CHAPTER V

THE COMPONENTS OF GUILTY PLEA

IN THE GUILTY PLEA proceedings it is essential that the accused person be willing to admit the truth of indictment, which the trial judge may feel inclined to accept.[1] The acceptance of the plea is followed by the passing of sentence. Succinctly the components of the guilty plea are: the willingness of the accused, the varacity of the statement made by him and the concurrence of the judge to accept the same. All these are necessarily required to lend validity to the sentence imposed in non-ajudicatory trials. Once it is found that each of the component has properly been geared into operation then alone the matter is precluded from further review by way of appeal, except the sentence part of it.[2]

The scheme of convicting an accused on his own testimony is variously found in sections 243, 255[3] and 271 (2) of the Code of Criminal Procedure 1898. These provisions are differently applicable for different types of trial. Section 243 of the Code is meant for the trial of summons cases. Section 255 becomes applicable to the proceedings in warrant cases. In the trials before the High Court and the courts of session, the plea of guilty is to be used in accordance with section 271(2) of the Code.

In all the three situations stated above the underlying mechanism seems to be the same though in each case the provision is worded differently. Thus section 243, which is applicable to the trial of summons case, reads:

> If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the magistrate may convict him accordingly.

Section 255 provides that in warrant cases:

> (1) The charge shall then be read and explained to the accused,

1. See Ss. 243, 251A and 255, the Code of Criminal Procedure 1898.
2. S. 412 *Ibid* : also S. 414 *Ibid.*
3. Also S. 251A (5), the Code of Criminal Procedure, 1898.

and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the magistrate shall record the plea, and may in his discretion convict him thereon.

Likewise, section 271 of the Code which is meant for use in the trials before High Courts and courts of session reads:

> 271 (1) When the court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.
>
> (2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Thus, the scheme pertaining to the adjudication of cases with the aid of the guilty plea discloses that the complexity in procedure is attained with gradual ascendancy along with the gravity of the offence with which a person may be charged. The utmost informality is explicit in the trial of summary cases. As compared to the summary offences the informality of the procedure in summons trials tends to become lesser. The trial procedure in summons cases requires that the particulars of accusation shall be stated to the accused on his appearance before the court, and he shall be asked as to why he should not be convicted.[5] The framing of a formal charge in summons cases is thus relegated to the background.

Contrastingly, the procedure used in warrant cases is formal even if

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4. The procedure in summary trials is confined to the filling of details as enumerated in S.263 of the Code which reads:

   In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge ; but he or they shall enter in such form as the (State Government) may direct the following particulars :—

   (a) the serial number ;
   (b) the date of the commission of the offence ;
   (c) the date of the report or complaint ;
   (d) the name of the complainant (if any) ;
   (e) the name, parentage and residence of the accused ;
   (f) the offence complained of and the offence (if any proved, and in cases coming under clause (d), clause (e), clause (f), or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed ;
   (g) the plea of the accused and his examination (if any) ;
   (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor ;
   (i) the sentence or other final order ; and
   (j) the date on which the proceedings terminated.

5. S. 242, the Code of Criminal Procedure 1898.

the decision has to rest merely on the admission of the accused. The stringent procedural compliance is necessary to make the trial process purposive and meaningful. The implementation of procedural requirements makes it incumbent upon the trial court to advice itself to apply its mind to ascertain the truth of the matter. In addition to this, the wararnt cases which comprehend disposal of felonious trials wherein the sentence may extend from imprisonment of one year up to death sentence, are entrusted to those judicial functionaries who have rich and varied experience. The courts of session is by itself a court of superior order and jurisdiction. Consequently, the requirement of complying with the procedural formalism coupled with the status and experience of the court are likely to act as inbuilt safeguards against the errors that may otherwise creep into the dispensatian of criminal justice, particularly when the abridged trial method is to be adopted.

The warrant cases are invariably instituted on the police report. Thus the pre-trial investigatory activities are already completed before the filing of a case. Sufficient investigation by the police takes place into each matter before it comes to the court. The investigating officer scans the material to see whether a *prima facie* case is made out or not. At times the matter is further subjected to administrative scrutiny by superior officials. The efficiency, honesty and integrity of the investigator thus become significant factors to lend credibility to these findings. The manner and method of investigation, which in turn spells out the personal traits of the investigating officer, also weigh with the trial judge in dealing with a criminal matter particularly when a plea of guilty is opted by the accused.

