

PREETAM

v.

STATE OF MADHYA PRADESH

MARCH 26, 1996

[M.K. MUKHERJEE AND G.B. PATANAIK, JJ.]

*Indian Penal Code, 1860 :*

*Ss.302 and 404—Trial of two accused for offences—Acquittal by trial court—High Court concurring with the trial court in disbelieving the eye witnesses but convicting one of the accused relying upon the confession and evidence relating to recovery—Held, confession having been recorded by the Magistrate in utter disregard of provision of s. 164(2) Cr. P.C. High Court was not justified in relying upon it—Consequently the recoveries made pursuant to the statement of the accused cannot be made the sole basis for conviction.*

*Criminal Procedure Code, 1973 :*

*Ss.164(2), (4) and 379—Confession—Recording of by Magistrate—Requirements to be complied with—Held, omission by Magistrate to ask questions to ascertain whether accused was making confession voluntarily resulted in non-compliance of the mandatory requirement.*

CRIMINAL APPELLATE JURISDICTION : Criminal appeal No. 110 of 1986.

From the Judgment and Order dated 3.8.84 of the Madhya Pradesh High Court in Cri. A. No 97 of 1976.

S.S. Khanduja, Y.P. Dhingra and B.K. Satija, for the Appellant.

K.N. Shukla, Prashant Kumar, S.K. Sinha and U.N. Singh for the Respondent.

The following Order of the Court was delivered :

Preetam, the appellant herein and his brother Ishwar Lal were placed on trial before the Sessions Judge, Morena, for committing the murder of one Chhita on June 15, 1973 and removing ornaments from his

person. The trial ended in an acquittal and aggrieved thereby the respondent-State preferred an appeal. The High Court dismissed the appeal so far as it related to Ishwar Lal but set aside the acquittal of the appellant and convicted and sentenced him under Sections 302 and 404 of the Indian Penal Code. The above order of reversal is under challenge in this appeal.

To prove its case the prosecution relied upon three eye witnesses, the doctor who held the autopsy, a judicial confession of the appellant and some recoveries made pursuant to his statement. While accepting the evidence of the prosecution so far as it sought to prove that Chhita met with a homicidal death, the trial Court rejected the entire evidence adduced by the prosecution to prove that the appellant was the author of the crimes. The High Court concurred with the finding of the trial Court that the three eye witnesses could not be relied upon but found the confession voluntary and true and as, according to it, the evidence relating to recovery corroborated the confession reversed the order of acquittal relying upon the same.

Since the reasons given by the learned courts below for disbelieving the eye-witnesses are cogent and convincing we must leave their evidence out of our consideration. We, therefore, proceed to consider whether the High Court was justified in making the confession the basis for conviction of the appellant.

It appears from the record that the appellant was arrested on June 17, 1973 and on his production before the Magistrate on the following day was directed to be sent to police custody, as prayed for by the investigating officer. He remained in such custody till June 22, 1973 when he was sent to judicial custody under orders of the Magistrate. Thereafter he was produced before the Magistrate on June 25, 1973 for recording his confession. On his production, the Magistrate gave him two hours' time to reflect and then recorded the confession. From the confessional statement (exhibit P.11) we find that the Magistrate (p.w. 8) first disclosed his identity and told him that he was not bound to make any confession and if he did so, it might be used as evidence against him. After administering the above caution the Magistrate recorded the confession and then made the memorandum required under Sub-section (4) of Section 164 Cr. P.C. In our considered view, the confession so recorded is in utter disregard of the statutory provisions of Sub-section (2) of Section 164 Cr. P.C. Under the

above sub-section the Magistrate is first required to explain to the accused that he was not bound to make a confession and that if he did so it might be used against him. Though this requirement has been complied with in the instant case, the other requirement which obligates the Magistrate to put questions to the accused to satisfy himself that the confession was voluntary so as to enable him to give the requisite certificate under Sub-Section (4), has not been fulfilled for, the learned Magistrate did not ask any question, whatsoever to ascertain whether the appellant was making the confession voluntarily. In view of such flagrant omission to comply with the mandatory requirement of Section 164(2) Cr. P.C. we must hold that the High Court was not at all justified in entertaining the confession as a piece of evidence, much less, a reliable one. Once the confession is left out of consideration - as it has got to be - the only other piece of evidence to connect the appellant with the alleged offences are the recoveries allegedly made pursuant to his statement. Even if we proceed on the assumption that the evidence led by the prosecution in this behalf is reliable, still, considering its nature, we are unable to hold that it can made the sole basis conviction even for the offence under Section 404 I.P.C.

On the conclusions above, we allow this appeal, set aside the impugned order of the High Court and acquit the appellant of the charges levelled against him. The appellant who is on bail is discharged from his bail bonds.

Appeal allowed.