

**309 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No.63 of 2006(O&M)
Date of decision : 12.08.2015**

Harbans Singh

..... Petitioner

versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Parminder Singh , Advocate for the petitioner.

Mr.Ashish Sanghi, DAG, Punjab.

Ms.Aditi Girdhar, Advocate, amicus curiae

for respondent No.2.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This revision has been filed against the acquittal of the respondent No.2 under Section 302 IPC.

As per the allegations, the complainant-Harbans Singh stated that on 31.07.2003 he had gone to give bed tea to his father-Bhola Singh who was sleeping in the fields and found him dead of injuries inflicted on his head. On 04.08.2003 he lodged the FIR regarding the murder of his father by some unidentified persons and thereafter he made a supplementary statement where he mentioned a suspicion that the respondent No.2 was behind the death of his father. On 04.08.2003 Charanjit Singh(PW-4) got recorded his statement that on 30.07.2003 he was on *Thikri Pehra* when respondent No.2 met him. At that time respondent No.2 had a wooden log in his hand. He disclosed to the witness that he had murdered Bhola Singh and after

threatening him not to mention this fact to any body, went away. On the very next day i.e. on 05.08.2003 Sukhdev Singh(PW-5) produced respondent No.2 before the police and mentioned that respondent No.2 had met him and made a second extra judicial confession about the murder of Bhola Singh and requested him to produce him before the police. It was on this material evidence that respondent No.2 was tried. The learned trial Court found that the testimony of Charanjit Singh(PW-4) and Sukhdev Singh (PW-5) suffered from some infirmities insomuch as Charanjit Singh admitted that he had been detained by the police in connection with the death of aforesaid Bhola Singh on 02.08.2003. As per learned trial Court in these circumstances his silence till 04.08.2003 rendered his testimony doubtful. As regards Sukhdev Singh (PW-5) the trial court found that he was closely related to Bhola Singh and came to the conclusion that in view of his close relation with the deceased there was no reason for respondent No.2 to have made an extra judicial confession before him. The trial Court also noticed that extra judicial confession has traditionally been taken to be a weak evidence unless corroborated. The trial Court also nixed the theory of motive holding that in the first place no reason was shown why respondent No.2 would particularly want to drink at the motor of Bhola Singh, deceased and also the fact that he was stopped from drinking there was a very weak type of motive. Ultimately the trial Court held that the prosecution had failed to bring home the guilt of respondent No.2 beyond reasonable doubt and, giving the benefit of doubt and giving him that benefit acquitted him.

Learned counsel for the petitioner has argued that Charanjit Singh (PW-4) was an uninterested witness and there was no reason for him to have falsely named respondent No.2 and even as regards Sukhdev Singh (PW-5), as per learned counsel the fact that he was related to Bhola Singh could not by itself be motive to have made a false statement against respondent No.2. He has also pointed out that the wooden log recovered at the instance of respondent No.2 was

smearred with blood of the same group as that of Bhola Singh- deceased and the trial Court wrongly ignored the cumulative effect of all this evidence. Learned amicus curiae for respondent No.2 has argued that the reasons given by the trial Court in not believing the testimony of Charanjit Singh (PW-4) and Sukhdev Singh (PW-5) are substantial and cannot be faulted. As per her once PW4-Charanjit singh stated that he had been detained by the police in connection with the murder of Bhola Singh on 02.08.2003, there was no conceivable reason for him not to have disclosed about the extra judicial confession of respondent No.2- Balwinder Singh at that very time. As per her there is no explanation why Charanjit Singh (PW-4) did not disclose about the confession immediately after the same was made to him and waited for four days to inform the police about the same. As regards Sukhdev Singh (PW-5) also she has argued that if respondent No.2 wanted to surrender before the police he would definitely not have chosen to use the good offices of a person related to the deceased and, therefore, the trial Court did not err in taking his testimony with a pinch of salt. Learned amicus curiae has stated that the only objective evidence was the wooden log which was stated to be smearred with the same blood group as that of the deceased but this solitary piece of evidence could not be held to have proven the guilt of respondent No.2 beyond reasonable doubt.

In my opinion the arguments of learned counsel appearing on behalf of respondent No.2 have more weight. In the testimony of PW4 he has not given any reason why he had not disclosed the fact of the extra judicial confession of respondent No.2 to anybody for four days. His testimony also reveals that at that time one Tej Singh son of Bura Singh was also present but he was not produced as a witness. Further in his testimony PW5-Sukhdev Singh stated that Balwinder Singh-respondent No.2 had come to him on 05.08.2003 to make his extra judicial confession but he did not take any action that day since he had to go to Bathinda for some work and told him(Balwinder Singh) to come on the next day. He also admitted that he did not disclose about

the fact of extra judicial confession to any body on 05.08.2003. Against the backdrop of this testimony I cannot hold that the doubt expressed by the trial Court on the credibility of these witnesses was misplaced. Therefore, it cannot be disputed that the only piece of objective evidence was the recovery of the wooden log and to my mind learned counsel for respondent No.2 is correct when she states that this evidence by itself does not bring home the guilt of respondent No.2 beyond reasonable doubt.

Resultantly the revision is dismissed. This Court wants to place on record its appreciation of learned amicus curiae for having discharged the burden placed on her shoulders with conviction and labour.

Since the main case has been decided, the Criminal Misc.

Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

August 12 , 2015
sunita