

RAVINDER KUMAR AND ANR.

v.

STATE OF PUNJAB

AUGUST 31, 2001

[K.T. THOMAS AND S.N. VARIAVA, JJ.]

Code of Criminal Procedure, 1973 : Section 154.

FIR—Delay in lodging of—Effect—Held : There is no time limit for lodging of FIR—Hence, delayed FIR is not illegal and fatal to the prosecution case.

FIR—Prompt and immediate lodging of—Advantages—Held : Allows immediate commencement of investigation—Possible concoction of a false version is eliminated.

FIR—Delay in lodging of—Reasons—Genuineness of—Explained and reiterated.

Criminal Trial :

Witness—Testimony of—Based on memory—Evidentiary value of—Held: A special event creates an impact on the human mind lasting for long—Though routine events may not be remembered yet odd or bizarre happenings stick in the mind indelibly—Such events easily get refreshed subsequently.

Criminal Law :

Motive—Establishing of—Held : It is generally impossible for the prosecution to establish the precise reason for a crime—Only the possible mental element, which is the cause of a crime, can be established.

The appellants-accused were convicted of an offence under Section 302 of the Penal Code, 1860 and were sentenced to undergo imprisonment for life. The High Court confirmed the conviction and sentence. Hence this appeal.

According to the prosecution, the appellants murdered the deceased, packed the dead body in a wooden container and engaged PW-5 (rickshaw-puller) to transport the container to the parcel service centre adjoining a

A **Railway Station.** As the load was something suspicious the container was opened and the dead body of the deceased was found wrapped in a gunny bag.

B On behalf of the accused, it was contended that the FIR was inordinately delayed and that itself was vitiative factor; that PW-5, a rickshaw-puller, could not have remembered, after many days, that a particular load was transported at the instance of the accused; and that the motive alleged by the prosecution was not established.

Dismissing the appeal, the Court

C **HELD :** 1.1. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. Law has not fixed any time limit for lodging the FIR. Hence a delayed FIR is not illegal.

D A prompt and immediate lodging of the FIR is ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly

E lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein. [469-E-G]

F 1.2. There can be a variety of genuine causes for FIR lodgement to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the with and kin of the deceased might take some appreciable time to regain a certain level of tranquility of mind or sedativeness of temper for moving to the police station for the purpose

G of furnishing the requisite information. Yet another cause is the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident. [469-H; 470-A-B]

H 1.3. The stale demand made in the criminal courts to treat the FIR

vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. [470-C, D] A

Zahoor v. State of UP, [1991] Supp. 1 SCC 372; *Tara Singh v. State of Punjab*, [1991] Supp. 1 SCC 536 and *Jamna v. State of UP*, [1994] 1 SCC 185, relied on. B

2.1. Human memory is very often a conditioned characteristic. Anything, which has any special or peculiar lineament, can create an impact on the human mind lasting for long. While it is true that routine events in a man's day-to-day life may not remain in his mind for being remembered later, any odd or bizarre happening involving him or in front of him have the tendency to stick in his mind indelibly. If there is any cause for him to recollect such events again they get refreshed again. That is why he is able to narrate such events with all details when asked to do so. This applies to all witnesses in criminal cases involving serious offences. [471-C-D] C D

2.2. Normally no porter or rickshaw-puller could speak from memory as to whom or whose load he carried many days ago. But if the carrying of a load on a particular day was soon followed by the flash of sensational news in the locality—that the load contained the corpse of a murdered person, the instinctive reaction of the carrier is to become inquisitive to know whether it was in respect of the load, which he himself carried. If that inquisitiveness had turned positive it is extremely probable that all the vivid details relating to that event would stick in his memory. For him such event would not have been a casual occurrence but extraordinarily odd and queer. Hence it is not likely to fade out of the canvass of his mind. It will be unrealistic to jettison the testimony of such a witness on the mere ground that he could not have remembered after the lapse of a long period the identity of the persons who engaged him and also of the load, which he carried. [471-E-F] E F

3. It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that the prosecution in many cases could point to is the possible mental element, which could have been the cause for the murder. [472-A, B] G

State of HP v. Jeet Singh, [1999] 4 SCC 370 and *Nathuni Yadav v. State of Bihar*, [1998] 9 SCC 238, referred to. H

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 881 of 2001

From the Judgment and Order dated 25.9.2000 of the Punjab and Haryana High Court in Crl.A.No. 339 of 1996.

B R.K. Kapoor, P. Verma and Shailendra Bhardwaj for the Appellants.
M.K. Garg and Rajeev Sharma for the Respondent.

The Judgment of the Court was delivered by

C THOMAS, J. Leave granted.

