

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-39-DB-2008
Reserved on : 19.02.2020
Date of decision : 04.03.2020

Nachhattar Singh alias Gora

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Gurjinder Singh Thind, Advocate
for the appellant.

Mr. H. S. Grewal, Addl. A. G. Punjab.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 27.09.2007 rendered by the learned Sessions Judge, Mansa, in Sessions case no.07 dated 31.08.2005 whereby, the appellant along with co-accused Sukhwinder Singh, Charanjit Singh and Raj Kumar was charged with and tried for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (in short 'IPC'). The appellant was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of five months. However, the co-accused of the appellant were acquitted.

2. The case of the prosecution, in a nutshell, is that MLR of Hardeep Singh son of Hazur Singh was received in Police Station City

Mansa on 29.05.2005. ASI Gurcharan Singh went to the Civil Hospital,

Mansa. He moved an application Ex.PF. The doctor made an endorsement Ex.PF/1 declaring the patient unfit to make statement. There was no other person present with the injured who could be the eye witness. The endorsement Ex.PF/1 was made by the doctor at 3.40 A.M. ASI Gurcharan Singh again went to the hospital and filed an application Ex.PG upon which the doctor made an endorsement Ex.PG/1 that the patient was referred to DMC & Hospital, Ludhiana, at 06.15 AM. Nobody contacted the ASI. On 30.05.2005 ASI Gurcharan Singh was proceeding to DMC & Hospital, Ludhiana along with other police officials. He received a telephonic message from MHC Prem Kumar of Police Station at 11.00 AM on the cell phone of the Investigating Officer that injured Hardeep Singh had expired. The Investigating Officer went to Police Station Division no.8, Ludhiana. He collected ruqa received from DMC & Hospital, Ludhiana. The dead body of Hardeep Singh was received at about 04.30 PM. Harmeet Kaur wife of Hardeep Singh was present in DMC & Hospital, Ludhiana. FIR Ex.PH was registered. The version of the prosecution is that three days before 30.05.2005 deceased Hardeep Singh and accused Raj Kumar, an employee of Government Hospital, Mansa, had jointly purchased a maruti car. On 27.05.2005 Raj Kumar came along with Nachhattar Singh alias Gora accused for taking car. Hardeep Singh refused to hand over the car. Accused were under the influence of liquor. On 28.05.2005 Nachhattar Singh alias Gora, Raj Kumar and Sukhwinder Singh alias Ghilli accused came to the house at about 05.00 PM for taking car from Hardeep Singh. Hardeep Singh told them that they would discuss the matter in the godown of Gas Agency of Charanjit Singh. The dead body of Hardeep Singh was

sent for post-mortem examination. The post-mortem was conducted. The cause of death was shock and haemorrhage due to injury found on the dead body of Hardeep Singh. The injury was ante mortem and sufficient to cause death in ordinary course of nature. The investigation was completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of the appellant and co-accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellant was convicted and sentenced, as noticed hereinabove. However, his co-accused were acquitted. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Dr.M.L. Gupta deposed that patient Hardeep Singh was admitted in Emergency Ward of DMC and Hospital on 29.05.2005 at 10.47 A.M. The patient was referred from Civil Hospital, Mansa. He was the head of Surgery Department of the DMC and Hospital and heading the team of doctors for treatment of Hardeep Singh patient. It was a case of assault on 28.05.2005 at about 10.30 P.M. with ice pick. The patient expired on 30.05.2005. In the post operative period, the patient went into hypotension and blood pressure became unrecordable on 30.05.2005. He died due to cardio respiratory arrest due to injuries causing blood loss and hypotension.

In his cross-examination, he admitted that the column relating to the name of the person to whom dead body was handed over in the slip Ex.P4/D was lying blank. He did not know to whom the dead body was handed over. There was no application of the police in the record brought by him seeking any information about the fitness of the victim or otherwise. There was no note in his hand in the record brought by him that the patient was examined by him, treated by him or operated by him. He had only one team of doctors. He did not mention in the record that cardio respiratory arrest was due to loss of blood due to injuries.

