

## **Tehal Singh And Ors. vs State Of Punjab on 27 October, 1978**

**Equivalent citations: AIR1979SC1347, 1979CRILJ1031, 1980SUPP(1)SCC400, AIR 1979 SUPREME COURT 1347, (1978) CURLJ(CCR) 295, 1978 CRILR(SC&MP) 660, (1979) 1 SCWR 301, 1979 SCC(CRI) 722, (1979) SC CR R 323**

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**Bench: Jaswant Singh, O. Chinnappa Reddy**

### **JUDGMENT**

O. Chinnappa Reddy, J.

1. Tehal Singh was convicted under Section 302, Indian Penal Code on three counts and sentenced to death by the learned Sessions Judge, Faridkot. His brothers Darshan Singh and Gurmial Singh were convicted under Section 502 read with Section 34, Indian Penal Code and sentenced to suffer imprisonment for life. Bhal Singh was also convicted under Section 27 of the Arms Act and sentenced to suffer imprisonment for three years. The convictions and sentences were confirmed by the High Court of Punjab and Haryana. Tehal Singh, Darshan Singh and Gurmial Singh have appealed to this Court by special leave. Chiman Lal and Murari Lal who were also tried with the three appellants for an offence under Section 302 read with Section 120B of the Indian Penal Code were acquitted by the learned Sessions Judge, There was no appeal to the High Court against their acquittal.

2. The brief case of the prosecution was as follows: There was some rivalry between Chiman Lal and Murari Lal who were transport operators on one side and Pirthi Singh and Harmal Singh who were also transport operators on the other side. On 22nd August, 1976, Pirthi Singh, his brother Harmel Singh. Mithu Singh and Hardip Singh the son of Pirthi Singh a boy aged 13 years were returning to their village Giddarbaha from Hussaner in their truck. They met Darshan Singh near the out skirts of Hussaner chowk, Pirthi Singh questioned Darshan Singh as to why he had threatened the Munshi of their Truck Union. There was an exchange of abuse, Pirthi Singh also slapped Darshan Singh. Darshan Singh left the scene in a vengeful mood, Pirthi Singh, Mithu Singh, Harmel Singh and Hardip Singh then proceeded to the premises of the agency of Parma Nand. While they were sitting there, at about 8 p. m. Chhota Singh came there and informed them that when he had gone to the agency of Chiman Lal to hire a truck, sometime earlier he had heard Chiman Lal and Murari Lal telling Tehal Singh, Darshan Singh and Gurmial Singh, that they should finish off Pirthi Singh. Within a few minutes after Chhota Singh informed Pirthi Singh and others about the conversation at Chiman Lal's agency, Tehal Singh, Darshan Singh and Gurmial Singh arrived at Parma Nand's agency in a truck. Tehal Singh was armed with a double barreled gun while Darshan Singh and

