

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal-D-246-DB of 2004

Date of Decision : September 28, 2017

Nachhattar Singh and anotherAppellants

Versus

State of HaryanaRespondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. Deepak Sharma, Advocate
for the appellant No.1-Nachhattar Singh.

Appellant No.2-Maya Chand, since dead.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

Mr. Subhash Godara, Advocate for
Mr. S.S. Dinarpur, Advocate
for the complainant.

T.P.S. MANN, J.

The appellants, namely, Nachhattar Singh and Maya Chand alongwith Amar Singh were tried for committing the offence punishable under Section 201 IPC with the allegations that they all, between the period of 5.11.1998 to 8.11.1998 in the area of Police Station Naggal and in furtherance of common intention knowing that the offence of murder punishable with death had been committed, took the dead body of Kehar Singh on a tractor and threw the same in the canal and, thus, caused the evidence of offence to disappear. Maya Chand-appellant was also tried for committing the offence punishable under Section 302 IPC with the allegations that on

5.11.1998, in the area of village Sonta, he committed the murder by causing the death of Kehar Singh. Vide impugned judgment and order dated 27/28.2.2004, learned Additional Sessions Judge, Ambala acquitted Amar Singh accused of the charge under Section 201 IPC. However, Maya Chand-appellant was convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months. Maya Chand and Nachhattar Singh were also convicted under Section 201 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months. Both the substantive sentences awarded to Maya Chand-appellant were ordered to run concurrently.

Aggrieved of their conviction and sentences, the appellants filed the present appeal.

As per the prosecution, on 13.11.1998 Gurvinder Singh son of Dayal Singh, aged 21 years, resident of village Jharmari, Police Station Lalru, District Patiala, grandson of Kehar Singh deceased, alongwith his uncle Ram Singh and maternal uncle Avtar Singh of village Chaurmastpur came to Police Station Naggal and got recorded his statement before SI Mange Ram, Station House Officer, wherein he stated as under :-

“I am residing at the above-said address and doing the work of agriculture. About 10 years ago, land

about 8 acres was purchased in village Sonta in the name of my grandfather Kehar Singh. My grandfather Kehar Singh used to look after the same. Previously, he used to cultivate it. This year he leased out this land to Narmail Singh s/o Jagir Singh caste Jat r/o village Mehla. On 2.11.1998, my grandfather Kehar Singh left village Jharmari saying that he was going to village Sonta for collecting the remaining lease amount of the land. After waiting for him, I and my tau Ram Singh s/o Arjun Singh reached village Sonta to enquire about my grandfather. Kehar Singh. First of all, we went to the house of Nachhattar Singh. Nachhattar Singh told us that my grandfather Kehar Singh had left their house in the evening of 5.11.1998 and had not come to their house thereafter. Then we enquired from Sucha Singh, Chairman; Chuhar Singh, Sarpanch and Ranjit Singh s/o Gulab Singh, caste Jat, r/o Sonta. They also told that Kehar Singh had not been seen in village Sonta after 5.11.1998. We enquired from all the relatives but no clue of my grandfather Kehar Singh could be found. My grandfather Kehar Singh was seen standing with Maya Chand s/o Bir Singh on 5.11.1998 at about 7.00 p.m. near Radha Swami Satsang Bhawan. I am fully confident that either my grandfather Kehar Singh has been murdered by Maya Chand and Angrej Singh, r/o Sonta or he has been kept concealed with intention to kill him. The cause of grouse is that my grandfather Kehar Singh wanted to purchase land of Nachhattar Singh. Similarly, Angrej Singh also wanted to purchase the same. Now, I alongwith my Tau Ram Singh and maternal uncle Avtar Singh, r/o Chaurmastpur have come to Police Station and got

recorded my statement to you. I have heard the same and it is correct.”

As the statement made by Gurvinder Singh disclosed the commission of offence under Sections 364/34 IPC, FIR No.94 dated 13.11.1998 was registered at 11.00 a.m. Special report sent through Constable Jagat Singh was received by the Ilaqa Magistrate on 13.11.1998 at 1.40 p.m.

