent or guardian or any legal adviser, to explain to the boy what he was charged with and also the meaning of pleading guilty to them. Instead of merely recording a plea of guilty he should have ascertained from the boy what he had to say and made it clear that the boy understood what was going on. The trial was, to my mind, conducted in a most unsatisfactory and perfunctory way. If this is the way magistrates understand their duties under the Children Act, the sooner they alter their opinion the better. This is not the way for a magistrate to deal with an offence alleged against a child of 12. In my opinion, the magistrate has entirely failed to comply

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with the provisions or the spirit of the Children Act and the trial of the case was conducted in a most unsatisfactory manner. I have no alternative, in the circumstances, but to set aside the conviction and sentence.

The question that remains then is whether I should order a retrial. In the circumstances of the case, I do not think that I should direct the child to be tried over again. I am not concerned with the contents of the leaflet. I think it is highly improbable that the child himself realised that he was committing any offence in distributing the leaflets or that the child of that age realised that such leaflets should have borne the names of the publisher, printer or of other people. Even if he be found guilty in this particular case, the fine would certainly be a small one and the accused has been sufficiently punished for any offence that might have been committed, by his trial. Therefore, in the circumstances of the case, I do not direct a retrial.

The accused, Jagadishchandra Basu, is therefore, acquitted.

Appeal allowed. Accused acquitted.

A. C. R. C.