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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-72-DB-2005 (O&M)

Date of Decision: 04.03.2025

HARJINDER SINGH

... Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Tejinder Pal Singh, Amicus Curiae
for the appellant.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 25.10.2004 passed by the Sessions Judge, Amritsar.

2. The FIR was registered on 16.09.2001, the judgment of conviction and order of sentence passed by the Sessions Judge, Amritsar is dated 25.10.2004, the appeal was filed on 28.01.2005 and the matter is being taken up for hearing now i.e. after a period of more than 23 years from the date of registration of the FIR.

3. The prosecution story in brief is that Nishan Singh S/o Gurdial Singh lodged a complaint with the police stating that he was a resident of Village Gaggobua and was working as a Conductor on a private mini bus. He had one brother and one sister Kulwinder Kaur who was married to Palwinder Singh of village Chhapa. His younger brother Khajan Singh was assisting his



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father in domestic work. They all used to pay obeisance at Baba Budha Sahib on every Sangrand. This time also they were to go to Baba Budha Sahib to pay obeisance for which his sister and her husband Palwinder Singh had come to their village in the evening. Then he (complainant) contacted the driver of the bus where he was employed as a Conductor to come to the village with passengers so that he (complainant) could also accompany his family members to pay obeisance at Baba Budha Sahib. At about 03.30/4.00 AM the driver had come with his mini bus after which he, his mother Gurbachan Kaur, sister Kulwinder Kaur and sister's husband Palwinder Singh and younger brother Khajan Singh went to pay obeisance after leaving behind their father in the house. When they came back to the house at about 06.00 AM they found that the outer door of the house was lying opened and their father Gurdial Singh was lying on the ground in a pool of blood after having fallen down from the cot. Harjinder Singh son of Sucha Singh caste Jat resident of Gaggobua carrying a knife like weapon in his hand saw them and immediately ran away from the spot. He and his mother and other members found that Gurdial Singh had been murdered by giving knife blows and by strangulation using a rope. Blood was oozing out from the wounds of the nose under the left ear and on the back of the left shoulder. Leaving behind his sister's husband Palwinder Singh, he went to call his other family members to guard the body and then went to inform the police. He met the police party at bus stand of village Gaggobua. The motive behind the occurrence was that Harjinder Singh had come to their house some time prior to the occurrence and had asked his father to keep one unauthorised pistol with him (deceased).



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His father had refused to do so and there had been a hot exchange of words between them. Harjinder Singh had seen his father alone in the house and had committed the murder by giving knives blows and by strangulation.

4. The aforesaid statement, Ex. PH was made about this occurrence before the SHO who after making his endorsement, Ex. PH/3 sent it to the police station on the basis of which FIR, EX.PH/4 was recorded against the accused under Section 302 IPC. The SHO accompanied by the complainant and others went to the spot and after inspecting the same prepared a rough site plan, Ex.PG with correct marginal notes. He got the spot/dead body photographed from Sarabjit Singh, Photographer, PW10. He prepared the inquest report, Ex. PC in respect of the dead body and sent the same for post mortem examination to Civil Hospital, Tarn Taran, alongwith his application, Ex. PB, through Sukhbir Singh and Sawinder Singh, constables, PW9 and PW2, respectively. He lifted bloodstained earth from the spot and put the same in a small tin box which was sealed with the seal of HS and was taken into possession vide memo, Ex. PJ. The blood stained parna, Ex. P2 of the deceased was also found lying at the spot which was converted into a separate parcel and sealed with the same seal. That, parna was taken into possession vide memo, Ex. PL. The plastic rope, Ex. P1 used for strangulating the deceased was also recovered from the spot which was taken into possession vide memo Ex. PK. One bloodstained Dang, Ex. P.3, was also recovered from that place which was taken into possession vide memo, Ex. PM. The autopsy on the dead body was performed by Dr. Dilbagh Singh, PW-1 who found four ante mortem injuries on the same and gave his opinion that the cause of death



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was due to asphyxia as a result of injury no.1 which was sufficient to cause death in the ordinary course of nature. After the post mortem examination, the wearing apparels found on the dead body of the deceased were produced by Sukhbir Singh constable before the SHO, who converted those into a parcel and sealed the same with his seal, HS. The sealed parcel was taken into possession vide memo, Ex.PO. After coming back to the Police Station, the SHO deposited the case property in the same condition with Gurdip Singh, AMHC, PW8. The SHO arrested the accused on 05.10.2001. When he was interrogated in the presence of Jagir Singh, ASI and Salwant Singh, he made a disclosure statement, Ex. PR that he had kept concealed a knife in the heap of chaff lying in his house about which he had the knowledge and could get the same recovered from that place. In pursuance of his disclosure statement, the accused got recovered the knife from the said place. The SHO prepared a rough sketch, Ex. PS thereof and took the same into possession vide memo, Ex. PT. On 30.10.2001, the sealed parcels containing blood stained earth and wearing apparels of the deceased were sent to the Forensic Science Laboratory, Punjab, Chandigarh, through Ram Singh, constable, PW3. After analysis it was reported by the Assistant Director of that Laboratory vide her report Ex.PU, that the same were stained with human blood. In the course of Investigation, the photographs taken by the photographer at the spot, Ex. P.9 to Ex. P.11 and the negatives thereof, Ex. P.6 to Ex. P.8 were produced by him before the SHO and were taken into possession by the SHO. The map on scale of the place of occurrence was got prepared from Rishi Ram, draftsman,