Gurmel Singh were armed the iron rods. Straight way Darshan Singh challenged Pirthi Singh and said he would be taught a lesson. Tehal Singh fired a shot which hit Pirthi Singh on the right shoulder, felling him to the ground. Darshan Singh beat the fallen Pirthi Singh three or four times with the iron rod which he had with him. Mithu Singh tried to intervene when Tehal Singh shot at him and killed him instantaneously. Harmel Singh came forward and he too was shot at by Tehal Singh on the right knee. He stumbled over a few paces and fell down when Darshan Singh and Gurmel Singh assaulted him with iron rods which were with them, Tehal Singh then fired a shot into the air and thereafter all the assailants drove away in their truck. Pirthi Singh and Harmel Singh who were both seriously injured were taken to the Hospital at Giddarbaha by Chhota Singh. Hardip Singh and others who had come there after the occurrence. Pirthi Singh died on the way. It was 10.15 p.m. when Harmel Singh was taken to the Hospital. Dr. Pasricha, the Medical Officer In-charge of the Hospital sent a report to the Police Post at 10.20 p.m. Kulwant Singh, Head Constable who was in-charge of the police post reached the Hospital at 10.40 p. m. and after enquiring whether Harmel Singh was in a fit condition to make a statement, he proceeded to record the statement of Harmel Singh. The statement was recorded in the presence of Dr. Pasri cha who appended a certificate to the effect that the statement was recorded in his presence and that Harmel Singh was in full possession of his senses throughout, The statement was sent to the Police Station Kot Bhai where the First Information Report was registered. On the advice of Dr. Pasricha Harmel Singh was taken to the Civil Hospital, Bhatinda for better treatment. Chhota Singh, Hardip Singh and others took Harmel Singh to Bhatinda but before they reached Bhatinda Harmel Singh died at about 1.30 A.M. Chhota Singh and Hardip Singh returned to Giddarbaha at about 6 A. M. Meanwhile Baldev Singh, Sub-Inspector of Police, Kot Bhai arranged to despatch the First Information Report to the Judicial Magistrate. The Judicial Magistrate received the report at 6.45 A. M. Bal dev Singh reached the Hospital at about 1.45 A.M. and took over the investigation from Kulwant Singh. Ha held the inquests and recovered four empty cartridges, bloodstained earth etc. from the scene of occurrence. Ha examined Chhota Singh and Hardip Singh next morning at 9 a. m. and 10 a.m. After completing the investigation a charge-sheet was laid against the five accused persons. Pirthi Singh surrendered himself before the Magistrate along with a.16 bore gun on 25th August, 1976. The post mortem examination over the body of Pirthi Singh revealed one gun shot wound and five contusions. The post mortem examination over the body of Mithu Singh revealed two gun shot wounds being the entry and exit wounds. The post mortem examination over the body of Harmel Singh revealed four lacerated wounds which were caused by blunt weapon and three pellet wounds. The plea of the accused was one of total denial. It was suggested to the prosecution witnesses on behalf of the accused that the dying declaration was a later fabrication and that neither Chhota Singh nor Hardip Singh had witnessed the occurrence. It was suggested that the case was foisted against the accused by the witnesses who were relations of the deceased with the help of Sub-Inspector Baldev Singh who was also related to the deceased.

3. The learned Sessions Judge accepted the evidence of Hardip Singh and the dying declaration but was not prepared to act upon the evidence of Chhota Singh. He, therefore, acquitted Chiman Lal and Murari Lal and convicted Tehal Singh, Darshan Singh and Gurmel Singh as mentioned earlier. The High Court also accepted the evidence of Hardip Singh and the dying declaration. The High Court was further of the view that the evidence of Chhota Singh in regard to the main occurrence was also acceptable. The convictions and the sentences passed on the appellants were confirmed. In this

appeal by special leave Dr. Chitaley learned Counsel for the appellants argued that the dying declaration was a later fabrication, brought into existence after the arrival of Baldev Singh on the scene. He submitted that the very wealth of detail contained in the dying declaration gave an indication that it was not the statement of the dying man. He invited our attention to the evidence of the Medical Officer and urged that Harmel Singh would not have been in a position to make the statement attributed to him. He also argued that the dying declaration was not recorded in the words of the deceased but "in his own way" by Kulwant Singh and; therefore, it was not entitled to any weight. It was also not entitled to weight as it was not made in expectation of death. In regard to the evidence of Hardip Singh, Dr. Chitaley submitted that he was a child witness and, therefore, his evidence could not be readily accepted without corroboration. He was closely related to the deceased and was interested in implicating the accused. The learned Counsel also commented on the delay in the examination of the witness by the Investigating Officer. The learned Counsel submitted that the evidence of Chhota Singh was entirely unworthy of credit and that he was introduced into the case solely with the object of implicating Chiman Lal and Murari Lal,

