Supreme Court of India
Tara Singh And Others vs The State Of Punjab on 25 October, 1990
Equivalent citations: AIR 1991 SC 63, 1990 (3) Crimes 565 SC, 1990 (2) SCALE 816, 1991 Supp (1) SCC 536, 1991 (1) UJ 155 SC
Author: K J Reddy
Bench: S Pandian, K J Reddy
ORDER K. Jayachandra Reddy, J.

1. This appeal is directed against the judgment of the Punjab & Haryana High Court convicting the two appellants herein under Section 302 read with Section 34 I.P.C. and sentencing them to suffer imprisonment for life and to pay a fine of Rs. 1,500/- in default of which to undergo further one year's rigorous imprisonment. The main submission in this appeal is that there was inordinate delay in registering the case and the investigation is tainted and consequently the whole case should be thrown out. The material facts of the case are as follows.

2. The two appellants and the three other accused who were also tried along with them are residents of Village Lopon in Ludhiana District. Accused Nos. 1 to 4 are brothers and the 5th accused is the relation. The deceased one Hazura Singh aged about 80 years was the Sarpanch of the Village. In the year 1971 he logded a report stating that some cement pipes in his fields were removed by the four brothers accused Nos. 1 to 4 along with other members of the family. A case was registered and the trial was pending. There were security proceedings also between P.W.2 son of the deceased and the two appellants and their brothers. On 15th Aug., 1975 at about 5 p.m. P.W.2 Bant Singh along with his sister's son P.W.4 Harbhajan Singh and his sister were hoeing the maize crop in their field. Hazura Singh the deceased came on the spot and after going around the field was going towards the path, at a distance of about 40 Karams from where the prosecution witnesses were working. P.W.3 was also working in a neighbouring field which he had taken on lease. The five accused emerged from the field. Tara Singh and Dial Singh, the two appellants herein were armed with Kirpans while their other two brothers were armed with gandasas and the 5th accused was armed with takwa. The first appellant shouted that the deceased should not be spared. The deceased hearing this tried to run away. When he reached the field of one Chandan Singh all the accused overtook him. The first appellant (A1) inflicted a kirpan blow on his neck while the second appellant also inflicted another blow on the neck and they inflicted further blows on the deceased on receipt of which he fell down. The other accused thereafter are said to have given him some blows. P.Ws 2 to 4 who had seen the crime raised an alarm. The accused thereupon ran away. P.W.2 who is witness of the occurrence went to the village which is half mile away and informed the Lambardar, P.W.5. P.W.2 then went in the company of the Lambardar to the Police Station at Samrala which is at a distance of 61/2 miles and lodged a report at about 8.45 p.m. on the same evening. The Sub-Inspector P.W. 9 registered the crime and issued an FIR which reached the Magistrate at about 2.45 A.M. P.W.9 took up the investigation, reached the place of occurrence at about 9.45 p.m., held the inquest and completed the same by 11.55 p.m. Then the body was sent for post-mortem. The next day at about 9.30 A.M. Dr. Bimla Kalra, P.W.1 conducted the post- mortem and she found as many as 12 incised wounds and one contusion. Some of them were on the head and injuries Nos. 7,8 and 11 were either on the neck or near about. The doctor opined that the death was due to shock and haemorrhage. She also opined that injuries Nos. 1 to 5 which were on the head were also individually sufficient to cause

death. The accused were absconding. Then later they were arrested and at their instance the weapons were recovered. The trial court relying on the evidence of the three eye-witnesses which is corroborated by the medical evidence and the circumstantial evidence convicted all the five accused and sentenced them to suffer imprisonment for life and also to pay a fine of Rs. 1,500/- each. The Division Bench of the High Court, however, felt that it is not safe to convict all the five accused since no specific acts are attributed to accused Nos. 3 to 5. The learned Judges after consideration of the evidence were of the view that because of the interested nature of the evidence of the main eye-witnesses and to avoid any innocent being convicted it would not be safe to rely on any omnibus allegation. In that view of the matter the learned Judges convicted the two appellants only to whom specific overacts are attributed and acquitted accused Nos. 3 to 5.