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PW4. After the completion of the investigation, the challan was put in before the S.D.J.M., Tarn Taran who committed the same to the Court of Sessions.

5. Charge was framed against the accused under Section 302 IPC. He pleaded not guilty and claimed trial.

6. To bring home the guilt of the accused, the prosecution examined Dr. Dilbagh Singh, PW-1, Sawinder Singh, LC, PW2, Ram Singh, LC, PW3, Rishi Ram, Draftsman, PW4, Nishan Singh, PW5, Kulwinder Kaur, PW6, Sukhpal Singh, Constable, PW7, Gurdip Singh, HC, PW8, Sukhbir Singh, LC, PW9, Sarabjit Singh, Photographrer, PW10, Gurbhinder Singh, PW11 and Hardev Singh, Inspector, PW12. The gist of the statements are as under:-

Dr. Dilbagh Singh, Medical Officer, Civil Hospital, Tarn Taran was examined as PW1 and found the following injuries on the person of the deceased:-

1. *On external examination, cyanosis was present on face nails and oral mucous membranes. Both conjunctivae were congested and single ligature mark measuring 18 cms x. 6 cm brownish in colour, dry, hard and parchement like present at the level of thyroid cartilage.
On internal examination, echymosed was present into subcutaneous tissue under, ligature mark, the neck muscle laryneal cartilages and tracheal rings were congested.*
2. *An abrasion of .8 x .4 cm was present on the middle of nasal bridge.*
3. *An incised wound of 1 cm x .5 cm was present on the back on left side. 3 cms from left inferior angle on lateral side.*
4. *An incised wound of 1 x .3 cm was present on the back of left pinna.*

As per him, cause of death was asphyxia due to injury No.1 which was sufficient to cause death in the ordinary course of nature. In his



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cross-examination, he stated that injuries No.3 and 4 could be caused with a knife and that with injury No.1 alone death could be caused.

LC Ram Singh (PW3) submitted his sworn affidavit Ex.PF.

Rishi Ram (PW4), Draftsman prepared the scaled plan Ex.PG after seeing the spot at the pointing out of Nishan Singh.

Nishan Singh/complainant (PW5) narrated his version as so narrated in the FIR. He also stated that he had accompanied the police to the place of occurrence and had participated in the inquest proceedings. The rough site plan was prepared by the police. Bloodstained earth was lifted from the place of occurrence, made into a parcel and sealed. The rope was also taken into possession against memo Ex.PK attested by him and the said rope was Ex.P1 which had been tied around the neck of his father. A bloodstained Parna of his father had also been taken into possession vide memo Ex.PL attested by him. One bloodstained Dang was taken into possession against memo PM. The Parna was Ex.P2 and Dang Ex.P3. In cross-examination, he denied the suggestion that the accused was a frequent visitor to their house or that there was litigation pending between them.

Kulwinder Kaur wife of Palwinder Singh and daughter of the deceased was examined as PW6. Her version is similar to that of her brother PW5-Nishan Singh. In cross-examination she stated that the accused who was the neighbour of her parents enjoyed good relations with them but he was not frequent visitor to the house of her parents. She stated that the rope was tied around the neck of her father. The constable Sukhpal Singh was examined as PW7 and produced his sworn affidavit Ex.PN.



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Head Constable Gurdip Singh was examined as PW8 and furnished his affidavit Ex.PO.

LC Sukbbir Singh was examined as PW9 and produced in evidence his sworn affidavit Ex.PO/1.

Sarabjit Singh, Photographer was examined as PW10 and stated that he had taken photographs of the dead body in the area of village Gaggobua at the instance of the police and the photographs and the negatives were handed over by him to the police.

Gurbhinder Singh was examined as PW11 and stated that he was a driver on mini bus No.PB02-9930 which used to ply Jabbal in Amritsar. Nishan Singh was the conductor of that bus. On 16.09.2001, they had taken passengers to Baba Budha Sahib where they reached at 05.00 AM. After paying obeisance they returned back to Gaggobua at about 06.00 AM.

