Sucha Singh vs State Of Punjab on 22 March, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1436, 2001 AIR SCW 1292, 2001 (1) UJ (SC) 779, 2001 (4) SRJ 342, 2001 (4) JT 107, 2001 (2) LRI 889, 2001 (4) SCC 375, 2001 (2) SCALE 543, 2001 SCC(CRI) 717, 2001 (2) BLJR 1526, 2001 CRILR(SC MAH GUJ) 361, (2002) SC CR R 238, (2001) 2 EASTCRIC 63, (2001) 2 RAJ LW 345, (2001) 2 RECCRIR 298, (2001) 2 SCJ 633, (2001) 2 CURCRIR 55, (2001) 2 SUPREME 451, (2001) 2 ALLCRIR 1182, (2001) 2 SCALE 543, (2001) 1 UC 572, (2001) 42 ALLCRIC 908, (2001) 2 CHANDCRIC 60, (2001) 2 ALLCRILR 91, (2001) 2 CRIMES 69, 2001 (1) ANDHLT(CRI) 375 SC

Bench: K.T. Thomas, R.P. Sethi

CASE NO.:
Appeal (crl.) 24 of 2001

PETITIONER:
SUCHA SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 22/03/2001

BENCH:
K.T. Thomas & R.P. Sethi

JUDGMENT:

THOMAS, J.@@ JJJJJJJJJJ L...I...T.....T.....T.....T.....T.....T.....T..J During the months when insurgency in the State of Punjab was at its peak two striplings were knocked off from their house on a dark night by armed assailants in the very sight of their old parents, despite the importunes made by their mother. Those abducted youngsters were finished off within a shortwhile by firing them with AK-47 rifles, a little away from their house. The abductors were indicted for the murder of those two young Sikhs. Appellant Sucha Singh, the sole survivor of the criminal conspiracy hatched, is now challenging the conviction and sentence of life imprisonment passed on him by a designated court, for the offence under Section 302 read with Section 34 of the Indian Penal Code.

Shri U.R. Lalit, learned senior counsel pleaded for reconsideration of the ratio laid down by this Court in State of West Bengal vs. Mir Mohammad Omar & ors. {2000 (8) SCC 382} wherein it is held that the court would be justified in appropriate cases to draw the presumption that the abductors themselves could be the killers of the abducted victim, unless they explained otherwise as to what they did with the prey.

Learned senior counsel submitted that the said ratio is discordant with the criminal jurisprudence thus far enunciated that the burden is entirely on the prosecution to prove the case. He further submitted that the ratio in the said decision cannot at any rate be applied for fastening an accused with the aid of Section 34 IPC. As we heard Shri U.R. Lalit in extenso on the above submission, besides other points convassed by him on the merits of the case, we are bound to deal with them now.

The synopsis of the case is this. The incident happened on the night of 22.2.1991. PW-3 Diwan Singh and his wife PW-4 Dalbir Kaur had five sons. The elder three were working in the grain market at Amritsar. Among the remaining sons Narinder Singh was in the army and he came home for a furlough and stayed with his parents. The other son Surinder Singh was also staying in the same house. The militancy in Punjab had armed terrorists on its cadre who were prowling for preys during those days. Diwan Singh and his family were targeted by the militants as they suspected him to be conduit for the police who were out to crush the insurgency.

On the night of occurrence Diwan Singh, his wife and their two sons (Narinder Singh and Surinder Singh) were in their house at Rupawali, which is situate on the outskirts of Amritsar City. The inmates of the house retired to their rooms in the night, presumably after their supper. Four assailants including the appellant went to that house armed with AK-47 rifles at about 10 P.M., and knocked at the door. Diwan Singh switched on the light in the courtyard and he immediately understood the danger ahead of him. He then scampered to the roof of the house and hid himself, but he could see what was happening on the courtyard. The assailants caught the two deceased sons and took them away despite the entreaties persistently made by their mother. Though she made a bid to follow them she could reach only up to the end of their courtyard as she was tweaked aside forcefully with the butt end of a rifle. The two sons taken away by the assailants were never seen thereafter by the parents.

