

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Revision No. 897 of 2007

Date of Decision: 10.11.2017

Kuldip Singh

... Petitioner(s)

Versus

Harvinder Singh alias Haivi and others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. A.P.S.Mann, Advocate
for the petitioner(s).

Mr. Lovekirat S. Chahal, Advocate
for respondents No.1 & 2.

Mr. Dharam Pal, Advocate
for respondent No.3.

Mr. Madan Pal, Advocate
for respondent No.4.

Shekher Dhawan, J.

Present revision petition against the judgment of acquittal dated 4.10.2006, passed by learned Additional Sessions Judge, Gurgaon, whereby the accused persons were acquitted of the charges.

Facts relevant for the purpose of decision of the case that process of law was set into motion on 5.5.2002, as complainant-Kuldeep Singh (PW.5) reported the matter to the police vide his statement (Ex.PG) that he is resident of village Garoli Khurd and is agriculturist by profession. On 4.5.2002, he along with his cousin Sanjay visited Naresh Kumar, Advocate (since deceased). Thereafter, they were going back to their village

in the afternoon on their scooters. Complainant-Kuldeep Singh and Sanjay were on one scooter and Naresh Kumar, Advocate was on another scooter bearing registration No. HR-26-N-2557. At about 3.30 p.m., when they crossed Radha Sawami Satsang Bhawan, complainant and his cousin Sanjay stopped their scooter to urinate, whereas Naresh Kumar (deceased) kept going towards his village. Meanwhile, one vehicle of white colour came from the side of Gurgaon and hit the scooter of Naresh Kumar from its back side. Naresh Kumar fell down from the scooter and three young men aged about 25/26 years alighted from the vehicle; lifted Naresh Kumar from the place of occurrence; put him in their vehicle and went towards Pataudi. Out of those three persons, two were identified as Harvinder and Mahesh. But the driver of the vehicle and fourth occupant thereof could not be identified on the spot.

As per complainant, they tried to search Naresh Kumar and on 5.5.2002 at about 1/1.30 p.m., they were searching for Naresh Kumar in the area of Manesar. They came to know about the recovery of a burnt dead body in the fields near Behrampur. Complainant, his father and cousin Sanjay reached the said place and found the dead body of his brother Naresh Kumar, which was lying in burnt condition on the spot. As per complainant, Harvinder, Mahesh and their two accomplices murdered his brother Naresh Kumar and burnt his dead body on the heap of straw. The complainant also named Narender Kumar son of Mehar Singh, resident of village Garoli Khurd. As per complainant, Harvinder and Mahesh were having litigation with him, whereas Naresh Kumar was defending him and

Harvinder and Mahesh and two other persons and after the murder, dead body was put on fire.

On this information, police started the investigation. The accused persons were arrested. After completion of formalities, challan was presented against Harvinder Singh alias Haivi, Bishamber and Sanjay. During trial of the case, accused Mahesh was summoned as additional accused and all of them were tried. During trial, prosecution examined as many as 15 witnesses apart from leading documentary evidence. All the accused were examined under Section 313 Cr.P.C. Four witnesses were examined in defence evidence. After considering the prosecution as well as defence versions, the learned trial Judge acquitted all the accused and as such present revision petition against it has been filed before this Court.

Learned counsel for the petitioner/complainant argued at length that the learned trial Judge has completely ignored all the material facts of the case and the evidence available on the file and recorded judgment of acquittal. Infact, there was no dispute about identity of the accused persons as Harvinder Singh and Mahesh were identified on the spot. They had hit the scooter of deceased Naresh Kumar from its back side, thereafter lifted the body and took away the same in Qualis vehicle and the entire incident was seen by the petitioner/complainant as well as his cousin Sanjay. The matter was immediately reported to the police. Thereafter, the dead body was identified on 5.5.2002 by the complainant, his father and cousin Sanjay. The complainant appeared before the learned trial Judge as PW.5 and Sanjay, eye witness to the alleged occurrence as PW.15 and both of them were cross-examined at length, but they have been disbelieved without any