The step that follows is the compliance of the provisions of section 251A of the Code of Criminal Procedure. This provision mandatorily requires that an accused be furnished, *inter alia*, with "the nature of the information and the names of persons who appear to be acquainted with the circumstances of the case".[6] The dossier should also include a copy of the police report, the first information report, and all such documents or extracts thereof on which the prosecution has proposed to place reliance. The statements and confession, if any, recorded under sections 161 and 164 of the Code are also to be furnished to the accused.[7]

An imperative duty is thus cast on the trial court to insure that sufficient notice of the subject-matter has been given to the person who is being made answerable to the charge of having committed a serious offence. Thereafter if it is revealed through the adduced evidence and the examination conducted by the magistrate that a ground exists to presume that an offence has been committed, a charge is framed which is then read and explained to the accused before he is made answerable to it.

6. S. 173 (1) *Ibid.*
7. S. 173 (4) *Ibid*; for exceptions see S. 173 (5), the Code of Criminal Procedure 898.

In between the stage of insuring that sufficient notice of the matter has been given to the accused by way of furnishing the documents and the stage of framing the charge, a necessary activity on the part of the trial judge follows. The law demands of the judge that he should make a thorough judicial scrutiny of the matter laid before him.[8] He should apply his mind to the entire procedings and satisfy himself fully about the allegations by putting necessary queries to the prosecution and also to the accused.[9] The satisfaction of the trial judge to the effect that presumably an offence has been committed by the accused is a prerequisite for invoking the criminal process further by formulating the charge against the person accused of having committed the offence. It is under these circumstances that the indictment is levelled to which the accused may plead guilty, but it remains open for the court to accept or reject the plea.

The above process enables the presiding judge to do the prognosis of the case through critical evaluation of the record. The satisfaction of the judge is a meaningful event in the entire criminal process. He may either permit the prosecution or may drop it there. In order to arrive at either of the decision, the inquisitorial role of the judge in making searching inquiries from the respective parties is inevitable. The satisfaction of the judge is the culmination of that preliminary stage of decision-making which induces him to invoke or revoke the criminal process.

Once the court has decided in favour of framing a charge against the person for his having committed an offence, the court has thus already given thought to the matter of complicity and culpability of the accused. This tentative conclusion seems to be processed through his reasoning by the judge and his judicial experience, and it is this indictment to which an accused person may plead guilty if he opts for that. However, it still remains open for the trial judge to accept or reject the same. The option of the judge in bypassing an admission of guilt and scrutinise the same through a trial is, therefore, an attempt to seek reassurances on certain doubts that might have crept in the judicial mind with regard to the guilt of the person.

The interplay of these two factors *viz.*, the satisfaction of the judge to proceed with the case and subsequently to use his discretion to convict the accused on his admission, are capable of bringing accuracy to the results in a case. However, the difficulty may remain to find out as to whether the exercise of discretion has been carried out in a reasonable manner. The determining tests of the subjective element of satisfaction to some extent may rest in the fact of the observance of procedure laid down in sections 251 (1) (2) and 251 (3) ; but definitive guidelines in the matter of exercise of discretion can be stated only with difficulty. Accordingly, it ought to be the concern of the judge to see that his option to accept the

8. S. 251A (2) *ibid.*
9. S. 251A (3) *ibid.*

plea of guilty is always accompanied by reasons which tempted him to take recourse to the abridged procedure.

The statutory requirement of recording the plea of the person making it, and the judicial insistence that, as far as possible, it should be in the words of the accused person, is by way of an added caution to eliminate the chances of erroneous convictions. The recorded plea would enable a wrongly affected party to cogitate the matter in revision before a superior court wherein a scrutiny is possible to ascertain as to whether the defendant meant to plead guilty or not.

The need to record the proceedings becomes more emphatic when it comes to taking down the statement of the person accused of a charge, and to which he assumably pleads guilty. It is clear that in an option to plead not guilty the compilation of record becomes inevitable as the trial procedure has to undergo the full length. This enables the reviewing, revisional or appellate court to peruse the record and come to its own conclusion with regard to the guilt or the innocence of the accused. However, it does not appear to be desirable to increase the compendium of record, more than what is absolutely essential, in informal and abridged proceedings. It would neither be practicable to do so without losing much of the efficacy of the procedure.