After a shortwhile the parents of the deceased heard the sound of gunshots from a distance. The terror stricken parents somehow whiled away their time in the night without even gazing outside. On the next morning Diwan Singh went to his brother Gurna Singh, who was living nearby, and with him a search was made for their abducted sons. They came across the dead bodies of the deceased lying on the roadside studded with gunshot injuries.

Police after investigation charge-sheeted only two persons as accused, one the appellant Sucha Singh and the other Sarbjit Singh. According to the police the remaining two assailants could not be apprehended despite all the steps adopted by the police. The case was sent up to a designated court as some of the offences included in the charge fell within the purview of the Terrorist and Disruptive Activities (Prevention) Act (TADA). The judge of the designated court convicted both the accused

under Section 302 read with Section 34 IPC though they were acquitted of the offences under TADA. We are told that the other convicted person died subsequently. This appeal pertains only to the appellant Sucha Singh.

There is no dispute that the deceased were shot dead on the said night by somebody with AK-47 rifles. Hence the only point is whether the appellant was one of the murderers. The evidence against the appellant is the testimony of PW-3 Diwan Singh and PW-4 Dalbir Kaur. As for them, they only testified that the two deceased were taken away by armed assailants from the house on that ill-fated night and such assailants included the two convicted persons and that the corpses of the deceased were spotted next morning lying on the roadside a little away from their house.

Shri U.R. Lalit, learned senior counsel first focussed on a contention that PW-3 Diwan Singh and PW-4 Dalbir Kaur were living with their elder sons at Amritsar City and that they learnt about the death of the deceased only when somebody informed them about it on the following morning. In other words, according to the learned senior counsel, the truth of the testimony of PW-3 and PW-4 will depend upon the question whether they were actually staying in the house where the deceased stayed on the night.

Three witnesses were examined on the defence side to say that the old parents were actually living at Amritsar for about six months prior to the occurrence. They are: DW-1 a member of the Panchayat, DW-3 and DW-4. True, those three witnesses said like that. But their evidence would not help the defence to show that the old parents were living differently from the house where the deceased stayed on that night. All that the witnesses could say was that PW-3 and PW-4 were staying at Amritsar. That expression Amritsar could encompass even areas lying on the periphery of the city limit also. This is clearly discernible from the manner in which DW-1 Senga Singhs address was described in his deposition. He is described as resident of Rupawali Village in Amritsar.

Learned counsel made a futile endeavour to create some doubt that PW-3 and PW-4 would have been staying with the elder sons at Amritsar City. One such attempt was based on a fact that PW-3 himself was convicted in a murder case earlier, and hence he would have known the value of prompt reporting to the police. According to the counsel, PW-3 did not choose to go to the police station even by next early morning. What PW-3 said on that score is that after the sons were taken away he remained in the house during the entire night as he was fear-stricken and when the morning broke he collected his brother Gurnam Singh and went in search of his sons and came across the body at Village Phirni (which is close to their residence). He then left the spot after leaving his brother to remain near the dead bodies, and went to Amritsar city on a bicycle for informing his elder sons about the occurrence. On his way back from the city he came across the police. He furnished to them the details of the occurrence as he knew. In the above narration there is nothing to show that PW-3 and PW-4 were residing away from their house at Rupawali.

Another attempt made by learned counsel is based on the fact that the abductors did not catch PW-3 who was considered to be a police tout. According to the learned counsel the assailants would not have left the house without him and the fact that they took away his two sons would further show that PW-3 was not available in the house. This argument proceeded on an assumption that the sons

were not the target of the assailants at all. We dont have any material to assume that the assailants did not count the sons also as touts of the police along with their father. It must be remembered that the assailants took away all the male members of the family whom they could see in the house. As PW-3 went to the roof hiding himself from the assailants they would have decided to be satisfied for the present with what they got, i.e. the two sons. Whatever it be, the fact that the accused succeeded in taking away the two sons of the two deceased alone is not enough, in the circumstances of this case, to doubt the presence of PW-3 and his wife PW-4 in the house on the crucial night.