4. The dying declaration was re corded by the Head Constable Kulwant Singh at the Hospital in the presence of the Medical Officer Dr. Pasricha. We were taken through the evidence of Kulwant Singh and we are unable to find any reason for not acting upon the evidence of Kulwant Singh. Dr. Pasricha who was examined by the prosecution as P.W. 2 stated in his evidence that Harmel Singh was brought to the Hospital at about 10.15 P.M. and that he sent a report Exh. P.W. to the Police and outpost at 10.20 p. m. The Head Constable came to the Hospital and recorded the statement of Harmel Singh, in his presence. On his advice Harmel Singh was taken to the Bhatinda Hospital at 11.15 p.m. In cross-examination he made a clear attempt to help the defence by stating that when Harmel Singh arrived in the Hospital his pulse was weak and imperceptible, suggesting thereby that Harmel Singh was not in a position to make a statement. He also stated that while the statement was recorded by the Head Constable he went to his office for 10 or 15 minutes in order to prepare some papers. The statements made by him are contradicted by the certificate appended by him at the foot of Harmel Singh's statement that the statement was recorded in his presence and that Harmel Singh remained in full possession of senses throughout. Dr. Pasricha also went to the extent of deposing that Sub-Inspector Baldev Singh and Assistant Sub Inspector Daulat Ram were both present when the statement of Harmel Singh was recorded. This statement of Dr. Pasricha is obviously false since Daulat Ram was not in Giddarbaha at all at that time and Baldev Singh came to the Hospital after Harmel Singh had been removed to Bhatinda. The attempt of Dr. Pasricha to help the defence was castigated by the learned Sessions Judge and the High Court and we entirely agree with the learned Sessions Judge and the High Court in the remarks which they made about Dr. Pasricha. From the certificates appended at the foot of the statement of Harmel Singh and from the evidence of Kulwant Singh we do not have the slightest hesitation in holding that Harmel Singh was in a position to make the statement attributed to him. We do not also see any force in the suggestion of Dr. Chitaley that the statement of Harmel Singh was not made in expectation of death and was, therefore, not entitled to weight. Apart from the fact that Section 32 of the Evidence Act does not require that a statement should be made in expectation of death, it is clear from the evidence that the condition of Harmel Singh was serious at that time. In the requisition made by the Medical Officer to the Police it has been clearly mentioned that the condition of Harmel Singh was serious. The very circumstance that Dr. Pasricha advised that Harmel Singh should be removed to Bhatinda Hospital for better

treatment clearly indicates that the condition of Harmel Singh was serious. Kulwant Singh stated in his evidence that he put questions to Harmel Singh and recorded the answers of Harmel Singh. No doubt he stated that he recorded what Harmel Singh stated 'in his own way'. It does not mean that he recorded something other than what Harmel Singh stated. All that it means is that the language was his but the substance was what Harmel Singh stated. We do not think that any infirmity is attached to the dying declaration on this account. The dying declaration undoubtedly contains a wealth of detail as argued by Dr. Chitaley. The details contained in any statement, depend upon the capacity for observation of the person making the statement, the condition of the person at the time of making the statement his anxiety to mention details and the manner in which questions are put and answers elicited. It may be that in certain situations the very wealth of detail in a statement attributed to a dying man may arouse suspicion. On the other hand the circumstance that a statement contains a wealth of detail cannot necessarily lead to the inference that the statement is a fabricated one. In the present case we are unable to say from the mere wealth of detail contained in the statement that it must have been fabricated. As already stated by us there was no reason for Kulwant Singh to involve himself by fabricating a false dying declaration. There is also the very important circumstance that the First Information Report containing the statement of Harmel Singh was received by the Magistrate by 6.45 a.m. It could hardly be said that there was time for fabricating a statement like the one in question. One of the comments of Dr. Chitaley was that if the dying declaration was recorded as stated by Kulwant Singh, he would have straightway examined Hardip Singh and Chhota Singh. Admittedly Hardip Singh and Chhota Singh were examined next morning. But that is easily explained. Harmel Singh was taken to Bhatinda Hospital at 11 p.m. i.e. immediately after the statement was recorded. Among the persons who went to Bhatinda with Harmel Singh were Hardip Singh and Chhota Singh. They were, therefore not available for examination by the Head Constable. They returned next morning. When they returned, the Sub-Inspector was busy preparing Panchanamas etc. and as soon as he finished preparation of Panchanamas he examined the two witnesses. It cannot, therefore, be said that there was any delay in the examination of Hardip Singh and Chhota Singh by the Police. We agree with the lower Courts that the dying declaration was recorded by Kulwant Singh at the time when it purports to have been recorded. We also find that there is no basis for the allegation that Baldev Singh was responsible for fabricating the dying declaration. Though it was suggested to Baldev Singh that he was closely related to the deceased he did not admit the relationship. It was elicited from Chhota Singh that Baldev Singh was related to Chhota Singh and that Chhota Singh's great grand-father and the grand-father of Pirthi Singh were brothers. The alleged relationship of Baldev Singh to the deceased appears to be far too remote,