Inspector Hardev Singh the then SHO Jabbal was examined as PW12. He stated that the complaint leading to the registration of the FIR was made before him by complainant/Nishan Singh. He made an endorsement and sent to the same Police Station for the registration of the formal FIR Ex.PH/4 which was recorded by ASI Sucha Singh. Thereafter, he accompanied the complainant to the place of occurrence, found the dead body of Gurdial Singh at the spot which was identified by Palwinder Singh and Swaran Singh. He completed the inquest proceedings Ex.PC. He also prepared the rough site plan Ex.PP with correct marginal notes and forwarded the dead body for postmortem examination along with the request Ex.PB. He also prepared the injury chart Ex.PC/1. Bloodstained earth was lifted from the spot and was put



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in a plastic box and converted into a sealed parcel. One bloodstained Parna was taken into possession vide memo Ex.PL and sealed. A plastic rope measuring about 4 meters was also taken into possession vide memo Ex.PK. One bloodstained Dang was also taken into possession from the spot vide memo Ex.PM. The Parna was Ex.P1, rope Ex.P2 and Dang Ex.P3. All the memos were attested by ASI Jagir Singh and Nishan Singh (PW5). On 17.09.2001, LC Sawinder Singh produced before him one Kachhera and a Fatuhi of the deceased after the postmortem examination which was sealed into a parcel. The accused was arrested on 02.10.2001. The Kachhera was (Ex.P4) and Fatuhi (Ex.P5). On 05.10.2001 on the disclosure statement of the accused, a knife was recovered from a heap of chaff. The disclosure statement was (Ex.PR) and the knife was taken into possession vide Ex.PT. Thereafter, after conclusion of the investigation, he presented challan against the accused. During cross-examination, he stated that the bloodstained clothes of the accused were not recovered by him. The knife recovered was also not having bloodstains. He also stated that the rope which was recovered was like in any other ordinary rope available in the market and so was the knife. He also stated that his inquiries revealed that the accused was a frequent visitor to the complainant. He denied the suggestion that Gurdial Singh (deceased) was caught in the rope and the electric Toka when he was cutting grass and on hearing his cries, the accused reached there in order to save him and later on, false story had been created.

7. After the closing of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating



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circumstances appeared against him in the prosecution evidence were put to him. He denied all those circumstances and pleaded his innocence and false implication. He was called upon to enter on his defence and he examined Salwant Singh as DW1 in his defence evidence.

8. Salwant Singh was examined as DW1 and stated that on 16.09.2001 he had gone to village Gaggobua to attend the marriage of his relative Mehar Singh. A quarrel had taken place in which a person had died. A number of persons had collected at the spot and he was one of them. He had seen a rope around the neck of the dead body of the deceased who died at the spot in his presence. The police came to the spot and removed the body to the hospital. His statement had not been recorded by the police and his signatures were obtained on a blank paper when he had gone to the Police Station. No recovery had been effected in his presence. The daughter of the deceased was a visiting terms with the accused present in Court and she used to visit in his presence as well. On this account, the accused had been falsely implicated in the present case. In fact, the deceased had died accidentally when the Toka machine was operated. During cross-examination, he stated that his signatures appearing on various memos had in fact been taken on blank papers as he was involved in 8-9 other criminal cases. He also stated that no knife had been recovered in his presence.

9. Based on the evidence led, the accused/appellant came to be convicted and sentenced by the Court of Sessions Judge, Amritsar vide judgment and order of sentence dated 25.10.2004 as under:-



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Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
302 IPC	Life imprisonment	Rs.5000/-	RI for 02 years

10. It is the aforementioned judgment, which is under challenge, in the present appeal.

11. The learned counsel for the appellant contends that there is no eye-witness of the occurrence. PW5-Nishan Singh and PW6-Kulwinder Kaur came to the spot later. The motive for the commission of the offence is extremely weak inasmuch as it is stated that the accused wanted the deceased to keep his country-made pistol in the house of the deceased which request was not acceded to by the deceased because of which there were altercations between the two, finally leading to the alleged commission of the offence. He contends that there is no evidence as to from where the rope allegedly used in the strangulation had been recovered. He therefore contends that the impugned judgment was liable to be set aside and the accused acquitted of the charges framed against him.

12. On the other hand, the learned State counsel contends that the depositions of PW5-Nishan Singh and PW6-Kulwinder Kaur are consistent with regard to the occurrence in question. The medical evidence of the death being caused by strangulation is substantiated from the recovery of a rope from the spot. The discrepancy regarding whether the rope was still on the neck of the deceased or lying separately on the spot is too minor so as to affect the prosecution case. He therefore contends that as the offence stands



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established beyond reasonable doubt, the present appeal was liable to be dismissed.