3. Shri R.K. Jain, learned Counsel appearing for the appellants submitted that there was unexplained delay in the special report reaching the Magistrate and therefore a reasonable doubt arises that this time should have been utilised for consultation with a view to implicate some of the appellants falsely out of enemity. It is also submitted that the possibility of false implication of these accused cannot be ruled out. It is also his submission that the very fact that the Investigating Officer took such a long time for sending the report to the Magistrate itself suggests that he must have colluded with the members of the prosecution party in preparing the first report and therefore the entire, investigation is tainted and according to the learned Counsel the case based on such tainted investigation must be thrown out in a wholesale manner as there is no scope to separate grain from the chaff. He relied on a judgment of this Court in Balaka Singh and Ors. v. The State of Punjab (1995) 4 SCC 511, In that case the names of the four accused alleged to have taken part in assault on the deceased were not at all mentioned in the inquest report and in the brief statement of the person who has lodged the FIR four hours before. That was also a case arising out of faction and the witnesses also were found to be interested. Taking these circumstances into consideration this Court observed:

This circumstance speaks volumes against the prosecution case. If, therefore, it is once established that the names of the four accused were deliberately added in the inquest report at the instance of the prosecution there is no guarantee regarding the truth about the participation in the assault on the deceased by the appellants.

It is further observed that:

It is true that there are as many as eight witnesses who are alleged to have seen the occurrence and they have given a parrot-like version of the entire case regarding the assault on the deceased by the various accused persons. All these witnesses have with one voice and with complete unanimity implicated even the four accused persons, acquitted by the High Court, equally with the appellants making absolutely no distinction between one and the other.

xx xx xx xx xx xx In these circumstances, therefore, we are satisfied that in view of the finding of the High Court that the F.I.R. was a belated document having come into existence much later than the time it is said to have been recorded and which adds the names of the four accused against whom the prosecution case is absolutely identical with the appellants, the case of the appellants cannot at

all be distinguished.

But the facts in the instant case are altogether different. The names of the accused are consistently mentioned throughout. There is absolutely no ground to hold that the FIR was brought into existence subsequently during the investigation and the mere delay in lodging the report by itself cannot give scope for an adverse inference leading to rejection of the prosecution case outright.

4. It is well-settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the" report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case. In the instant case there are three eye-witnesses. They have consistently deposed that the two appellants inflicted injuries on the neck with kirpans. The medical evidence amply supports the same. In these circumstances we are unable to agree with the learned Counsel that the entire case should be thrown out on the mere ground there was some delay in the FIR reaching the local Magistrate. In the report given by P.W.2 to the police all the necessary details are mentioned. It is particularly mentioned that these two appellants inflicted injuries with kirpans on the neck of the deceased. This report according to the prosecution, was given at about 8.45 P.M. and on the basis of the report the Investigating Officer prepared copies of the FIR and despatched the same to all the concerned officers including the local Magistrate who received the same at about 2.45 A.M. Therefore we are unable to say that there was inordinate and unexplained delay. There is no ground to doubt the presence of the eye-witnesses at the scene of occurrence. We have perused their evidence and they have withstood the cross- examination. There are no material contradictions or omissions which in any manner throw a doubt on their varasity. The High Court by way of an abundant caution gave the benefit of doubt to the other three accused since the allegation against them is an omnibus one. Though we are unable to fully agree with this finding but since there is no appeal against their acquittal we need not further proceed to consider the legality or propriety of the findings of the High Court in acquitting them. So far as the appellants are concerned, the evidence against them is cogent and convincing and specific over tacts arc attributed to them as mentioned above. Therefore we see absolutely no grounds to interfere. The appeal is, therefore, dismissed.