

A

SHERA SINGH

v.

THE STATE OF PUNJAB

AUGUST 28, 1996

B

[G.N. RAY AND B.L. HANSARIA, JJ.]

*Penal Code, 1860 :*

C

*S. 302 r/w 34—Murder—Three accused convicted and sentenced to imprisonment for life and a fine of Rs. 500—On appeal High Court acquitting two co-accused and upholding the conviction of the appellant—The conviction was based on the evidence of the approver and corroborated by the evidence of another witness—On appeal held : Deposition of approver required to be corroborated in material particulars—Evidence of witness that the deceased was last seen in the company of appellant cannot be regarded as corroboration of the approver's evidence—Conviction and sentence passed against the appellant set aside.*

D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 328 of 1985.

E

From the Judgment and Order dated 17.1.84 of the Punjab & Haryana High Court in CrI.A. No. 560-DB of 1983.

R.C. Kohli for the Appellant.

Mrs. Amita Gupta for R.S. Suri for the Respondent.

F

The following Order of the Court was delivered :

G

Three accused, including the appellant Shera Singh, were tried for an offence of murder before the learned Session Judge, Ferozpur in Sessions Trial No. 41 of 1983. By the Judgment dated 29th July, 1983 the learned Sessions Judge convicted all the three accused under Section 302 read with 34 of the Indian Penal Code and sentenced each of them to suffer imprisonment for life and to pay a fine of Rs. 500 or in default to undergo rigorous imprisonment for six months. The said three convicted accused, including the appellants, preferred appeal before the Punjab and Haryana

H

High Court being Criminal Appeal No. 560-DB 1983. By the impugned

judgment dated 17th July, 1984, the High Court acquitted the two co-accused Lachman Singh and Balbir Singh, but the conviction of the appellant for an offence of murder under Section 302 IPC has been upheld by the High Court. It may be stated that in this case there is no direct evidence about the complicity of any of the accused in committing the murder of one Sucha Singh at about 9.00 P.M. on 28th July, 1982 excepting the evidence of the approver, being P.W. 13. As per illustration (b) under Section 114 of the Indian Evidence Act, 1872, an accomplice is unworthy of credit, unless he is corroborated in material particulars. In the instant case, the only evidence other than the deposition of the said approver, is the deposition of PW.16, the brother of the deceased who only stated that the deceased was seen by the said brother near the canal bridge of village Midha at about 9.00 P.M. on 28th July, 1982 and he had gone to the western side alongwith the appellant Shera Singh. As the names of other two accused were not mentioned by PW. 16, the High Court gave them the benefit of doubt and acquitted them but since the name of the appellant was mentioned by PW 16 as the person with whom the deceased was last seen together, the conviction against the appellant has been upheld by the High Court. The High Court has held that as the name of the appellant was mentioned by PW 16 as the person with whom the deceased was last seen, the evidence of PW 16 gets corroboration from the deposition of the approver PW 13.

In our view, such finding of the High Court is not justified. Simply on the basis of evidence of PW 16 that the deceased was last seen in the company of the appellant, the appellant is not liable to be convicted for the offence of murder. The deposition of an approver is required to be corroborated in material particulars. The circumstance about which PW 16 deposed cannot be regarded such a corroboration. So, the conviction of the appellant by relying upon the evidence of PW 13 was not justified. We, therefore, allow this appeal and set aside the conviction and sentence passed against the appellant. The appellant has been released on bail during the pendency of this appeal by this Court. His bail bonds stand discharge.

G.N.

Appeal allowed.