5. Hardip Singh is a lad of 13 years. In our country and particularly in the rural areas it is difficult to think of a lad of thirteen years as a child. A vast majority of boys round about that age go to the fields and do men's work. They are certainly capable of understanding the significance of the oath and the necessity to speak the truth. The learned Sessions Judge who had the opportunity of seeing the witness Hardip Singh in the witness box did not consider it necessary to treat him as a child witness. A perusal of his evidence also shows that he has certainly attained a measure of mature understanding. We do not think we can accept Dr. Chitaley's argument and proceed on the basis that Hardip Singh is a child witness. Even otherwise, having gone through his evidence we are satisfied' that his evidence does not suffer from any infirmity. He was cross-examined at great length

but nothing was elicited from him to dub him as a false or a tutored witness. The mere circumstance that he is the son of one of the deceased person does not justify our looking at his evidence with any suspicion. The dying declaration refers to his presence. There was no reason for him to be influenced by anyone else to implicate the accused, nor was there any reason for anyone else to influence him to implicate the accused. The learned Sessions Judge found no hesitation in accepting the evidence of Hardip Singh about whom he made the following observation:

The statement of Hardip Singh P.W. 18 is still fresh in my mind and when read as a whole it gives an impression that though this young lad of 13 years was subjected to a long detailed and searching cross-examination but he gave consistent and rational replies. The learned Counsel for the accused was not able to bring any circumstances from which I may reject the testimony of Hardip Singh P.W. 18.

The High Court also observed:

Though patently a young boy he has emerged from a long and protracted cross-examination as a truthful witness and nothing of any significance would be elicited from him which would in any way detract from the massive weight of testimony.

We endorse the opinion of the learned Sessions Judge and the High Court about the weight to be attached to the evidence of P.W. 18 Hardip Singh.

6. Chhota Singh's evidence was as sailed by Dr. Chitaley on the ground that he had been deliberately introduced into the case in order to implicate Chiman Lal and Murari Lal. Whatever may be the truth or otherwise of his evidence in regard to Chiman Lal and Murarilal, his evidence regarding the main occurrence remained unshaken in cross-examination. His name was also mentioned in the dying declaration as present at the time of the occurrence. P.W. 18 also spoke to his presence. We think that in the circumstances of the case P.W. 17-Chhota Singh's evidence also can be safely accepted in regard to the attack on the three deceased persons.

7. Dr. Chitaley argued that in any event Darshan Singh and Gurmial Singh could not be convicted of the offence under Section 302 read with Section 34 Indian Penal Code. He argued that the medical evidence showed that the injuries inflicted by them were not only simple but appeared to have been given with light force or with a light weapon, He contended that it could not, therefore, be held that Darshan Singh and Gurmial Singh shared any common intention with Tehal Singh to cause the death of Pirthi Singh or anyone of the other deceased persons. We are unable to agree with the submission of Dr. Chitaley. The three accused persons came together. One of them was armed with a gun, the other two were armed with iron rods. One of them challenged the deceased. The person who was armed with the gun opened fire and after the deceased fell down the other two accused were not content but went forward to inflict injuries on the deceased person with the iron rods in their hands. Thereafter all of them went away together. The irresistible inference from these circumstances is that the three of them were actuated by the common intention to cause the death of the deceased. Merely because the injuries inflicted by Darshan Singh and Gurmial Singh were not serious in injuries,

it cannot be said that they were not actuated by the common intention to cause the death of the deceased. In order to attract the applicability of Section 34 read with Section 302, it is not necessary that each and every one of the accused persons must have inflicted a serious injury.

8. It was lastly contended that Tehal Singh should not be awarded the extreme penalty since the evidence showed that there was some provocation on the part of Pirthi Singh. It is difficult to agree with this submission. The action of the deceased Pirthi Singh which might be said to have given rise to some provocation was not part of the same incident. The provocation, if any, was to Darshan Singh and not to Tehal Singh. After the earlier incident Darshan Singh went away. It was a few hours thereafter that the three accused persons came armed with gun and iron rods and attacked the deceased. Mithu Singh and Gurmel Singh had offered no provocation at all. Their only sin was that they attempted to intervene when Pirthi Singh was shot at. We do not think that we will be justified in interfering with the sentence awarded by the Sessions Judge and confirmed by the High Court. The appeal is, therefore, dismissed.