D A railway burial was contrived for eliminating the corpse of a business broker of Ludhiana. The coffin made for that purpose was camouflaged as parcel container to be despatched to a distant destination. But the parcel narrowly missed from being consigned to the railway bogie as some employees at the Parcel Service Center smelled foul. The suspicion led to the disinterring of a strangled body which was later identified to be that of the aforesaid business broker. Eventually it led to the detection of an orchestrated murder committed by the appellants. The trial court convicted the appellants for murder of the business broker besides the offences of abducting him and destroying the evidence. They were sentenced to imprisonment for life on the main count and to lesser terms of imprisonment on the other two counts. A Division Bench of the High Court of Punjab and Haryana confirmed the conviction and sentence as per the judgment which is now being challenged.

E Amar Kumar Gupta (deceased) and his wife Veena were living with their two little daughters (Sonia and Dimple) in their house at Ludhiana. He was making his livelihood through the brokerage earned by him in the business transactions with the manufacturers of hosiery goods. It appears that the two appellants were manufacturers of hosiery articles at Ludhiana and the manufacturing concern was called "M/s. Kapoor Knitting, Harbans Pura", and they had engaged the deceased as a broker for the sale of goods manufactured in their concern. The amount which the appellant owed to the deceased ranged around one lakh of rupees by way of brokerage.

F Now the prosecution story can be narrated compendiously. On 2.2.1994 the appellant visited the house of the deceased at about 11 A.M. and they had a conversation, presumably about the brokerage claimed by the deceased or due to him. Appellants asked the deceased to go with them so that the accounts

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could be settled conveniently. Reciprocating the offer the deceased went with them. He rode on a scooter along with Mohan Lal Jain (PW-8) who was a close relative. As they reached the place of the appellants deceased relieved PW-8 who was in a hurry to go away for his own work. A

The vivid details of what all happened thereafter are not known except that at some time during the day the two appellants murdered the deceased by strangulating him with a ligature. They packed the dead body in a wooden container. It was wrapped in a gunny bag, on the top of which they scribbled the words "To self-Arun Goel; G-1 New Delhi". They engaged a rickshaw-puller to transport the container to the parcel service center adjoining the Railway Station at Ludhiana. PW-5 Daya Ram (rickshaw-puller) collected the load from the premises of M/s. Kapoor Knitting and transported it in his rickshaw to the aforesaid parcel service center. The box was unloaded from the vehicle to the parcel building by the rickshaw-puller with the help of the two appellants and another person. B C

Then the two appellants approached PW-11 who was one of the partners of a parcel service firm and wanted to do the needful for booking the goods for being despatched to New Delhi. It was 4.30 P.M. but they learnt that the next goods train available from that station would be only on the succeeding day. However, PW-11 agreed that the goods would be despatched on the next day itself. But when the Parcel Supervisor weighed the load and found it to be 152 Kgs. he felt something fishy about it. But by that time both the appellants had left the scene. So the container was kept outside the Parcel Office. Perhaps the staff at the parcel section felt that the load was something suspicious and hence they wanted to see what was inside the container. D E

On 4.2.1994 the Chief Parcel Supervisor intimated the police about the suspicious container lying at their office. After the police reached, the container was opened and all of them became stunned seeing a dead body with a ligature tied around its neck and the legs tied up with a string stuffed inside the box. The body was found wrapped with a black glazed paper and the box was wrapped with a gunny bag on which the destination of the parcel was scribbled as mentioned above. The inquest was held by PW-17 Boota Ram who was the Station House Officer, General Railway Police Station (GRPS), Ludhiana. F G

The police suspecting the appellants detailed a guard at the house of the accused as both were absent from the scene. On 11.2.1994, the first appellant Ravinder Kumar returned to the house but when he noticed the presence of H

A the police in the vicinity of his house he realised that he was within the penumbra of police suspicion. He then ran away from the place. On the way he gulped some poison but before he could die he was admitted in the CMC Hospital, Ludhiana. On 25.2.1994 he was arrested by the police when he was discharged by the hospital authorities.

B Appellant Surinder Kumar was arrested in connection with some other case on 2.5.1994 by the Jind Police. When PW-17 Boota Ram came to know of his arrest he proceeded to that station and took over the custody of appellant Surinder Kumar after formally arresting him in connection with this case. The case rested entirely on circumstantial evidence. The trial court and the **C** High Court concurrently found that the circumstances proved by the prosecution were quite sufficient to establish that the deceased was murdered by the two appellants and that they tried to dislodge the corpse in such a manner as to escape from anybody's suspicion.

D We have no doubt that the deceased Amar Kumar Gupta was murdered on 2.2.1994 by ligature strangulation and his body was packed up in a wooden container which was camouflaged as a parcel consignment. Nor has that aspect been disputed by the appellants. The sole question which the appellants seriously disputed was that they were the killers of the deceased. To substantiate that appellants were the real murderers in this case prosecution has presented the following circumstances:

E (1) Appellants had dealings with the deceased and a good sum was to be paid to the deceased by way of brokerage.

F (2) On 2.2.1994 appellants went to the house of the deceased and persuaded him to go with them up to their house at Mohalla Taj Ganj situated in Harbans Pura.