8. PW-2 Dr.Yashpal Garg conducted the post-mortem examination on the body of Hardeep Singh on 31.05.2005 at 9.30 A.M. He noticed the following injuries on the person of deceased:-

“1. Punctured wound, circular in shape, 3 mm in diameter, on the left side of anterio lateral surface of abdomen, 4 cm below the costal margin 15 cm from mid line, with everted, ragged and reddish edges. Fat was protruding out of the wound. No granulation was seen. Serious blood discharge was present.

On dissection, infiltration of blood in the abdominal wall was present. Track was going upward, medially and posteriorly which was narrowed as it goes deeper. Injuring the peritoneum, mesentary and its vessels alongwith retroperitoneal vessels. Massive amount of dark coloured blood was present in the peritoneal cavity and retroperitoneal region.

2. *20 cm long stitched wound on the midline of the anterior abdominal wall with stitches was present. Edges were red and swollen. Stitches of abdominal removed and abdomen opened up.*
3. *Two needle puncture marks on the right side of the neck with two stitches on the right side of the neck.*
4. *One needle puncture mark on the anterior surface of right elbow.*
5. *I/V cannula in situ on the left wrist.”*

In their opinion, the death was due to result of haemorrhage and shock due to injuries which were sufficient to cause death in the ordinary course of nature. The injuries were ante mortem in nature. The probable time that elapsed between injury and death was about 36 hours and between the death and post-mortem was within 36 hours. In his cross-examination, he admitted that he did not mention in the post-mortem report that the death was due to cardio respiratory arrest but he mentioned shock and haemorrhage which result to cardio respiratory arrest.

9. PW-5 Dr.Sukhdev Singh Domeli examined patient Hardeep Singh on 29.05.2005. The patient was conscious, oriented in time place and person. He noticed the following injuries on his person:-

- “1. *A sharp wound 3 x 3 m.m. round in shape present on left lumbar region of anterior abdominal wall 4 c.m. below costal margin. Margins were inverted and small amount of blood was present. Injury was kept under observation and X-ray examination was advised.”*

The probable duration of injury was within 6 hours. Kind of weapon was sharp. He proved the MLR Ex.PJ.

10. Statement of PW-3 Harmit Kaur was recorded on 21.03.2006. She was declared hostile and cross-examined by the learned Public Prosecutor on 21.03.2006. Learned State counsel sought time to move application under Section 319 Cr.P.C. to arraign Raj Kumar. Thereafter, Raj Kumar was arraigned as accused.

11. Statement of PW-3 Harmit Kaur was again recorded on 30.09.2006. She categorically stated in her examination-in-chief that her husband did not purchase the car jointly with any person. She did not identify Raj Kumar in the Court. About one and half year ago, her husband Hardeep Singh came back to the house with the injury on left side of his abdomen. Her husband did not disclose to her the manner in which he suffered injury because he was unconscious. Two persons brought her husband in injured condition. She did not know those persons. Ranjit Singh was the nephew of her husband, i.e. his sister's son. Ranjit Singh was not with her husband when he came back home. However, she called him by telephone call. She was declared hostile and cross-examined by the learned Public Prosecutor. She resiled from the statement made before the police and earlier statement recorded in the Court on 21.03.2006. She denied the statement Ex.PH. In her cross-examination by the learned Public Prosecutor, she deposed that she did not make any statement to police that three days before 30.05.2005 her husband and Raj Kumar accused purchased Zen maruti car jointly. She was confronted with portion A to A1 of statement Ex.PH. She did not make statement to the police that Raj Kumar was posted as Clerk in Government Hospital, Mansa. She was confronted with portion

