

(1985) 03 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6936-M of 1984

The State of Punjab

APPELLANT

Vs

Surinder Singh and another

RESPONDENT

Date of Decision : 28-03-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1985) 03 P&H CK 0002

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : D.S. Brar, A.A.G., Pb, for the Appellant;

Final Decision : Allowed

Judgement

M.M. Punchhi, J.—The accused-Respondents Surinder Singh and Kulwinder Singh were accused of having committed offences u/s 302, Indian Penal Code and Section 25 of the Arms Act in committing the murder of Shri Rajinder Kumar Bhalla on 23rd October, 1984. The offence was triable by a Special Court established under the Terrorist Affected Areas (Special Court) Act 1984. During the investigation, an application was made on behalf of the accused seeking a direction from Shri J. S. Pama, PCS Judicial Magistrate, 1st Class, Jalandhar that the counsel for the accused be permitted to be present at the time of the interrogation. The learned Magistrate without giving any reason for acceding to the request straightaway conceded the prayer and ordered that the Investigator shall inform Shri P.S. Sidhu Advocate/S Sarabjit Singh, Advocate on telephone Nos. 778930/76467 at the time of interrogation of the accused. This order has been challenged by the State by means of this petition. Respondents have been served but they are not represented by any counsel.

2. There is no legal requirement that in every case where the accused during the investigation sought to be interrogated, his counsel must always be present. This statement is not opposite to the view expressed in Nandini Satpathy Vs. P.L. Dani and Another, . The following extracts from the report make it clear-

*** The right to consult an advocate of his choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Article 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of search-custodial interrogation. Moreover, the observance of the right against self-crimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice. Lawyer's presence is a constitutional claim in some circumstances in our country also, and, in the context of Article 20(3), is an assurance of awareness and observance of the right to silence. * * * *

We do not lay down that the Police must secure the services of a lawyer. That will lead to "police-station-lawyer" system, an abuse which breeds other vices. But all that we mean is that if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-crimination secured in secrecy and by coercing the will, was the project.

3. These observations of the Supreme Court do not seem to me to be laying down a hard and universal rule of application that no questioning on interrogation can ever be made by the police of an accused unless his counsel is called. In that the police would be at the mercy of the lawyer who may conveniently be available or may not be at the appointed time. He may adopt dilatory tactics by seeking adjournments and not permit questioning at all. This may even frustrate investigation. Important evidence timely available may get lost. The inherent risk in not calling a lawyer has no doubt been spelled out by their Lordships of the Supreme Court but that risk can calculatively be taken by any sensible investigation. In any event the matter has to come to Court and a self-criminating statement of an accused can be examined by the Court in accordance with the standards and norms well known to it in the pursuit of the art of justicing. Thus it appeals to me that the learned Magistrate went off the tangent and in a sweep passed the impugned order without any basis or reasoning. And the same is quashed by acceptance of this petition.