

(1987) 04 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 2-R of 1985

State of Punjab

APPELLANT

Vs

Parminder Singh alias Pappu and anr.

RESPONDENT

Date of Decision : 06-04-1987

Acts Referred:

Citation : (1988) 1 RCR(Criminal) 131

Hon'ble Judges : Pritpal Singh, J

Advocate : Ravinder Chopra, U.T. Chandigarh, P.S. Teji, H.S. Brar, S.C. Sibal,
Advocates for appearing Parties

Judgement

Pritpal Singh, J.

1. This Session case State v. Parminder Singh alias Pappu and Sarbjit Singh, both residents of Johlan, Police Station Tanda, District Hoshiarpur, was received on transfer from the Court of Shri R.P. Gaiind, Additional Judge Special Court, Hoshiarpur, after the coming into force of Act No. 45 of 1985, at the stage of evidence of the prosecution. The case came up for hearing today i.e. on 29.10.1985, for recording of evidence of the prosecution before this Court. After going through the record of the case and the documents submitted therewith, this Court is of the considered opinion that it is a case of no legal evidence against the accused and no charge could have been framed on the basis of the record of the case and the documents submitted therewith for the following reasons :

2. This case pertains to a blind murder of one Sita Ram Pujari of Mandir Baba Balak Nath, situated in village Garhdiwala, on the night intervening 23rd and 24th of June, 1984. The dead body of the deceased was found lying in the compound of the Mandir and one Kishan Chand, who runs a tea shop near to the Mandir, lodged the information with the police regarding the murder of Sita Ram Pujari and about his dead body lying in the Mandir, with injuries on the same. The report was lodged with ASI Gajjan Singh, incharge of Police Post Garhdiwala. This information was forwarded by ASI Gajjan Singh to Police Station Tanda on

the basis of which formal FIR No. 221 dated 24.6.1984 was recorded at 9.40 A.M. ASI Gajjan Singh reached the place of occurrence. He prepared the inquest on the dead body and sent the dead body for postmortem examination through constables and collected the blood stained earth from the place of occurrence. The postmortem examination was conducted by Dr. Raj Bala Medical Officer of Civil Hospital Dasuya, on the same day, who observed various sharp edged injuries on the dead body and gave the opinion that the death was due to excessive hemorrhage and shock resulting from multiple injuries which were sufficient to cause death in the ordinary course of nature. No clue of the culprits was available to the investigation till 16.8.1984, when it is said that SI Manohar Singh was investigating a case pertaining to FIR No. 155 of 1984 of Police Station Hariana, under Section 382 of Indian Penal Code when both these accused are said to have made confessional statement before SI Manohar Singh in the presence of ASI Tarlochan Singh and Head Constable Onkar Dutt, having committed the murder of Sita Ram Pujari, on the night intervening 23/24.6.1984, alongwith one Surinder Singh alias Chhinda with Kirpans and that the deceased was sleeping and it was a dark night and nobody else had seen them. Both these accused Sarbjit Singh and Parminder Singh were arrested on the same day in this case. The third alleged assailant Surinder Singh alias Chhinda remained at large and ultimately was declared proclaimed offender. There is also allegation that on 19.8.1984 these accused made disclosure statement before SI Manohar Singh, in the presence of ASI Tarlochan Singh and HC Onkar Dutt that they could point out the place of murder of Sita Ram Pujari and it is further said that accordingly both these accused pointed out the place of murder of Sita Ram Pujari. There is no other evidence with the police against any of the accused on the file of the case. It is, thus, clear that the entire evidence against these accused is their alleged confessional statements made before SI Manohar Singh, in the presence of other police officials and their alleged pointing out of the place of murder subsequent to the disclosure statements. The pointing out of the place of murder cannot be termed as a fact discovered subsequent to the disclosure made by the accused because the place of murder of Sita Ram Pujari was already known to the Police from where the dead body was recovered. The alleged confessional statements of both these accused recorded separately by SI Manohar Singh, cannot be termed as evidence in view of the prohibition laid down by the Section 25 of the Indian Evidence Act. The case, thus, lacks legal evidence which could prima facie connect the accused with the crime of could be the basis of the charge framed against them under Section 302 read with Section 34 of the Indian Penal Code.

