

A

TULSI SINGH  
v.  
STATE OF PUNJAB

AUGUST 7, 1996

B

[M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

*Indian Penal Code, 1860 :*

C

*S.302—Murder—Trial by Special Court—Trial Court recording conviction on the basis of confession of accused and medical evidence—Held, confession not having been recorded in consonance with the requirements of s.164(2) Cr. P.C., Special Court was not justified in entertaining the confession as a voluntary one—Conviction and sentence recorded against accused set aside.*

D

*Code of Criminal Procedure, 1973 :*

E

*S.164(2) and (4)—Confession—Conviction by trial Court based on—No indication in the confession recorded by Judicial Magistrate that it was recorded by him after being satisfied that the accused was making a voluntary statement and he gave the accused the requisite caution—Held these are basic pre-requisites for recording a confession and a mere endorsement in accordance with sub-section (4) after recording it would not fulfil requirements of sub-section (2)—Since none of the two requirements of s.164(2) has been complied with, trial court was not at all justified in entertaining the confession as a voluntary one and recording conviction in absence of any other incriminating evidence against the accused.*

F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 589 of 1986.

G

From the Judgment and Order dated 30.1.85 of the Special Court at Ferozepur in Case No. 64/84 T.No. 18/85 and F.I.R. No. 151 of 1984.

O.P. Khullar and R.C. Kohli for the Appellant.

H.M. Singh for R.S. Suri for the Respondent.

H

The following Order of the Court was delivered :

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. A

In absence of any eye witness 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. B

From the impugned judgment we find that the appellant did not dispute the fact that his wife met with an homicidal death. He, however, contained 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. C

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 Cr.P.C. 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 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 Cr.P.C. D

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 June 16, 1984 and sent to police custody for a week on the prayer of the Investigating Officer. He was thereafter produced before the Magistrate on June 22, 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 June 23, 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 satis- E F G H

- A fied 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 pre-requisites for recording a confession under sub-section (2) of Section 164 Cr.P.C. 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) Cr.P.C. has been complied with we are left with no other alternative to hold that the Special Court was not at all justified in entertaining the confession as a voluntary one. Once the confession is
- C left out of consideration - as it has got to be -the impugned conviction cannot be sustained in absence of any other incriminating evidence against the appellant.

- D 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.

R.P.

Appeal allowed.