The purpose underlying the need for recording the plea of the accused is to insure that the willingness of the accused to admit the truth of the guilt has been present. The procedure thus vouchsafes the presence of another component of guilty plea which further goes to validate the proceedings. Accordingly, the judicial insistence has been that any admission alleged to have been made by the accused should be recorded in his own words to the extent it is possible. By not doing so it becomes impossible for the court to ascertain whether or not the accused really admitted the guilt. In *Gopal Singh* v. *The State*[10] the magistrate had noted down the effect of the statement made by the accused which tended to be an admission of guilt by the accused. The court found that it was unjust and hazardous to rely on the effect of an admission for upholding the conviction and sentence particularly when the conviction and sentence were based on an assumption of the magistrate that the statement purported to be a voluntary admission of the guilt. The safest course to insure voluntariness is to ascertain the guilt through the exact words used by the accused.[11] It is, therefore, only the accused who has a right to plead guilty[12] and any proxy on his behalf does not insure the voluntary character of a statement which has the consequences of fastening culpability upon tde accused. A conviction on the admission of a lawyer on behalf of the accused is being deemed bad[13] whereas it was validly being

10. A.I.R. 1960 J & K 64, 65 ; also *Surath Chandra* v. The State, A.I.R. 1961 Assam 19.
11. *Municipal Council* v. *Rama* A.I.R. 1165 Raj. 107.
12. *Sarsibala* v. *The State*, A.I.R. 1961 Pat. 144, 146.
13. *Rahman Sheikh* v. *The State*, A.I.R. 1969 Cal. 516; see also *Prova Devi* v. *Mrs. Fernandes*, A.I.R. 1962 Cal. 203 F.(B).

used earlier.[14]

The test of voluntariness does not remain confined to the fact that the admission of guilt has been mouthed by the accused himself. Nor it would always depend upon the ritual of the exact words having been recorded by the trial judge. Variant circumstances and factors do call for further probe and prudence from the court. The purpose is to see that the voluntariness of the accused is ensured in making the statement and that what has been voluntarily admitted constitutes the truth of the allegation. In *State of M.P.* v. *Mushtaq Hussain*[15] the accused was not convicted in spite of his plea of guilty because the facts stated in the challan and the particulars of the offence stated therein were not in consonance with the admission of the guilt. Thus, mere admission of the facts does not necessarily amount to an admission of the offence.[16] Likewise, a plea of guilty based on erroneous view of law would not stand in the way of acquittal of the accused.[17] The refusal to accept a guilty plea voluntarily proffered in the initial stage may loose that character for purposes of validating the guilty plea if once the court has thought fit not to accept it and then proceeded to take the evidence, but later found it convenient to rely on the plea for purposes of convicting the person.[18] Once a plea is not accepted it becomes necessary that the evidence is recorded and the judgement is based thereupon.[19]

The rationale behind not accepting a volunteered plea of guilty is based on the doubts that a court may have about its not being true. As a judicial forum the court has a bounden duty to secure convictions on those volunteered truthful admisions which, without apprehension of injustice being committed, could be relied upon for passing the sentence. It is with the avowed objective of ascertaining the voluntariness of the guilty plea that the procedural compliance of recording the statement of the accused in answer to the charge is mandatorily required. It has been the legislative intent that not only the accused plead guilty to the charge, but must do it in a way that there is no sufficient cause for not convicting him.[20] Whatever fluctuations in the legal thinking may have been discernible in the past, it seems to be now clearly established that "the legislature requires that the exact words used by the accused in his plea guilty should, as nearly as possible, be recorded in his own language in order to prevent any mistake or misapprehension".[21]

14. *State of M.P.* v. *Lakhanlal* A.I.R. 1960 M.P. 186.
15. A.I.R. 1956 M.P. 137, 139.
16. *In re U.R. Ramaswami,* A.I.R. 1954 Mad. 1020, *Murarji Raghunath* v. *Emperor* A.I.R. 1919 Bom. 160 *Subbarao* v. *The King,* A.I.R. 1951 Pat. 405.
17. *Niranjan Lal* v. *State,* A.I.R. 1954 Cal. 82.
18. *Dhanroj Vindichand* v. *State* 1962 (I) Cr. L.J. 43.
19. *Kuldip Singh* v. *The State,* A.I.R. 1962 J & K 23.
20. See S. 243, the Code of Criminal Procedure 1898.
21. *Mahant Kaushalyada* v. *State of Madras,* A.I.R. 1966 S.C. 22, 24 ; also *Emperor* v. *Krugadu* I.L.R. 15 Mad. 831 *Mukandi Lal* v. *State,* A.I.R. 1952 All. 212 ; *Sailbaladasi* v. *Emperor* I.L.R. 62 Cal. 1827.