It is also the case of the prosecution that Inspector Mange Ram started with the investigation and visited village Sonta alongwith Gurvinder Singh, Avtar Singh and Ram Singh at the Dera of Maya Chand accused. On his return journey, when he was standing at Bus Stand Thol, SI Mange Ram received VT message that dead body of Kehar Singh had been recovered at Dala Majra. Accordingly, the Inspector alongwith the complainant and others reached the place where the dead body was recovered. The dead body was identified by Sahib Singh and Balbir Singh. SI Mange Ram conducted inquest proceedings and got the dead body photographed. Tractor-trolley was arranged to shift the dead body to Civil Hospital for post-mortem. On 14.11.1998, ASI Suraj Bhan received post mortem report Ex.PF and, accordingly offence was converted into Section 302 IPC. Special report was, once again, sent to the Ilaqa Magistrate. The statements of the PWs were recorded and search conducted for arresting the accused. On 15.11.1998, SI Mange Ram while in search of the accused, reached Jansui Power House, where Gurdev Singh and Mam Raj met him and started talking with them. In the meanwhile, SI

Mange Ram received secret information that Maya Chand accused had just alighted from the bus and going towards Jansui on foot. Maya Chand was arrested and interrogated. He suffered disclosure statement Ex.PE that he could identify the place where the murder was committed and also the place where the dead body was thrown. Thereafter, Maya Chand accused led the police party to village Sonta. Maya Chand alighted from the jeep and led the police party to the disclosed place and identified the place where he had committed the murder of Kehar Singh by strangulating and gagging his mouth. He also got recovered the turban and comb, which were identified by Gurvinder Singh and Avtar Singh to be that of Kehar Singh. Thereafter, the accused identified the place where he had initially kept concealed the dead body under the heap of parali. The accused also led the police party to the drain where he had thrown the dead body in the wild grass. He also got recovered the shoe which was identified by Gurvinder Singh and Avtar Singh to be that of Kehar Singh. Thereafter, the accused led the police party to the Baandh of Tangri river where they had thrown the dead body of Kehar Singh. The dead body was thrown by them in the Tangri canal. Rough site plans of the places demarcated by the accused were prepared.

It is also the case of the prosecution that on 17.11.1998, Maya Chand accused suffered disclosure statement to the effect that what was told by him before ASI Suraj Bhan earlier was incorrect as he thought that he could save the tractor being taken into possession by the police whereas truth was that on 5.11.1998 he committed the

murder of Kehar Singh by strangulating him and in order to destroy the dead body, he and his son on the night of 8.11.1998, tied the dead body in a cloth with the help of his servant Amar Singh and took the dead body on the lift of his tractor and threw it in the canal. He had kept concealed the tractor at his dera in the heap of parali at a distance of 3 killas from the dera. Only he and his son Nachhattar Singh knew about it and he could demarcate the place and get the tractor recovered. Thereafter, the accused led the police party and got recovered the tractor make Escort, which was taken into possession by the police. On 21.11.1998, SI Mange Ram alongwith other police officials went to Matheri Chowk where Surjan Singh met them and at that place one Amar Singh produced Nachhattar Singh accused who was interrogated. His disclosure statement was recorded pursuant to which, he led the police party and demarcated the place where tractor was kept concealed and also the place where he and his father Maya Chand had lifted the dead body and also the place where they had thrown the dead body in the canal. On 22.11.1998, SI Mange Ram recorded the statements of the Patwari, photographer and others. On completion of investigation, final report under Section 173 Cr.P.C. was prepared. After its presentation and commitment of the case, both the appellants and Amar Singh were challaned for the offences mentioned above, to which they pleaded not guilty and claimed trial.

At the trial, the prosecution examined as many as nineteen witnesses to prove the guilt of the accused.

PW1 Constable Ram Saran deposed that on 28.1.1999,

on being summoned to Police Station Naggal, he visited siphon No.3 of Bhakra Canal falling in the revenue estate of Dala Majra and on inspection he prepared scaled site plan Ex.PA with correct marginal notes.

PW2 Tilak Raj, Photographer deposed that on 15.11.1998, on the asking of the police, he visited the place and took two photographs of the place where a turban and shoe were lying. He proved photographs Ex.P1 and negatives Ex.P2. He also deposed about visiting the place where dead body was stated to have been concealed and took photograph Ex.P3 and negative Ex.P4.

PW3 HC Jagat Ram deposed of having delivered special report on 13.11.1998.

PW4 Constable Gaje Singh tendered his affidavit Ex.PB in evidence of having carried a sealed parcel from Police Station to Chemical Examiner without tempering with it.

PW5 Constable Satbir Singh deposed that on 14.11.1998 he delivered the special report.

