

Tulsi Singh

Vs

State of Punjab

Criminal Appeal No. 589 of 1986

(M. K. Mukherjee, S. P. Kurdukar JJ)

07.08.1996

JUDGMENT

1. Tulsi Singh the appellant before us, was arraigned before the Special Court, Ferozepur for the murder of his wife Chhinder Kaur. The trial ended in an order of conviction and sentence recorded against the appellant under Section 302 IPC and aggrieved thereby he has filed the instant appeal.
2. In the absence of any eyewitness to the murder, the prosecution rested its case upon the confession made by the appellant before a Judicial Magistrate and the evidence of the doctor who held post-mortem examination upon the deceased and opined that her death was homicidal.
3. From the impugned judgment we find that the appellant did not dispute the fact that his wife met with a homicidal death. He, however, contended that he was not responsible for the murder, nor did he make any voluntary confession in respect thereof as alleged by the prosecution. The Special Court, however, found the confession made by the appellant to be voluntary and true and relying solely thereupon convicted the appellant.
4. The only point that has been urged on behalf of the appellant in support of this appeal is that the Special Court was not justified in entertaining the confession as evidence - much less relying upon the same - as it was not recorded in accordance with the provisions of Section 164 CrPC. In elaborating this contention it has been submitted that before recording the confession Shri O.P. Garg (PW 1), the learned Magistrate, did not explain to the appellant that he was not bound to make a confession and that if he did so it might be used against him nor did he put any question to him to satisfy himself that the confession was being voluntarily made, as required under sub-section (2) of Section 164 CrPC.
5. To ascertain whether the above contention is borne by the record or not we have carefully looked into the evidence of the Magistrate as also the confession (Ext. P-6). On perusal thereof, we find that after his arrest the appellant was produced before the Magistrate on 16-6-1984 and sent to police custody for a week on the prayer of the Investigating Officer. He was thereafter produced before the Magistrate on 22-6-1984 when he volunteered to make a confession. The Magistrate remanded him to judicial custody with a direction that he be produced on the following date, that is, on 23-6-1984. It appears that immediately after he was produced on that day the learned Magistrate recorded his confession. Though the learned Magistrate testified that before recording the confession he satisfied himself that the accused (appellant) was making a voluntary statement and that after giving due caution he recorded it, the confession does not anywhere indicate as to whether before recording the same he gave him the requisite caution and put questions to satisfy himself that it was being made voluntarily. These are the basic prerequisites for recording a confession under

sub-section (2) of Section 164 CrPC and a mere endorsement in accordance with sub-section (4) after recording it would not fulfil the requirements of the former sub-section. Since none of the two requirements of Section 164(2) CrPC has been complied with we are left with no other alternative but to hold that the Special Court was not at all justified in entertaining the confession as a voluntary one. Once the confession is left out of consideration - as it has got to be - the impugned conviction cannot be sustained in the absence of any other incriminating evidence against the appellant.

6. In the result we allow this appeal, set aside the conviction and sentence recorded against the appellant. The appellant, who is on bail, is discharged from his bail bonds.