SUPREME COURT OF INDIA

Badshah

Vs

State of U.P

Appeal (crl.) 554 of 2005

(S.B. Sinha and Harjit Singh Bedi)

12/02/2008

JUDGMENT

S.B. SINHA, J.

1. Appellants herein are residents of village Salampur, Police Station Kuraoli, district Mainpuri in the State of Uttar Pradesh. They were accused of charges under Section 364 of the Indian Penal Code for commission of the offence of kidnapping and murder of one Suraj Pal Singh on 23.5.1980 at about 10.00 pm. They are resident of a village called Kherioa. The majority of the population of the said village either belongs to Yadav caste, to which the accused persons belong to, or Kumhar caste, to which the prosecution party belongs to. Two criminal cases were instituted against the prosecution witnesses by the accused. They were, however, acquitted. Suraj Pal Singh son of Jagal Lal, admittedly, was looking after the said cases.

2. A First Information Report was lodged by Pahalvan Singh, PW-1, brother of Suraj Pal Singh at about 5.15 pm on 23.5.1980 alleging that when the said Suraj Pal Singh along with PW-3, Ram Pal, Summer Singh, Khetal Singh and Puttu Lal were sleeping in their field where crops had been

harvested and ready for thrashing, the appellants herein as also Buddhi (since acquitted) reached there armed with guns and caught hold of Suraj Pal Singh and bodily lifted him. Puttu Lal, Ram Pal and other persons who were present there, questioned the accused persons as regards their said conduct and being resisted thereto, they resorted to firing thereby creating panic amongst them. Allegedly, they also gave out that Suraj Pal Singh was being abducted for being killed. On hearing the hue and cry as also the sound of firing shots, the informant, Pahalwan Singh, came to the place of occurrence where the other prosecution witnesses narrated the incident to him. An abortive search was made for Suraj Pal. He was not found and as such a First Information Report was lodged wherein apprehension was expressed as regards danger to the life of the said Suraj Pal Singh.

3. The learned Trial Judge found the appellants guilty of commission of the offence under Section 364 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for seven years. However, accused No.6, Buddhi was acquitted.

4. An appeal preferred by the appellants has been dismissed by the High Court by reason of the impugned judgment.

5. Mr. Swarup, learned counsel appearing on behalf of the appellant, submitted that no evidence having been brought on record to show that Suraj Pal Singh had been kidnapped for causing his murder or with a view to see that he was murdered, as envisaged under Section 364 of the Indian Penal Code, the impugned judgment of conviction and sentence is illegal. At best, the learned counsel contended, an offence under Section 365 of the Indian Penal Code has been made out.

6. Mr.Ratnakar Dash, learned senior counsel appearing on behalf of the respondent, on the other hand, supported the impugned judgment.

7. Before the Trial Court, the appellants abjured their guilt. It was contended that in view of the fact that the prosecution witnesses did not have any legal electricity connection for running the thrashing machine and there being no light, they could not have identified. Delay in lodging the First Information Report, according to the appellants, also gives rise to a suspicion. It was furthermore contended that all the prosecution witnesses are interested.

The learned Trial Judge, however, relied upon the deposition of PW-1 and PW-2 to hold that all the charges for grant of electrical connection having been deposited, user of electrical energy by the prosecution witnesses was permissible. The Investigating Officer, in his deposition, also found existence of electrical connection. The learned Trial Judge consulted an almanac to infer that it was a full moon night and further having regard to the fact that both the parties were known to each other, being residents of the village, the appellants had rightly been identified by the prosecution

witnesses as having committed the offence.

8. The learned Trial Judge furthermore found that PW-1 has rendered sufficient explanation for the delay in lodging the First Information Report as the kidnapped persons were searched by him and others. In regard to the contention that all the prosecution witnesses were interested witnesses, it was opined that in view of the fact that there were two factions in the village, no independent witness was available. PW-2, however, was considered to be an independent witness.

9. The High Court affirmed the said finding by reason of the impugned judgment.

10. Before embarking upon the legal issue, we may notice the definition of kidnapping and abduction, as contained in Section 359 and 362 of the Indian Penal Code which are in the following terms:

"359KidnappingKidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.362AbductionWhoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person."

We may also notice Section 364 of the Indian Penal Code which reads as under:

"364Kidnapping or abducting in order to murder Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

11. Ingredients of the said offence are (1) Kidnapping by the accused must be proved; (2) it must also be proved that he was kidnapped in order to; (a) that such person may be murdered; or (b) that such person might be disposed of as to be put in danger of being murdered. The intention for which a person is kidnapped must be gathered from the circumstances attending prior to, at the time of and subsequent to the commission of the offence. A kidnapping per se may not lead to any inference as to for what purpose or with what intent he has been kidnapped.