B to B1 of statement Ex.PH where it was so recorded. She denied the suggestion that on 27.05.2005, i.e. on next day, Raj Kumar and Nachhattar Singh alias Gora came to her house to take the car while they were drunk and her husband refused to give them the car and they went away grambling. She did not make such statement to the police. She was confronted with portion C to C1 of statement Ex.PH. She also denied the suggestion that on 28.05.2005 Nachhattar Singh, Raj Kumar and Sukhwinder Singh accused came to her house at 5.00 P.M. and demanded car from her husband. She was confronted with portion D to D1 of statement Ex.PH. Her husband came back home at about 1.00 A.M. or 1.30 (midnight). He was having injury on his abdomen. At that time injury was not bleeding. She denied the suggestion that her husband was brought in the injured condition by accused Charanjit Singh and PW Ranjit Singh. She did not make such statement to the police. She was confronted with portion F to F1 of statement Ex.PH. She denied the suggestion that she stated to the police that injury on the left flank of her husband was bleeding. She was confronted with portion G to G1 of statement Ex.PH. She denied the suggestion that her husband told her that there was quarrel between her husband and accused Raj Kumar, Nachhattar Singh and Sukhwinder Singh in the godown of gas agency of Charanjit Singh and Sukhwinder Singh and Raj Kumar held him from his arm and Nachhattar Singh inflicted blow on his left flank with the ice pick (sua) and Charanjit Singh was exhorting his co-accused to kill Hardeep Singh. She was confronted with portion H to H1 of statement Ex.PH. Her statement was earlier recorded in the Court but it was as per version prepared by the police. When she made statement in the Court on 21.03.2006, she deposed that 4/5 days before the occurrence, her

husband purchased Zen maruti car with Raj Kumar employee in Government High School, Mansa. But that was made as told by the police to her. She admitted that on 21.03.2006 she deposed in the Court that 10 months ago Raj Kumar accused had come to her house as they wanted to have party for purchasing a new car. She stated so at the instance of police. She had stated in her earlier statement that Raj Kumar had taken her husband from house at about 4.00/5.00 P.M on 28th May, but she stated so at the instance of police. She had mentioned that Ranjit Singh nephew of her husband went along with her husband and Raj Kumar but that was on the basis of statement prepared by the police. She had also mentioned in the statement made on 21.03.2006 that her husband was brought home at 11.30 A.M. by Charanjit Singh and Ranjit Singh was also with them. It was according to the directions given to her by the police. She also denied the suggestion that she made statement in the cross-examination conducted by the learned State counsel that Raj Kumar and her husband purchased the car jointly but Raj Kumar was still making payment of his share. She was confronted with portion B to B1 of her statement dated 21.03.2006. She also denied the suggestion that both Raj Kumar and Nachhattar Singh were under influence of liquor. She was confronted with portion C to C1 of statement dated 21.03.2006. She might have stated in her cross-examination conducted by the State counsel that on the next day in the evening Nachhattar Singh, Raj Kumar and Sukhwinder Singh came to her house and demanded the car from her husband and her husband told that matter would be discussed in gas agency of Charanjit Singh as told to her by the police. She did not know whether her husband was brought in the house in a vehicle or otherwise by two persons. She could not identify those

persons. In her cross-examination conducted by the learned defence counsel appearing on behalf of accused Sukhwinder Singh, she deposed that she did not know accused Sukhwinder Singh earlier.

12. PW-4 Jasbir Kaur deposed that she did not know with whom her father jointly purchased the car. No one come to take car from her father in her presence. No one had come to take her father from house on 28.05.2005. Two persons had come with her father who was injured. She did not know who those two persons were. Her father did not disclose to them who had caused him injuries as he was unconscious. She was declared hostile and cross-examined by the learned Public Prosecutor. She denied the statement Mark A made to police. She denied the suggestion that few days before occurrence, her father jointly purchased Zen car with Raj Kumar accused nor she made such statement before the police. She was confronted with portion B to B1 of statement Mark A. She denied the suggestion that on 27.05.2005 Raj Kumar and Nachhattar Singh accused came to fetch the car from her house while they were drunk. She was confronted with portion D to D1 of statement Mark A. She denied the suggestion that Ranjit Singh was present in their house. She denied the suggestion that on 28.05.2005 at 5.00 P.M., accused Nachhattar Singh, Raj Kumar and Sukhwinder Singh came to their house and demanded the car from her father. She was confronted with portion F to F1 of statement Mark A. She denied the suggestion that her father was brought home at about 1 o'clock in midnight by Charanjit Singh accused and Ranjit Singh PW in the four wheeler and there was bleeding from his left flank and they told to her and her mother that there was an altercation with regard to sharing of car in which Sukhwinder Singh and Raj Kumar held her father from arm and Nachhattar

Singh accused inflicted blow with ice pick on his abdomen. She was confronted with portion H to H1 of statement Mark A.