(3) On the same evening appellants engaged PW-5 Daya Ram (rickshaw-puller) to transport a load wrapped in a gunny bag from the factory of the appellants at Harbans Pura to the parcel office of the Ludhiana Railway Station.

G (4) Appellants booked the parcel to be despatched to New Delhi on the same evening. When the parcel employees asked certain queries regarding the heavy weight of the load appellants advanced false excuses.

H (5) The container was opened and the dead body was disinterred. Since then the appellants remained absent from the locality itself

for 14 days henceforth.

- (6) The appellant Ravinder Kumar immediately on smelling that police suspected him attempted to commit suicide.
- (7) On the information supplied by the said appellant the scooter of the deceased was retrieved from the premises of the Railway Station, Ludhiana.
- (8) The clothes of the deceased were recovered by PW-17 Investigating Officer on the basis of the information elicited from appellant Ravinder Kumar.

Both the courts found that the prosecution has established the above circumstances with convincing and reliable evidence. But learned counsel for the appellants contended that there are some basic infirmities which did not weigh with the two courts and those infirmities are sufficient to disrupt the chain of circumstances. He first contended that the FIR was inordinately delayed and that itself is a vitiating factor. His next contention was that the two courts did not consider how a rickshaw-puller would remember, after many days, that a particular load was transported at the instance of the appellants. Lastly, he contended that the appellants had no motive to murder the deceased, and even the suggestion made by the prosecution for that purpose remained unsubstantiated. On these grounds he pleaded for interference with the conviction and sentence passed on the appellants.

The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people

A might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

C We are not providing an exhausting catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. *Vide Zahoor v. State of UP*, [1991] Suppl. 1 SCC 372; *Tara Singh v. State of Punjab*, [1991] Suppl 1 SCC 536; *Jamna v. State of UP* [1994] 1 SCC 185. In *Tara Singh* (Supra) the Court made the following observations:

E “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.”

G In the present case, no doubt, there is apparently a long delay of two days to give information to the police but the bereaved widow was not absolutely certain that she lost her husband once and for all until her brother-in-law confirmed to her, after identifying the dead body, that the same was that of her husband. The initial tension and suspense, undergone by her would have billowed up into a massive wave of grief. It is only understandable H how much time a woman, placed in such a situation, would take to reach

some level of placidity for communicating to the strangers of what she knew about the last journey of her husband. We therefore find no merit in the contention based on the delay of lodging the FIR. A

The second contention relates to the evidence of PW-5 Daya Ram (rickshaw-puller). He remembered the two appellants who engaged him to carry the load in his rickshaw up to the railway station. He also identified the wooden box in which the load was packed, with the help of the scribbings made on it. The contention is that it is not possible for any person, much less a rickshaw-puller like PW5, to remember who exactly employed him to carry a particular load on a particular day, after the lapse of several days thereafter. This contention is raised overlooking the psychological phenomenon that human memory is very often a conditioned characteristic. Anything which has any special or peculiar lineament can create an impact on the human mind lasting for long. While it is true that routine events in a man's day to day life may not remain in his mind for being remembered later, any odd or bizarre happenings involving him or in front of him have the tendency to stick in his mind indelibly. If there is any cause for him to recollect such events again they get refreshed again. That is why he is able to narrate such events with all details when asked to do so. This applies to all witnesses in criminal cases involving serious offences. Normally no porter or rickshaw-puller could speak from memory as to whom or whose load he carried many days ago. But if the carrying of a load on a particular day was soon followed by the flash of sensational news in the locality - that the load contained the corpse of a murdered person, the instinctive reaction of the carrier is to become inquisitive to know whether it was in respect of the load which he himself carried. If that inquisitiveness had turned positive it is extremely probable that all the vivid details relating to that event would stick in his memory. For him such event would not have been a usual occurrence but extraordinarily odd and queer. Hence it is not likely to fade out of the canvass of his mind. It will be unrealistic to jettison the testimony of such a witness on the mere ground that he could not have remembered after the lapse of long period the identity of the persons who engaged him and also of the load which he carried. We, therefore, repel such contention. B
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The third contention is that the motive alleged by the prosecution was not established and hence the area remains gray as to what would have impelled them to liquidate the broker. No doubt it is the allegation of the prosecution that appellants owed a sum of Rs. one lakh to the deceased and it might not have been possible for the prosecution to prove that aspect to the H

A hilt. Nonetheless some materials were produced for showing that there were transactions between the appellants and the deceased and that they had some account to be settled. Only thus far could be established but not further. It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. In this connection we deem it useful to refer to the observations of this Court in *State of Himachal Pradesh v. Jeet Singh*, [1999] 4 SCC 370:

C “No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.”

E An earlier decision of this Court in *Nathuni Yadav v. State of Bihar* [1998] 9 SCC 238, which dealt with the same aspect, has been referred to therein and a passage therefrom has been extracted. We are, therefore, not persuaded to change the tide on account of the inability of the prosecution to prove the motive aspect to the hilt.

F In the result we dismiss this appeal.

V.S.S.

Appeal dismissed.