PW6 Ram Singh deposed that on 21.11.1998, he was coming to Ambala from his village Sonta alongwith one Bhupinder Singh, when at about 10.00 a.m. the police party met him at Jansui head and they were asked to join the investigation concerning murder of Kehar Singh and on being enquired into, he disclosed to the police that on 8.11.1998 at about 11.00 p.m., he was going to his village from his fields and when reached metalled link road, connecting

Sonta with Jansui, saw Nachhattar Singh and Maya Chand going towards Jansui on his tractor, which was being driven by Nachhattar Singh whereas Maya Chand was sitting on the mudguard. On being enquired into about their destination at late hours, they stated to be going towards village Dangarian and further that there was bundle wrapped in a jute cloth tied with the lift of the tractor.

PW7 Bhupinder Singh stated that on 8.11.1998 at about 11.00/11.30 p.m., he was returning to his house from his fields, when he saw a tractor coming from the side of Sonta, with Nachhattar Singh and Maya Chand sitting on the said tractor, who were known to him. He further stated that Nachhattar Singh was driving the tractor, while Maya Chand was sitting on the mudguard and that a bundle was tied with the lift of tractor. On an enquiry being made, he was told by the accused that they were going to village Dangarian and further that a hand like object was protruding from the said bundle. He further deposed that on 21.11.1998 he alongwith Ram Singh was coming to Ambala, when police party met them at Jansui head and on being enquired into, he disclosed above facts to the police. He identified tractor Ex.P5 as the same which he had seen Nachhattar Singh driving and Maya Chand sitting on the same.

PW8 Balbir Singh deposed that Kehar Singh was his uncle who had purchased eight acres of land in village Sonta, which he used to cultivate earlier and later leased out the same. He stated that on 2.11.1998 Kehar Singh had come to village Sonta to collect lease money and did not return. During search on 8.11.1998, he was

told that Kehar Singh was last seen in the company of Maya Chand and Angrej Singh on 5.11.1998, near Satsang Bhawan. He further stated that on 13.11.1998 when he alongwith Sahab Singh was searching for Kehar Singh, his dead body was found in Bhakra canal and after about 5/10 minutes police party arrived and got the dead body photographed. He further stated that on 28.1.1999 he pointed out the place of recovery of dead body to the draftsman.

PW9 Dewan Singh deposed that on 17.11.1998 he had some dispute with his neighbours and came to the Police Station Naggal to report the matter where accused Maya Chand was interrogated by the police. Accused Maya Chand suffered a disclosure statement of having kept concealed the tractor used by him in disposal of dead body under the heap of paddy straw and further that disclosure statement was reduced in writing as Ex.PC, which was attested by him. He further deposed that, thereafter, accused Maya Chand led police party and got recovered tractor Ex.P5, which was taken into possession vide memo. Ex.PD.

PW10 Gurdev Singh deposed that on 15.11.1998 at about 12.30 p.m, he alighted from the bus at Jansui, where Mam Raj Gujjar met him near Power House, when police also arrived there and enquired from him about Maya Chand. A person who was already standing near them, stated to the police that Maya Chand had just alighted from the bus and was proceeding to village Jansui. He further stated that he alongwith said person was made to sit in the jeep and proceeded towards Jansui, when Maya Chand was seen on the way

and on being pointed out, accused Maya Chand was apprehended. Maya Chand was interrogated in his presence, who suffered disclosure statement Ex.PE, which was attested by him and other witnesses and thumb marked by accused Maya Chand.

PW11 ASI Suraj Bhan deposed that on 13.11.1998, while being posted in Police Station Naggal, he received a message from the SHO to reach Bhakra canal, falling in the revenue estate of village Dala Majra and upon reaching there found dead body of Kehar Singh lying there. He further stated that he had handed over the dead body alongwith application for getting postmortem conducted. He further stated that postmortem examination was conducted on 14.11.1998 and after postmortem the doctor handed over to him one parcel containing viscera, an other parcel containing sample seal and papers, which he handed over to SHO, who took them into possession vide memo. Ex.PF. He further stated that on 15.11.1998, he accompanied SHO Mange Ram in search of accused and when they reached at Bus Stand Jansui, SHO received a secret information of accused Maya Chand having alighted from a bus and proceeding towards Jansui. Mam Raj and Gurdev Singh were joined in investigation and while proceeding towards village Jansui, accused was arrested on the way. He also stated that accused Maya Chand was interrogated and suffered disclosure statement. The accused led the police party to the place disclosed by him. He further deposed that accused identified the place where Kehar Singh was murdered and a turban and comb having been found lying there, which were