13. PW-6 Ranjit Singh deposed that Hardeep Singh deceased was his real maternal uncle. He did not know whether Hardeep Singh purchased a car jointly with any person. He came to house of his maternal uncle only after he learnt about his death. No occurrence had taken place in his presence on 27.05.2005 wherein he had seen Nachhattar Singh accused inflicting ice pick (sua) blow in the left flank of Hardeep Singh and Sukhwinder Singh and Raj Kumar holding him and Charanjit Singh instigating them. He did not come to his maternal uncle's house on 27.05.2005. He did not see any incident on the night of 28/29.05.2005. He was declared hostile and cross-examined by the learned Public Prosecutor. He was confronted with statement Mark B. He denied making statement Mark B. In his cross-examination by learned Public Prosecutor, he denied the suggestion that he had come to meet his maternal uncle Hardeep Singh on 27.05.2005. He also denied the suggestion that in his presence Raj Kumar and Nachhattar Singh accused came to his maternal uncle Hardeep Singh to take away the car and they were under the influence of liquor. He was confronted with portion C to C1 of statement Mark B. He also denied the suggestion that on 28.05.2005 Nachhattar Singh, Raj Kumar and Sukhwinder Singh came to the house of his maternal uncle and demanded car from him and Hardeep Singh told them they would meet at Gas Agency of Charanjit Singh accused and they would discuss the matter in the godown of agency and would decide about the person who could take the possession of car. He was confronted with portion E to E1 of statement Mark B. He denied the suggestion that he accompanied his maternal uncle Hardeep

Singh along with three accused where Charanjit Singh co-accused was already present. He was confronted with portion F to F1 of statement Mark B. He denied the suggestion that quarrel took place between them and Sukhwinder Singh and Raj Kumar held Hardeep Singh from his arms and Nachhattar Singh co-accused inflicted the blow with the ice pick (sua) on the left flank of Hardeep Singh. He was confronted with portion G to G1 of statement Mark B. He denied the suggestion that he told accused Charanjit Singh that they had committed a dangerous act and in case Hardeep Singh dies, they would be implicated for his murder, that they arranged for a four wheeler in which Hardeep Singh was taken in the injured condition to the house. He was confronted with portion J to J1 of statement Mark B. He deposed that when he came back to house of his uncle, his dead body was lying in Civil Hospital, Mansa. He did not know if Hardeep Singh his maternal uncle was referred to New Dayanand Hospital, Ludhiana where he succumbed to injuries on his person on 30.05.2005. He was confronted with portion K to K1 of statement Mark B. He was not associated during the investigation of the case on 05.06.2005. He denied making disclosure statement by Nachhattar Singh in his presence on the basis of which he got recovered blood stained ice pick from the disclosed place.

14. PW-7 Inspector Gobinder Singh deposed that on 30.05.2005 he was posted as SHO of Police Station City Mansa. At Khokhar road Ranjit Singh PW met him. They went to Ramditte wala crossing. They arrested Nachhattar Singh alias Gora accused. He was interrogated. Accused made disclosure statement Ex.PM. The accused took the police to the disclosed place on the Khokhar road. He got recovered the sua (ice pick). It was taken into possession vide memo Ex.PN.