13. We have heard the learned counsel for the parties and gone through the record.

14. The argument that the statements of PW5-Nishan Singh and PW6-Kulwinder Kaur have no evidentiary value as they had not witnessed the occurrence cannot be accepted. As per their depositions, they had gone with their family members to pay obeisance at Baba Budha Sahib on the occasion of Sangrand at about 03.30/4.00 AM in a bus whose driver was PW11-Gurbhinder Singh who has admitted the factum of having taken the family of the deceased to the Gurdwara. When they came back home, they saw the accused carrying a knife like weapon in his hand, who on seeing them ran away from the spot. Their father Gurdial Singh was lying dead having been murdered by knife blows and by strangulation. This evidence apparently is in the realm of 'res gestae' evidence as envisaged under Section 6 of the Indian Evidence Act. These prosecution witnesses saw the accused in their house, armed with a knife standing near their dead father and on seeing them he fled away.

15. In the context of 'res gestae' evidence, in **Veerendra Versus State of Madhya Pradesh, 2022 AIR Supreme Court 2396**, the Hon'ble Supreme Court held as under:-

“10. It is the further contention on behalf of the appellant that though, PW-14 testified that the finger nail injuries were seen on the right cheek of the appellant, his MLC would indicate finger nail injuries only on the left side of the face and neck. At any rate, no



reliance should have been given on that issue as the appellant was in the custody of the police even before his formal arrest, as spoken by PW-4. It was also contended that the date of birth of the victim was not proved by producing the school records. Furthermore, it was contended that the conclusion that the deceased was lastly seen in the company of the accused was arrived at relying on the oral testimonies of PW2 and PW-4 without proper appreciation of various relevant aspects. According to the appellant neither PW-2 nor PW-4 had informed about the same to the police at the first instance, i.e., at the time of lodging complaint regarding missing of the victim. The non-examination of one Rakesh who, according to the prosecution, joined PW-4 and the appellant for drinking during that night and that of Sri Ganesh, the father of the deceased, who was an attesting witness to certain mahazars for the recoveries and seizures, is fatal to the case of the prosecution. In regard to the testimony of PW-12 that he had seen the appellant coming out of the bada of Jagan Sindhi, in the night of 19.09.2014 at about 09:00 pm, it is submitted that it ought not to have been taken as a link in the chain of circumstances, as his statement under Section 161 Cr.P.C. was taken belatedly. May be as an alternative contention it is contended that PW-12 is a chance witness and his testimony is not creditworthy.

36. The evidence of PW-12 was actually taken as res gestae under section 6 of the Indian Evidence Act, 1872 by the High Court. In Sukhar v. State of UP [(1999) 9 SCC 507] this court explained the said provision. It was held therein that the statement sought to be admitted, as forming part of res gestae, must have been made contemporaneously with the acts. Thus, it is evident that the essence of the doctrine of res gestae is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" that it becomes relevant by itself. A conduct of the accused after the incident may become admissible under



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Section 6 of the Evidence Act, though not in issue, if it is so connected with the fact in issue.”

(Emphasis supplied)

16. The medical evidence of the death having been caused by strangulation and injuries having been inflicted by a sharp edged weapon is also supported by the deposition of PW5-Nishan Singh and PW6-Kulwinder Kaur who came to the spot immediately after the occurrence. As per the FIR, the strangulation was with a rope which has been found at the spot and injuries have been caused with a sharp edged weapon such as knife which came to be recovered at the instance of the accused. While, it is true that as per the inquest report (Ex.PC), the rough site plan (Ex.PP), the recovery memo (Ex.PK), the scaled site plan (Ex.PG) and the photographs taken at the time the rope was found lying on the side of the deceased, the version of PW5-Nishan Singh and PW6-Kulwinder Kaur is to the effect that rope is still tied around the neck when it was discovered. This discrepancy does not materially weaken the prosecution case in any manner whatsoever when it has been established beyond doubt as per the postmortem that the cause of death was strangulation which was evident from the presence of a ligature mark around the neck.

17. Bloodstained earth was recovered from the spot as per the FSL report which goes to show that the deceased was given incised injuries with a sharp knife like object recovered from the accused. The defence of the deceased having been caught in the rope attached to the Toka machine is not substantiated by any material on record. In fact, the defence is too far-fetched to be even plausible.



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18. As regards the motive for the occurrence, PW5-Nishan Singh, the complainant at the very outset while getting recorded his FIR stated that the accused wanted the deceased to keep an unauthorized pistol in his possession which his father (deceased-Gurdial Singh) refused to do because of which there were an exchange of hot words leading to the subsequent occurrence of the murder of the deceased.

19. The cumulative effect of the aforementioned discussion is that the prosecution has established its case against the accused beyond reasonable doubt and therefore, finding no merit in the present appeal, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

04.03.2025

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No