

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-106 of 2015 (O&M)
DATE OF DECISION: May 02, 2016

Hans Raj

...Appellant

Versus

Tarun @ Sunny and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Yogesh Chaudhary, Advocate for the appellant.

RAMENDRA JAIN, J.

CRM No.13893 of 2016

This is an application for recalling of order dated 11.4.2016 whereby the appeal of the appellant was dismissed for want of prosecution.

After hearing learned counsel for the appellant, the prayer made in the application is allowed.

Accordingly, the main appeal is restored to its original number.

CRM No.7252 of 2016 and
CRA-AD-106 of 2015

The instant application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 24.2.2015 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri acquitting

respondent Nos.1 and 2.

According to the prosecution, on 3.2.2013, on receipt of a telephonic message from Ex. Sarpanch Ram Kumar Mehta of village Gumthala, SI Harish Dutt along with other police officials reached the informed place. The applicant Hans Raj got recorded his statement that he was running a sweets shop near bus stand Gumthala. He was blessed with two sons, namely, Sohan Chawla @ Hunny Chawla and Tanuj Chawla. Around 7.30 p.m. on 2.2.2013 while his elder son Sohan Chawla was taking meal, a call was received on his mobile. After taking the meal, he left the home. Around 8.30 p.m., a call was made, however, his mobile phone was found switched off. That being so, they made search for Sohan Chalwa in relations as well, but did not yield fruitful result. His younger son Tanuj along with his friend had also started making search for Sohan Chawla. While they were going towards village Rajheri and near the river bridge Nachron, they saw one Chappal along with blood. Identifying the chappal to be that of Sohan Chalwal, his younger son apprised telephonically to the applicant. Whereupon, the applicant along with his relatives reached the spot. A blood stained knife lying near that place was noticed. Apprehending that his elder son was murdered and his dead body was thrown into the canal, a call was made to the police. The description of his son was given that he was

of fair complexion, thin body, on the right arm English letter "H" was scribed, wearing a white colour T-shirt, black checked jacket, grey colour lower, wearing blue colour hawai chappal, height was 5'-7" and was aged 23/24 years.

On the aforesaid statement, a case under Section 364 IPC was registered. Investigation was swung into action. Blood stained knife, chappal and leaves were taken into possession from the spot. Call details of the mobile phone of the victim were procured. Photography of the place of the occurrence was done. On 13.2.2013, Harbans Lal made a statement about the extra judicial confession before him by respondent No.1 Tarun Batra of his guilt as well as of respondent No.2 Ishant @ Golu. They confessed that dead body of Sohan Chawla was disposed off by throwing the same into canal with a view to destroy the evidence. Respondent Nos.1 and 2 were arrested. They suffered disclosure statements. In pursuance of disclosure statements, they got recovered the blood stained shirts worn by them at the time of occurrence, motor cycle and knife used in the commission of crime. On completion of investigation, final report under Section 173 CrPC was presented before the concerned Magistrate.

Accordingly, the respondents Nos.1 and 2 were charge sheeted under Sections 364,302 and 201 read with section 34 IPC.

In order to prove its case, the prosecution examined as many as twenty witnesses.

The entire incriminating evidence was put to respondents Nos.1 and 2. They pleaded their false implication. After hearing learned counsel for both the parties, the trial Court acquitted respondent Nos.1 and 2 of the charges framed against them.

Learned counsel for the applicant has argued that the findings recorded by the trial Court are erroneous, inasmuch as, the trial Court has brushed aside the entire prosecution evidence by presuming that extra-judicial confession is a very weak type of evidence and the recoveries from the respondent Nos.1 and 2 were doubted. It would depend on the circumstances, the time when the confession was made and the credibility of the witness, before whom the confession was made. Thus, respondent Nos.1 and 2 are liable to be convicted and sentenced for the charges framed against them.

After giving our thoughtful consideration to the arguments advanced by learned counsel for the applicant, we find the present application devoid of any merit for the reasons to follow.

First of all, we analyse the statement given by PW3 Harbans Lal. This witness deposed that respondent Nos.1 and 2 had asked deceased-Sohan Chawla to drive

the motor cycle. On sitting on the driving seat, respondent No.1 Tarun had inflicted injury with knife on his throat, then other injury on the same place was given by respondent No.2 Ishant. However, the aforesaid evidence was missing in the statement Ex.PW3/A given to the police.

The story so projected with regard to extra judicial confession by the prosecution appears to be impressive, but on depth analysis, it demolishes the foundation. The extra judicial confession was suffered by respondent No.1 Tarun Kumar to PW3 Harbans Lal in the morning of 13.2.2013, whereas, the dead body was recovered from the canal in the late evening of 13.2.2013. The injuries were shown on the dead body in the post mortem report horizontally on the neck region caused with a sharp edged weapon. These injuries matched with the extra judicial confession. Moreover, the aforesaid injuries were not in the knowledge of PW3 Harbans Lal or the police prior to the recovery of the dead body. The factum of no knowledge can be gathered from the statement made as a part of inquest proceedings on 13.2.2013. This statement does not show that any extra judicial confession was suffered by respondent No.1 Tarun Kumar before PW3 Harbans Lal in the earlier part of that day. Rather the evidence available on record suggests that PW3 Harbans Lal stated that he is an Ex Member Panchayat and the deceased was his nephew, who was

kidnapped on 2.2.2013 by some persons and thrown in the Avardhan Canal. On receiving the information on 13.2.2013, he had reached the spot. The dead body of Sohan Chawla was taken out which was identified by him. However, in this part of evidence, mentioning of extra judicial confession made by respondent No.1 Tarun Kumar is missing. On the same breath, during the inquest proceedings, there was reference made by the Investigating Officer about the extra judicial confession suffered by respondent No.1 Tarun before PW3 Harbans Lal on 13.2.2013 prior to recovery of the dead body. Moreover, when the respondent Nos.1 and 2 had been joined in the investigation by the police immediately after the incident on 2.2.2013, then it cannot be imagined that they would suffer extra judicial confession before PW3 Harbans Lal, who is relative of deceased as reflected in the statement given during the inquest proceedings on 13.2.2013. This evidence available on record suggests that the prosecution has failed to prove that any extra confessional statement was made, inasmuch as, it suffers from doubtfulness.

Even no scientific method was adopted to ascertain that the blood group of deceased matched with the blood group detected on the articles allegedly recovered from the possession of respondent Nos.1 and 2 or from the spot. No efforts were made to join the independent witness

at the time of alleged recovery. It casts doubt on the prosecution story to ascertain that the alleged recovery was effected from the respondent Nos.1 and 2 or not.

All the facts and circumstances, discrepancies, false implication of the respondents Nos.1 and 2 and observations in that regard made by the trial Court lead to the inference that the prosecution case in all probabilities is false.

In view of the aforesaid discussion, we find no merit in the present application and, therefore, the same is hereby dismissed. Leave to appeal is declined and the appeal is dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 02,2016
KD