15. PW-8 ASI Gurcharan Singh deposed that on 29.05.2005 he was posted in Police Station City Mansa. MLR of Hardeep Singh was received in the police station. He went to Civil Hospital, Mansa for recording statement of injured. He filed an application Ex.PF before the doctor concerned who made the endorsement Ex.PF/1 finding the patient unfit to make statement. In the noon time on the same day, he again went to Civil Hospital, Mansa and filed application Ex.PG before the doctor concerned who made endorsement Ex.PG/1 that the patient was referred to DMC and Hospital, Ludhiana. On 30.05.2005 he proceeded to record the statement of injured to the DMC and Hospital, Ludhiana. He was informed that Hardeep Singh died during the night in the DMC and Hospital, Ludhiana. He reached DMC and Hospital, Ludhiana. The dead body was taken into possession. He recorded statement of Harmit Kaur wife of Hardeep Singh deceased. He correctly recorded the statement of Harmit Kaur vide Ex.PH. He recorded statement of Jasbir Kaur on 31.05.2005. He went to the spot and prepared rough site plan Ex.PV. He arrested accused Sukhwinder Singh, Charanjit Singh and Raj Kumar. Statement of Ranjit Singh was also recorded vide Ex.PZ. In his cross-examination, he deposed that he reached Civil Hospital, Mansa, on 29.05.2005 in the early morning at 2.30 AM. There was no family member of Hardeep Singh present in the Civil Hospital with Ranjit Singh as they were stated to have gone to buy medicine.

16. According to FSL report Ex.PAA, Pajama and sua (ice pick) were stained with human blood.

17. The post-mortem examination was conducted by PW-2 Dr.Yashpal Garg. The cause of death was shock and haemorrhage due to injuries which were sufficient to cause death in ordinary course of nature.

The probable time that elapsed between injury and death was about 36 hours and between the death and post-mortem was within 36 hours. Hardeep Singh was initially examined by PW-5 Dr.Sukhdev Singh Domeli at Civil Hospital, Mansa, on 29.05.2005. Thereafter, he was referred to DMC and Hospital, Ludhiana. The surgery was conducted at DMC and Hospital, Ludhiana. Hardeep Singh died on 30.05.2005.

18. The case of the prosecution is that the deceased had purchased a car jointly with Raj Kumar. Raj Kumar had come to take away the car. Hardeep Singh refused. Thereafter, accused had gone to godown of Charanjit Singh to settle the matter. Hardeep Singh was brought home by two persons in the mid night. He was having injury on his abdomen. Statement of PW-3 Harmit Kaur was recorded earlier on 21.03.2006 in the Court. She was declared hostile. Thereafter, the prosecution had moved an application under Section 319 Cr.P.C. to arraign Raj Kumar. Statement of PW-3 Harmit Kaur was again recorded afresh on 30.09.2006. She did not support the case of the prosecution in her examination-in-chief. She was declared hostile. She was confronted with her statement Ex.PH. Similarly PW-4 Jasbir Kaur did not support the case of the prosecution. She was also confronted with statement Mark A (Ex.PU). PW-3 Harmit Kaur in her examination-in-chief deposed that her husband was unconscious and he did not disclose the manner in which he had suffered injuries. She did not identify two persons who had brought her husband in her house. PW-6 Ranjit Singh was not with her husband when he came back. Similarly PW-4 Jasbir Kaur deposed that she did not know with whom her father had purchased the car jointly. No one came to take away the car in their presence

on 28.05.2005. Two persons had come with her father who was injured. She did not know the names of those persons. PW-6 Ranjit Singh has also not supported the case of prosecution. The gist of his examination-in-chief is that he came to the house of his uncle after he came to know about his death. He was confronted with statement Mark B (Ex.PZ). According to PW-7 Inspector Gobinder Singh, accused Nachhattar Singh made a disclosure statement in the presence of Ranjit Singh on the basis of which ice pick was recovered. However, PW-6 Ranjit Singh deposed that neither recovery was made in his presence nor any disclosure statement was made by Nachhattar Singh in his presence. The genesis of the dispute was that deceased Hardeep Singh purchased a car jointly with Raj Kumar. No RC was produced on record by the prosecution. The dispute if any was between Raj Kumar and deceased Hardeep Singh and not between Nachhattar Singh and accused. The prosecution has failed to prove the case against the appellant.

19. Accordingly, the appeal is allowed. The judgment and order dated 27.09.2007 are set aside. The appellant is acquitted of the charges. The appellant is on bail. His bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 04, 2020.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No