That apart, the two younger sons, including Narinder Singh who came from army for a furlough to be with his parents, were actually staying in their house at Rupawali on the fateful night. There would be no logic in assuming that their parents would have kept away from their own house leaving those two sons alone on that night. Why should they do so.

Thus we too are inclined to believe the version of PW- 3 and PW-4. On their testimony the circumstances against the appellant are the following:

> (1) The incident happened during a period when Punjab was boiling with terrorist activities. (2) The house of the deceased was treated by the terrorists as the home of police touts against terrorists. (3) Appellant and three others reached the house during the dead of night armed with AK-47 rifles (which is described as assault rifle) and caught the two sons. Even in spite of entreaties made by their mother PW-4, the abductors forcibly took away the two sons into the darkness outside. (4) Within a shortwhile they heard the sound of gunshots. (5) The two abducted sons did not return to the house during that night. (6) On the next morning their dead bodies were spotted on the roadside at a place situated only a short distance away from the house. (7) They were killed with AK- 47 rifles as the empties of the bullets of such firearm were lying near the dead bodies. (8) Appellant did not tell the court as to what happened to the two sons after they abducted them.

The abductors alone could tell the court as to what happened to the deceased after they were abducted. When the abductors withheld that information from the court there is every justification for drawing the inference, in the light of all the preceding and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased.

Shri U.R. Lalit, learned senior counsel raised his contention on the above score that even assuming that the appellant was one among the persons who took away the deceased that circumstance alone is not sufficient to hold him to be one of the killers of the deceased. According to the senior counsel a finding beyond abduction cannot be fastened on the appellant.

Recently this Court has held in State of West Bengal vs. Mir Mohammad Omar (supra) that the principle embodied in Section 106 of the Evidence Act can be utilised in a situation like this. Shri U.R. Lalit pleaded for reconsideration of the said legal position. According to him, the ratio laid down in that decision is not in tune with the well accepted principle of criminal law that the accused is entitled to keep his tongue inside his mouth as the burden is always on the prosecution to prove

the guilt of the accused. To meet the said contention it is appropriate to extract the following observations from that decision:

> The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.
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> Learned senior counsel contended that Section 106 of the Evidence Act is not intended for the purpose of filling up the vacuum in prosecution evidence. He invited our attention to the observations made by the Privy Council in Attygalle and anr. vs. The King (AIR 1936 PC 169) and also in Stephen Seneviratne vs. The King (AIR 1936 PC 289). In fact the observations contained therein were considered by this Court in an early decision authored by Vivian Bose, J, in Shambhu Nath Mehra vs. State of Ajmer (AIR 1956 SC 404). The statement of law made by the learned Judge in the aforesaid decision has been extracted by us in State of West Bengal vs. Mir Mohammad Omar (supra). It is useful to extract a further portion of the observation made by us in the aforesaid decision:
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> Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.
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> We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.
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> We have seriously bestowed our consideration to the arguments addressed by the learned senior counsel. We only reiterate the legal principle adumbrated in State of West Bengal vs. Mir Mohammad Omar (supra) that when more persons than one

> have abducted the victim, who was later murdered, it is within the legal province of the court to justifiably draw a presumption depending on the factual situation, that all the abductors are responsible for the murder. Section 34 of the IPC could be invoked for the aid to that end, unless any particular abductor satisfies the court with his explanation as to what else he did with the victim subsequently, i.e. whether he left his associates en-route or whether he dissuaded others from doing the extreme act etc. etc. We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle to be laid down is that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities.

India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others.

Lastly, learned counsel invited our attention to a note which was recovered by the police from the scene of murder. That note contained the scribbling purported to have been authored by a group styled as Babbar Khalsa, owning the two murders of the deceased. We do not know how the said note would help the appellant unless he shows that he has nothing to do with that self styled Babbar Khalsa, even assuming that the note was left by the murderers without any intention to mislead the investigation. At any rate, we are not persuaded to change our conclusion on the strength of the said note.

In the result, we confirm the conviction and sentence and dismiss this appeal.