taken into possession vide memo. Ex.PG and SHO prepared the site plan of the place of occurrence. He further deposed that SHO also prepared memo. Ex.PH of the place of demarcation. He further deposed that accused then led the police party to the place where dead body was kept concealed. Site plan of the said place was also prepared, besides memo. Ex.PI of the place of dead body being prepared by the Investigating Officer. He also deposed that a pair of shoes was also recovered which was identified by Gurvinder Singh and Avtar Singh and was taken into possession vide memo. Ex.PJ. He also deposed that the place was got photographed. It was further deposed that accused led the police party to his Dera and pointed out the place where dead body was put on the lift of the tractor and memo. Ex.PK was prepared. He also deposed that accused also led police party to the place where dead body was thrown in the canal and its memo. Ex.PL was also prepared. He further deposed that on 17.11.1998 accused disclosed the place of having kept concealed the tractor in his Dera, behind the heap of paddy straw and that disclosure being reduced into writing, accused led police party and got recovered tractor. He also deposed that accused Amar Singh was arrested on 16.11.1998.

PW12 Raj Kumar, Revenue Patwari deposed that on police request Ex.PM, he prepared a scaled site plan Ex.PM/1 as per revenue record.

PW13 HC Vrish Bhan tendered his affidavit Ex.PN in evidence regarding deposit of case property by SHO and having sent

the parcel to the Chemical Examiner.

PW14 Surjan Singh deposed that about 3/4 years prior to his making statement, SHO Mange Ram accompanied by HC Ram Juari and other police officials met him at Matheri Bus Stand where Amar Singh resident of Bhano Kheri arrived alongwith Nachhattar Singh accused and produced him before the SHO. He further deposed that SHO interrogated Nachhattar Singh who suffered disclosure statement Ex.PO.

PW15 Dr. R.C. Jindal deposed that on 14.11.1998 a Medical Board consisting of himself, Dr. R.K. Patnaik and Dr. Awan Chaudhary conducted postmortem on the dead body of Kehar Singh. The postmortem report Ex.PQ was prepared. The cause of death, in the opinion of the Board, was due to asphyxia, which was ante-mortem in nature.

PW16 Gurvinder Singh deposed that his grandfather Kehar Singh had purchased eight acres of land in village Sonta about 12/13 years prior to the occurrence. Initially, he used to manage the land personally and in May, 1998 he leased out the land to one Nirmal Singh of village Mehlan. He deposed that on 2.11.1998 Kehar Singh left his village to collect lease money from Nirmal Singh and did not return for 5/6 days. Then he alongwith his uncle Ram Sarup visited village Sonta and met Nachhattar Singh where he was told that Kehar Singh was last seen on 5.11.1998 in the evening. He further stated that Chuhar Singh, Sarpanch; Sucha Singh, Chairman and Ranjit

Singh were approached, who disclosed that Kehar Singh was last seen on 5.11.1998 at about 7.00 p.m. with Maya Chand near Radha Swami Satsang Bhawan. He further stated that thereafter he approached his maternal uncle Avtar Singh of village Chaurmastpur and narrated him the incident and tried to search Kehar Singh in the relations. On 13.11.1998 he got FIR Ex.PR registered. He further stated that on 13.11.1998 in the evening dead body of his grandfather was recovered from canal. He further deposed that on 15.11.1998 he alongwith his maternal uncle Avtar singh was present in village Sonta. In the meanwhile, police arrived and Maya Chand led the police party to the field, where he pointed out the place where Kehar Singh was murdered by strangulation and he got recovered turban and comb of Kehar Singh, which being identified, were taken into possession vide memo. Ex.PG. He also deposed that accused Maya Chand also pointed out the place, i.e. heap of paddy straw as well as the drain, where dead body was kept concealed and a pair of shoes being recovered. He also deposed about accused Maya Chand pointed out places pursuant to his disclosure. The witness identified turban Ex.P6, pair of shoes Ex.P7 and comb Ex.P8, which were recovered by the police at the instance of accused Maya Chand.

PW17 Avtar Singh also deposed on the lines of PW16 Gurvinder Singh.

PW18 Inspector Mange Ram (retd.) was the Investigating Officer and deposed on the lines as stated in the earlier part.

PW19 Tejinder Singh, Photographer deposed that on 13.11.1998, on request of the police, he took photographs Ex.P19 to Ex.P22 of the dead body with their negatives Ex.P23 to Ex.P26.