3. However, Shri R.P. Gaiind, learned Additional Judge, Special Court Hoshiarpur, in his wisdom thought it proper to accept the allegations of the prosecution sufficient to frame the charge against the accused and passed the following order on 18.2.1985 :

"Present : Both the accused in custody with Mr. Sohan Singh, Advocate, PP for the State.

Arguments heard. From the evidence on record, a prima facie case under Sections 302/34 IPC, is made out against the accused and they have been charged accordingly. They plead not guilty to the charge and claimed to be tried. PWs may be summoned for 21.9.1985.

Sd/ (R.P. Gaiind)

Additional Judge, Special Court,

Hoshiarpur. 18.2.1985."

In view of this order, the charge was framed against the accused in the following terms :

CHARGE

State. Versus : 1. Parminder Singh alias Pappu son of Harbans Singh son of Buta Singh, aged 23 years, cultivator resident of Johlan.

2. Sarbjit Singh son of Balbir Singh son of Mehar Singh aged 19 years, by appearance 22 years, labourer, r/o Johal.

I, R.P. Gaiind, Additional Judge, Special Court, Hoshiarpur hereby charge you Parminder Singh and Sarabjit Singh accused as follows :

That on the night intervening 23/24.6.1984 in the area of Garhdiwala, in furtherance of the common intention of you both, committed the murder of Sita Ram Mahi by intentionally causing his death and thereby committed an offence punishable under Sections 302/34 IPC, and within my cognizance.

And I hereby direct that you be tried by me on the said charge.

Dated Hoshiarpur.

18.2.1985.

Sd/ Addl. Judge,

Special Court,

Hoshiarpur.

Certified that the charge has been read over and explained to the accused in simple Punjabi and a copy of the same has been supplied to the accused free of costs.

Sd/

Addl. Judge, Hoshiarpur. 18.2.1985."

The learned Additional Judge, Special Court, Hoshiarpur, did not consider to include the third alleged assailant Surinder Singh in any form in the charge framed against these two accused.

4. The Statements of the witnesses on which the prosecution relies to bring home the guilt to these accused, do not fall under the term "evidence" which can be considered sufficient to warrant the framing of charge against them.

5. In view of the facts mentioned above, this case is referred to the Hon'ble High Court for appropriate orders, for quashing the charge framed against the accused. The file of the case be forwarded to the Hon'ble High Court forthwith.

Dated : 29th October, 1985.

Sd/ Amarbir Singh Gill,

Sessions Judge, Hoshiarpur.

Dated the 6th April, 1987.

Before : Pritpal Singh, J.

For the Petitioner : Mr. S.S. Kang, A.A.G. Punjab.

For the Respondents : Mr. P.S. Hundal, Advocate with Mr. Balbir Singh, Advocate.

Pritpal Singh, J. This reference has been made by the learned Sessions Judge, Hoshiarpur, under Section 395 Code of Criminal Procedure.

Charge under Section 302 read with Section 34, Indian Penal Code, was framed on February 18, 1985, against the accused Parminder Singh and Sarabjit Singh by the Additional Judge, Special Court, Hoshiarpur. In this reference the learned Sessions Judge, Hoshiarpur has recommended for the quashing of the charge on the ground that there is no evidence at all in support thereof. It is said that the only material upon which the charge was framed against the accused is their alleged confession before the police. It is manifest that such confession does not constitute legal evidence and no reliance can be placed thereon. The learned counsel appearing for the State could not deny that the charge has been framed against the accused, by the Additional Judge, Special Court, without any evidence in support thereof.

8. In these circumstances this reference is accepted, the charge framed against the accused is quashed and the accused are discharged.