12. The fact that the parties were enemically disposed of towards each other is beyond any doubt or dispute. Two criminal cases were instituted against the prosecution witnesses. It has been

established that Suraj Pal Singh had been looking after the said criminal cases. The fact that the appellants were present at the place of occurrence also stands established. Appellant, not only picked up Suraj Pal Singh but also bodily lifted him away and when some resistance was put, they also resorted to firing in the air.

13. Indisputably, Suraj Pal Singh has not been seen thereafter. He has not been heard of. Nobody in his family has heard from Suraj Pal Singh for the last 27 years. In terms of Section 118 of the Indian Evidence Act, he is presumed to be dead. But in absence of any proof of death having been caused to him, a charge under Section 302 of the Indian Penal Code could not be made. Fact remains that he has not been heard or seen from the date of the incident, the law presumes him to be dead.

14. Although the First Information was lodged on 24.5.1988, the Investigating Officer did not find the appellants in their house. They could not immediately be arrested. Warrant of attachment of sale of their property was issued. Mulaim Singh was arrested only on 28.6.1988. It is also significant that PW-2, in his deposition, categorically stated that the accused No.1, Badshah, had given out that they were taking Suraj Pal Singh away in order to kill him. Similar are the statements of PW-2 and PW-3. PW-2 categorically stated that appellants had furthermore given out that if they wanted to save their lives, they should run away.

15. Testimonials of the said prosecution witnesses have been relied upon by the two courts below. We do not see any reason to differ therewith. The fact that there had been a deep-rooted enemity between the accused persons and Suraj Pal Singh, it will bear repetition to state, stands established. They came to the place of occurrence in the night heavily armed, took the deceased away stating that they would kill him and thereafter he has not been seen alive by any person which, in our opinion, is sufficient to arrive at a conclusion that a case under Section 364 of the Indian Penal Code has been made out.

16. The question as to on whom the onus lies would depend upon the facts of each case. We may at this juncture notice a few decisions operating in the field.In Murlidhar & Ors. v. State of Rajasthan [(2005) 11 SCC 133], this Court proceeded on the basis that the prosecution while taking upon itself the burden of proving the murder of the abducted boy by introducing eye-witnesses, the provisions of Section 106 of the Indian Evidence Act would have no application. Several circumstances which were sought to be proved by the prosecution were held to have been not proved. It was in the aforementioned fact situation, Section 106 of the Evidence Act was held to have no application.

17. However, in Ram Gulam Chaudhary & Ors. v. State of Bihar [(2001) 8 SCC 311], this Court upheld the conviction of the appellants therein who were alleged to have brutally assaulted the boy. Finding him still alive, a chhura blow was inflicted on his chest and then he was carried away. The Court, opining that the burden to prove was on the accused, stated:

"Even otherwise, in our view, this is a case where Section 106 of the Evidence Act would apply. Krishnanand Chaudhary was brutally assaulted and then a Chhura blow was given on the chest. Thus Chhura blow was given after Bijoy Chaudhary had said "he is still alive and should be killed". The Appellate then carried away the body. What happened thereafter to Krishnanand Chaudhary is especially within the knowledge of the Appellant. The Appellants have given no explanation as to what they did after they took away the body. Krishnanand Chaudhary had not been since seen live. In the absence of an explanation, and considering the fact that the Appellants were suspecting the boy to have kidnapped and killed the child of the family of the Appellants. It was for the Appellant to have explained what they did with him after they took him away.When the abductors withheld that information from the Court there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be 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 like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The Appellant by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference. We, therefore, see no substance in this submission of Mr. Mishra."

18. In Sucha Singh v. State of Punjab [(2001) 4 SCC 375], Section 106 of the Evidence Act was held to be applicable to cases where the prosecution had succeeded in proving facts for which a reasonable inference can be drawn as regards 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.

19. In the event of murder of an abducted person, either by direct or presumptive evidence, an inference of murder can safely be drawn in resepct whereof, it would not be necessary to prove the corpus delicti.

In Ramjee Rai & Ors. v. State of Bihar [2006 (8) SCALE 440], this court observed :

"It is now a trite law that corpus delicti need not be proved. Discovery of the dead body is a rule of caution and not of law. In the event, there exists strong circumstantial evidence; a judgment of conviction can be recorded even in absence of the dead body."

20. The fact of the matter together with the precedents as noticed hereinbefore, in our opinion, lead to the conclusion that a different view from that of the High Court is not warranted.

21. This appeal is, therefore, dismissed.