When examined under Section 313 Cr.P.C., all the accused denied the incriminating evidence appearing on the file against them and pleaded that they were innocent.

In their defence, they, however, did not lead any evidence.

As mentioned above, the learned trial Court acquitted Amar Singh of the charge against him, whereas, the two appellants, namely, Nachhatar Singh and Maya Chand were convicted and sentenced, as mentioned above.

It may not be out of place to mention here that on 6.7.2017, when the appeal came up for final hearing, learned counsel for the appellants informed the Court that Maya Chand-appellant had passed away during the pendency of the appeal. Accordingly, learned State counsel prayed for an adjournment for obtaining verification of the factum of death of Maya Chand. On the adjourned date, learned State counsel placed on record the report prepared by ASI Mange Ram. As per the same, the factum of death of Maya Chand having taken place on 19.7.2014 stood duly verified.

In view of the fact that Maya Chand appellant has since died, the appeal filed by him will abate. Accordingly, the appeal survives qua the challenge of Nachhatar Singh-appellant to his conviction and sentence under Section 201 IPC.

In order to sustain the charge under Section 201 IPC against Nachhattar Singh-appellant, the prosecution has examined PW6 Ram Singh and PW7 Bhupinder Singh, who had seen Nachhattar Singh-appellant and Maya Chand accused carrying a bundle on the lift of their tractor. Pursuant to the disclosure statement Ex.PC suffered by Maya Chand accused, tractor Ex.P5 was taken into possession vide memo. Ex.PD. The defence has suggested to PW6 Ram Singh that he was a witness against Angrej Singh. This suggestion was admitted by PW6 Ram Singh. The admission on the part of PW6 Ram Singh corroborates the prosecution version. The trial of Angrej Singh had ended in his conviction. PW6 Ram Singh also admitted that there were security proceedings under Sections 107/151 Cr.P.C. between him and Bachna on the one side and Angrej Singh, Maya Chand, etc. on the other. If PW6 Ram Singh was having criminal litigation against Angrej Singh, it cannot be believed that he would depose falsely in the present case at the instance of Angrej Singh.

PW7 Bhupinder Singh has also corroborated the testimony of PW6 Ram Singh. PW6 Ram Singh and PW7 Bhupinder Singh were going to Ambala on 21.11.1998 when they met the police party and disclosed about having seen Maya Chand and Nachhattar Singh accused carrying a bundle on the lift of their tractor on 8.11.1998. Merely because there were minor contradictions during the cross-examination of PW6 Ram Singh and PW7 Bhupinder Singh would not be sufficient to reject the prosecution case in its entirety.

In view of the above, no case is made out for any interference in the impugned judgment to the extent of convicting Nachhattar Singh-appellant of the charge under Section 201 IPC. The trial Court had appreciated the prosecution evidence in its proper perspective so as to establish the charge of Section 201 IPC against Nachhattar Singh-appellant. This Court, upon re-appreciation of the evidence of the prosecution, finds that Nachhattar Singh-appellant has been rightly convicted by the learned trial Court.

Coming to the quantum of sentence imposed by the learned trial Court upon Nachhattar Singh-appellant, this Court finds that he was sentenced to undergo imprisonment for five years and to pay a fine of Rs.2,000/- for committing the offence under Section 201 IPC. As per the custody certificate produced by the learned State counsel, Nachhattar Singh-appellant has already undergone an actual period of one year and two days. He is not shown to be either involved or convicted in any other case apart from the present case. He is on bail pursuant to the order passed by this Court on 25.10.2004. Besides, he has earned remission of one month and three days. In all, he has undergone sentence of one year, one month and five days. He is facing the agony of criminal prosecution for the last about 19 years.

Taking into consideration the totality of the circumstances, this Court finds that no case is made out for sending Nachhattar Singh appellant behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably

met if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, the sentence of fine, alongwith its default clause, can be maintained.

Resultantly, the appeal of Maya Chand-appellant is disposed of as having abated, whereas that of Nachhatar Singh-appellant is disposed of by upholding his conviction under Section 201 IPC but reducing the sentence of imprisonment to the one already undergone by him. The sentence of fine qua Nachhattar Singh- appellant, alongwith its default clause, is maintained.

	(T.P.S. MANN) (MAHABIR SINGH SINDHU)	
September 28, 2017	JUDGE	JUDGE
satish		

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO