

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

CRA-S-No.600-SB OF 2003
DATE OF DECISION : 3rd MAY, 2017

Ajaib Singh ASI

.... appellant

Versus

State through Central Bureau of Investigation

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Bipan Ghai, Senior Advocate with
 Mr. Paras Talwar, Advocate for the appellant.

Mr. Sumeet Goel, Advocate, Retainer Counsel for CBI.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment and order dated 07.02.2003 passed by Additional Sessions Judge, Patiala by which appellant-Ajaib Singh ASI was convicted and sentenced to undergo rigorous imprisonment for a period of 10 years plus fine of ₹500/- for offence under Section 364 IPC, the appeal was preferred by him in this Court.

2. Briefly stated the prosecution case is that on 03.04.1992 Sukhmander Singh, the husband of Smt. Charanjit Kaur of Village, Malooka, Police Post Bhakta Bhai Ka, District Bathinda, was abducted from his house at about 10.00 am by Ajaib Singh ASI/In-Charge Police Post, Bhakta Bhai Ka and HC Jagraj Singh (since dead) in a white private Maruti Van, that was witnessed by Charnjit Kaur his wife, Sukhdev Singh, Jasbir Kaur, Veerpal Kaur, Chitan Kaur and one Darbara Singh Gill. They tried to contact Sukhmander Singh but were told that he was

not brought in the Police Post. On 08.04.1992 Darbara Singh Gill, brother-in-law of Sukhmander Singh, had sent a telegram to higher authorities to that effect. Ranjit Singh Sidhu had seen Sukhmander Singh in Police Post, Bhakta Bhai Ka on 05.04.1992 and that Sukhmander had told him that he was tortured by the accused and others. Gurdev Singh had also seen Sukhmander Singh in Police Post on 04/05.04.1992. It was also revealed during the investigation that Maruti Van of one Dev Raj Singla of Bhakta Bhai Ka was at the disposal of accused on 03.04.1992. Entry No.5 was there in the DDR dated 03.04.1992 departure of the accused and officials along with two sections of CRPF and 9.10 am for conducting search in the area of village Malooka etc. and that all of them come back at 1.30 pm after conducting the search. The CRPF personnel denied having accompanied the police officials to village Malooka etc. but had stated that they have themselves conducted the search of the suspicious places and tubewells in and around village Malooka. Whereabouts of Sukhmander Singh were not known after 05.04.1992. Prosecution examined in all eleven witnesses and thereafter closed its evidence. The accused Ajaib Singh was examined under Section 313 Cr.P.C. and claimed to be innocent. In defence he examined fourteen defence witnesses. Thereafter, the learned trial Judge heard the rival parties and convicted the appellant-Ajaib Singh ASI as stated above. Hence this appeal.

3. Heard learned counsel for the rival parties at length and perused the paper book and the lower Court record with their assistance.

4. In support of the appeal, the learned counsel for the appellant-Ajaib Singh, vehemently contended that on the basis of complaint made by the complainant, higher officers had made an enquiry and the report was given by Sukhdev Singh, Senior Superintendent of Police, Phul that Sukhmander Singh was not abducted by the Incharge Police Post Bhakta Bhai Ka. The First Information Report was registered in the present matter after this Court had issued directions in Criminal Writ Petition No.769 of 1995 vide its order dated 27.05.1997 i.e. after five years of the occurrence. According to learned counsel for the appellant it was the case of the prosecution itself that the canter had gone to the village and CRPF personnel have made a search in the village. It was, therefore, not sure as to whether the alleged abduction was made by the appellant or CRPF personnel. No entry was produced by the prosecution about Sukhmander Singh being brought in the Police Post nor any witness from the Police Post, was examined that Sukhmander Singh was in the Police Post. According to the prosecution, Sukhmander Singh was not heard of after 08.04.1992 and, therefore, the theory of last seen, propounded by his wife and other witnesses, was of no significance. He then contended that the trial Court erred in convicting the appellant merely because Sukhmander Singh has no enmity with the appellant. He also contended that the *Sarpanch* of the village was examined and the trial Court has given no reasons for disregarding his evidence apart from the evidence of DW-12 Sadhu Ram Duggal. He finally contended that at any rate trial Court ought to have given benefit of doubt to the appellant.

5. *Per contra*, Mr. Sumeet Geol learned counsel for the CBI contended that the wife of Sukhmander Singh and other witnesses have clearly deposed against the appellant that the appellant had abducted Sukhmander Singh from his house and was not seen thereafter and that is a very strong piece of evidence against the appellant on which the conviction was rightly based by the trial Court. Mr. Geol then contended that the prosecution proved its case beyond reasonable doubt and trial Court has given detailed reasons for convicting the appellant and there is no reason why interference should be made with the order of conviction.

6. Heard learned counsel for the rival parties.

7. I have seen the entire record, including the evidence of the witnesses examined by the prosecution as well as by the defence. It is not in dispute that the FIR in this case was registered for the first time after five years from the date of the alleged occurrence, of course because of the intervention by this Court in a criminal writ petition filed by wife of Sukhmander Singh and this Court had made an order on 27.05.1997 in Crl. Writ Petition No.769 of 1995. As rightly observed by the trial Court the delay in registering the case against the appellant, therefore, was not of much importance. Nevertheless, it cannot be forgotten that the complaints made by PW-1 Chitan Kaur and others were enquired into by Sh. Sukhdev Singh, SSP, Phul who had stated in his report dated 24.04.1992 that Sukhmander Singh was not abducted by the Incharge Police Post, Bhagta Bhai Ka and he was not called in the Police Post. It is not in dispute that those were the days of insurgency in the State and it was difficult to pin point the persons creating trouble in the State and,

therefore, paramilitary forces including the CRPF was also put in to service of the Government to control the insurgent activities.

8. The trial Court discussed the evidence of PW-2 Charnjit Kaur and other witnesses who stated that Ajaib Singh had taken away Sukhmander Singh from the house and thereafter the other witnesses namely PW-7 Gurdev Singh had seen Sukhmander Singh in the Police Post on 05.04.1992. PW-4 Dev Raj deposed that his Maruti Van was being used by the police personnel which has been used as taxi and that the Maruti Van was taken away by the accused persons from the taxi stand on 03.04.1992. The prosecution evidence thus does not go beyond the words of the witnesses that Sukhmander Singh was taken in a Maruti Van by the Incharge Police Post Ajaib Singh. But then the witnesses as aforesaid i.e. Gurdev Singh had seen Sukhmander Singh as stated by them in the Police Post on 05.04.1992 and, therefore, on 08.04.1992 the telegram was also sent by his brother-in-law PW-3 Darbara Singh to the authorities. The prosecution evidence does not extend beyond this but then enquiry report dated 24.04.1992 Sukhdev Singh, SSP, Phul stated to the contrary. It is not the case of the prosecution that the said enquiry report dated 24.04.1992 was falsely made or did not represent the correct picture. It is the prosecution case that as per the DDR entry in the Police Post on 03.04.1992, accused Ajaib Singh ASI and other officials along with two sections of CRPF had left at about 9.20 am in order to conduct search in the village Malooka etc. and they came back at about 1.30 pm. But then CRPF personnel denied having accompanied the police official and submitted that they had themselves conducted the search in that

village. It cannot, therefore, be said that it was the appellant Ajaib Singh alone who had gone to that village. On the contrary, it was the CRPF personnel who had gone in that village for making search and therefore, since Sukhmander Singh was seen by the witnesses even after 05.04.1992, the evidence that it was Ajaib Singh-appellant, who had retained him, till he went missing, would be doubtful and untrustworthy. It cannot be forgotten that during those days of insurgency the police party as well as CRPF used to take the suspected persons with them but then the same could not be treated as abduction as they were obliged as per their duty to make search of the suspected persons and even apprehend them. It is in this background the entire prosecution evidence will have to be marshalled.

9. It is significant to note that the prosecution did not bring before the Court any entry with the Police Post about Sukhmander Singh being brought in the Police Post by appellant Ajaib Singh nor it is the case of the prosecution that no entry was made or that documents were not available. On the contrary, the DDR entry of 03.04.1992 about departure of the police party and CRPF personnel, was produced by the prosecution, which means that DDR register was available with the prosecution but that was not produced. Looking to the nature of the duty of the police personnel and looking to the fact that the CRPF had visited the village, it cannot be said with full surety that Sukhmander Singh was abducted by Ajaib Singh-appellant. Even assuming that Ajaib Singh-appellant had taken Sukhmander Singh on the date of occurrence, the evidence of the prosecution itself shows that he was seen thereafter till

08.04.1992 in the Police Post. The last seen theory, therefore cannot be pressed into service, looking to the nature of the job the appellant was obliged to perform. The prosecution does not have any evidence beyond the aforesaid evidence.

10. It is then seen that the appellant had examined defence witnesses. DW-8 Mal Singh, Sarpanch of Village Malooka was examined. His evidence has not been seriously challenged. As stated by learned trial Court, he stated in para 21 as follows:

“21. DW8 Mal Singh, Sarpanch of village Malooka in 1992 deposed that his servant Dholi had relations with terrorists in those days. Sukhmander Singh was their head and was involved in terrorist activities. He further deposed that Dholi was taken away by Sukhmander Singh from his house. He further deposed that on 3-4-92 he had visited police post Bhagta Bhai ka and met Ajaib Singh accused at 9.10 a.m. He further deposed that Ajaib Singh had arrived in the police post in a Canter accompanied by 3-4 police officials and there was no civilian with him at the time. He further deposed that firing had taken place near his village and in that connection he had again visited the police post alongwith others and saw Nachhattar, Jasbir and Raja of village Kalyan in the police post and requested the incharge to proceed according to laws in their case.”

11. From his evidence it is seen that Sukhmander Singh was heading the group involved in terrorist activities and that the firing had taken place in the village.

12. DW-9 Jagatpal Singh who was working as Lambardar of village Gurhari also deposed regarding activities of Sukhmander Singh. The trial Court stated about evidence of DW-9 in para 22, which I quote hereunder:

“22. DW9 Jagatpal Singh deposed that he is Lambardar of village Gurhari, police station Sangar, District Bathinda and Sukhmander Singh of village Malooka was known to him who used to visit his village (Gurhari) and was indulging in terrorist activities. He also deposed that one Nandi also used to visit the house of Malkiat and he has seen Sukhmander Singh visiting the house of said Malkiat off and on and have not seen him for the last six months. He further deposed that Sukhmander Singh had met him on 19-11-98 on the gate of Charitable Hospital of village Moria Chak, when he went there in connection with a religious congregation and Sukhmander Singh had told him that he was having chest pain and was getting the treatment from that hospital.”

13. Thus there is one more unchallenged piece of evidence which has been unjustifiably ignored by the trial Court. DW-12 Sadhu

Ram Duggal was examined who stated that Sukhmander Singh had visited the hospital Param Pita Shah Satnam Singh Ji, General Hospital, District Gurusar Moria, District Sri Ganga Nagar (Rajasthan) on 19.11.1998. He had produced entry from OPD register at serial No.60 dated 19.11.1998 Exhibit DF showing that Sukhmander Singh son of Bhag Singh had visited that hospital. The trial Court discussed about his evidence in para 42, which I quote hereunder:

“42. An attempt has also been made by the accused to show that Sukhmander Singh had gone to hospital Param Pita Shah Satnam Singh Ji, General Hospital, Gurusar Moria Chak, District Sri Ganga Nagar (Rajasthan) on 19-11-98. In that regard he has examined DW12 Sadhu Ram Duggal who brought the O.P.D register and there is an entry at Sr.No.60 of 19-11-98, copy of which is Ex.DF that Sukhmander Singh son of Bhag Singh or Malooka had visited that hospital.”

14. The trial Court has not taken into consideration the above evidence on the ground that the accused could have fabricated the said entry in the hospital. It is not possible to agree with the said reason as to the said entry in the absence of any cross-examination to this witness to that effect. After all at serial No.60 dated 19.11.1998 Exhibit DF entry was made during official course of business and the same could not have been ignored. It thus appears that Sukhmander Singh had disappeared from the State of Punjab and was moving here and there and visited the

said hospital on 19.11.1998 perhaps for the reason about the nature of activities performed by him during the days of insurgency.

15. The over all discussion as above would lead one to the conclusion that prosecution has proved suspicion against appellant Ajaib Singh. However, it is trite law that suspicion however strong, cannot take the place of proof. In the above circumstances, the benefit of doubt ought to have been given by the trial Court to the appellant.

16. In the result, I think, the conviction of the appellant will have to be set aside. Hence, I make the following order.

ORDER

- (i) CRA-S-No.600-SB OF 2003 is allowed.
- (ii) The judgment and order dated 07.02.2003 convicting and sentencing the appellant is set aside.
- (iii) The appellant be set at liberty forthwith if not required in any other case.
- (iv) Fine if any paid be refunded to him.

3rd MAY, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned : *Yes* *No*

Whether Reportable : *Yes* *No*