

**(2008) 03 P&H CK 0197**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 547 of 1999

Dalip Singh

APPELLANT

Vs

Mam Chand and another

RESPONDENT

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**Date of Decision:** March 18, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 378

**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J

**Bench:** Single Bench

**Advocate:** Praveen Moudgi, for Mr. Manu K. Bhandari, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

Kanwaljit Singh Ahluwalia, J.

Civil Misc. No. 11310 of 2008

1. Application is allowed subject to just exceptions. Affidavit of Harbhajan Singh, Inspector, is taken on record.

Criminal Revision No. 547 of 1999

2. It has been stated that Mam Chand alias Chanda Ram son of Dalip Ram has died. Therefore, the present revision petition cannot proceed against respondent No. 1.

3. Sukha Singh alias Leedi son of Gurmukh Singh, respondent No. 2 is present in the Court.

4. Mr. Parveen Moudgil, Advocate, has stated that learned Sessions Judge, Patiala, committed grave error in acquitting the respondents. It has been very fairly contended that the State had not filed any application for leave to appeal against the acquittal of respondents as envisaged u/s 378 Cr.P.C.

5. Prosecution case in short is that dead body of Sat Pal was recovered from the well and there were grievous injuries on his body with the sharp edged weapon. Admittedly, as per prosecution case there is no direct evidence. Prosecution has placed reliance upon testimony of one Jaswinder Singh, PW.5, who had seen Mam Chand armed with gandasi and Sukha Singh armed with a dang on the intervening night of 6/7.5.1996 at about 9.00 P.M. Near Imli Road. Inference was sought to be drawn that the accused were seen on the night of occurrence going armed with weapons.

6. Further, prosecution has relied upon the evidence that extra judicial confession was made to Jai Kishan, PW.4. Learned trial Court disbelieved the testimony of Jai Kishan, PW.4 and held in para 18 of the impugned judgement that the accused were arrested as per statement of Jaswinder Singh, PW.5, 3-4 days after the occurrence, whereas it is stated by Jai Kishan, PW.4, before the Court that accused came to him on 2.6.1996, however, the occurrence has taken place on the intervening night of 6/7.5.1996. Learned trial Judge has rightly concluded that if the accused was arrested i.e. after 3-4 days from the date of occurrence as stated by Jaswinder Singh, PW.4, and 4/5 days after the occurrence as stated by Dalip Ram, PW.2, complainant, then there was no occasion for the accused/respondents to make extra judicial confession as they were in police custody. Even otherwise any confession made in police custody is inadmissible.

7. Learned trial Court rightly disbelieved the testimony of Jaswinder Singh, PW.5, as he had not told anybody regarding the fact that he had seen the accused/respondents going armed with weapons.

8. The findings given by learned trial Court are probable and suffers from no infirmity or perversity. Law is well settled that revision against acquittal by the complainant, this Court cannot re-appreciate or re-evaluate the evidence. No irregularity or illegality has been pointed out. It has been held by the Courts that even in appeal against the acquittal when two views are possible then the Appellate Court shall not formulate contrary view. Since I am exercising revisional jurisdiction, scope is further limited, thus, no interference is called for. The present revision petition is dismissed.