

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

**CRA-D-1156-DB of 2015
Date of decision : 12.4.2016**

Sekhu Masih

.....Appellant

v.

State of Punjab and another

.....Respondents

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

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Present : Mr. K.S. Kahlon, Advocate
for the appellant

RAMENDRA JAIN, J.

Respondent No.2 was booked and tried under Sections 302 and 201 IPC for committing the murder of Salim Masih.

Put pithily, around 10.30 a.m. on 13.7.2014 deceased Salim Masih after loading iron bars on his bullock cart left for village Sekha, but did not return. His whereabouts could not be traced, despite intensive search by his relatives. However, on 29.7.2014, when complainant Sekhu Masih son of the deceased along with his brother, uncles and other persons in search of Salim Masih was going towards Village Bhago Kawan, he found some dogs coming

out from the bushes on the left side of the Bhago Kawan road after crossing Government Senior Secondary School, Magar Mudian. Foul smell was emanating. Hence, the complainant by going inside the bushes, found a human skeleton. Nearby it, one black trouser, black underwear, chappal, HMT Watch, gold chain and one Nokia mobile phone were found lying. From the pocket of the trouser, mobile numbers, currency notes of ₹ 1855/- along with photograph of Salim Masih were recovered. Thereafter, one Piara Singh Sarpanch came to the house of complainant and told him about the extra judicial confession made by respondent No.2-Ashwani Masih @ Ashni that he had murdered Salim Masih as he was having illicit relations with his mother. Despite his asking, Salim Masih had not refrained himself from doing so. Respondent No.2 had also confessed that after committing the murder he had thrown the dead body of Salim Masih at the spotted place and he may be got pardoned.

On the above information, a case was registered. All the aforesaid articles lying alongside the skeleton of the human body were taken into possession. Accused was arrested. A brick allegedly used in the murder of Salim Masih was also recovered on his disclosure statement. After completion of necessary investigation, final report was submitted in the Court.

On commitment of the case to the court of Sessions, the prosecution examined as many as 11 witnesses in support of its case.

After perusing the prosecution evidence, the statement of respondent No.2 under Section 313 Cr.P.C. and hearing learned counsel for both the sides, the trial Court did not find itself convinced with the prosecution story and thus, acquitted respondent No.2 vide impugned judgment dated 19.5.2015.

Being unsatisfied, the complainant has preferred the present appeal.

Learned counsel for the appellant contended that the impugned judgment of the trial Court is based on surmises and conjectures. The Court below has failed to appreciate that the dead body of Salim Masih was identified through his belongings lying nearby. Since, PW9 Piara Singh was won over by respondent No.2, before whom he had made extra judicial confession, therefore, his statement under Section 161 Cr.P.C. should not have been thrown outrightly by the trial Court.

We have given our thoughtful consideration to the above submissions and find the present appeal completely meritless for the reasons to follow.

(i) PW 9 Piara Singh is the star witness of the prosecution, before whom respondent No.2 had allegedly made extra judicial confession, confessing his guilt of murdering Salim Masih. However, he did not support the prosecution case and turned hostile. He categorically deposed that he never made any statement to the police.

(ii) It is a blind murder case. There is no eye witness account to the murder of Salim Masih. The entire case is based on circumstantial evidence. By this time, it is well settled that the circumstantial evidence is very weak type of evidence and thus, conviction should not be based upon the same, unless and until the same is corroborated by any convincing evidence. However, the prosecution has not been able to lead any cogent and convincing evidence.

(iii) The chemical report Ex.PW10/G stating human blood on the

brick allegedly got recovered by respondent No.2, in pursuance to his disclosure statement has not much relevance and significance, more particularly, when the FSL authorities did not make any effort to match the alleged human blood on the brick with the blood group of the deceased. They did not make any effort to conduct any DNA test. The brick was got recovered from an abandoned place having access to all and sundry.

Learned counsel for the appellant has miserably failed to put any dent in any of the findings of the Court below. We have also gone through the impugned judgment and found no illegality or perversity in the same.

Accordingly, the appeal being completely devoid of any merit, is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

12.4.2016
Ashwani