reason. The other witnesses, who are police officials, supported the prosecution version regarding recovery of articles and arrest of accused in the case. The defence version is just an after-thought version. The learned trial Judge acquitted the accused persons on account of delay in reporting the matter to the police, whereas infact there was no delay as the police was duly informed on phone immediately after kidnapping of Naresh Kumar and as soon as the dead body was recovered in burnt condition, the matter was reported to the police vide statement (Ex.PG). The prosecution has been able to prove on the file that there was motive on the part of the accused persons to commit the murder of Naresh Kumar as he is Advocate by profession and used to defend the case of complainant in the Court of law and accused persons were aggrieved of that and wanted to eliminate him. Even the disclosure statements made by the accused, which resulted into recovery, have also been ignored. Undue reliance has been placed upon not effecting the recovery of scooter of Naresh Kumar and recovery of Qualis vehicle. That may be a lapse on the part of investigating agency but the complainant cannot be put to suffer because of these lapses in such a heinous crime. The acquittal resulted into grave miscarriage of justice. As such present revision petition be accepted, judgment of acquittal be set aside and accused persons be punished according to law.

While arguing on these points, learned counsel representing the respondents submitted that the learned Court below has already considered all these point which were raised at the time of arguments and the judgment of acquittal was recorded, which does not require any interference and

present revision petition be dismissed.

Having considered all these facts and material available on the file, this Court is of the considered view that the learned trial judge has rightly considered the relevant points involved in this case that the alleged occurrence had taken place on 4.5.2002 when the offending vehicle had hit the scooter of the deceased and thereafter body of Naresh Kumar was lifted in the vehicle and it was recovered on the next day i.e. 5.5.2002 at about 1/1.30 p.m. in the area of Behrampur in burnt condition. There is absolutely no material or evidence available on the file that the matter was reported to the police immediately after the alleged occurrence. Infact, if the case of complainant is taken to be correct, the offence had been committed on 4.5.2002 in the afternoon and that was within the view of complainant and his cousin Sanjay. It had also come on the file that police post was at a distance of about 1 km. from the place of occurrence. More important point in the case is that the complainant is son of police official. Still the matter was not reported to the police. Though later on an attempt has been made to improve the version and to introduce that police party was informed immediately i.e. after ten minutes of occurrence. But there is absolutely no material on the file or no proceedings having taken place by the police. It is quite unbelievable that after such an incident, the complainant, who was accompanied by his cousin and he being a son of police official would go and take rest at his home and failed to report the matter to the police. It had also come in the cross-examination of the complainant that they had been searching Naresh Kumar in different areas and there were different police stations enroute but still there was no report to the police in any police station. Meaning thereby, the prosecution version is far away from the truth

on this point. The learned trial judge has rightly taken the view that it appears that an unsuccessful attempt was made to convert a blind murder to an eye witness account, which they failed to establish.

Undisputedly, the offending vehicle has not been recovered in the case. Nothing was recovered from the place of accident where the alleged occurrence had taken place on 4.5.2002 indicating that there was some accident involving Qualis vehicle and scooter and the said vehicle hit the scooter from the back side. If Naresh Kumar deceased had sustained injuries on the spot, there must be some blood marks on the spot. But there is no such investigation on that point. There is no mechanical examination of any vehicle indicating the impact of accident. If there had been any accident at the alleged place of occurrence on 5.5.2002, the inspection could bring the clear picture establishing the version of the complainant. But unfortunately, there is no such material or evidence on the file. That way, the learned trial Judge was left with no option but to disbelieve the so called eye witness, namely Sanjay (PW.15). The defence version and plea of denial was rightly held to be the probable version. Law on the point is also settled that benefit of doubt is to be given to the accused and in this case also, the learned trial Judge has rightly acquitted the accused by giving benefit of doubt. Thus, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

November 10, 2017

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No