Sumaida v. Canada (Minister of Citizenship and Immigration) (C.A.), 2000 CanLII 17099 (F.C.A.)

Date: 2000-01-07
Docket: A-800-95
Parallel citations: [2000] 3 F.C. 66 • (2000), 183 D.L.R. (4th) 713 • (2000), 179 F.T.R. 148
URL: http://www.canlii.org/en/ca/fca/doc/2000/2000canlii17099/2000canlii17099.html

Reflex Record (noteup and cited decisions)

A-800-95

Minister of Citizenship and Immigration (*Appellant*)

v.

Hussein Ali Sumaida (*Respondent*)

Indexed as: Sumaidav. Canada (Minister of Citizenship and Immigration) (C.A.)

Court of Appeal, Strayer, Létourneau and Noël JJ.A. "Toronto, December 10, 1999; Ottawa, January 7, 2000.

Citizenship and Immigration " Status in Canada " Convention refugees " Exclusion " Crimes against humanity " Complicity " Need not be shown that claimant linked to specific crimes as actual perpetrator.

In 1991, the Immigration and Refugee Board (the Board) concluded that the respondent, a citizen of Iraq and Tunisia, was a Convention refugee but, having found that there were serious reasons for finding that the respondent had committed crimes against humanity, excluded him pursuant to the combined effect of the *Immigration Act* and Article 1F of the United Nations Convention Relating to the Status of Refugees.

As a student in England, between 1983 and 1985, the respondent voluntarily reported to the Mukhabarat, the Iraqi secret police, the names of over 30 members of the Al Da'wa, a group opposed to Sadam Hussein and his government. Although the Al Da'wa was a terrorist organization, the cells outside Iraq were non-violent and involved primarily in recruitment and propaganda. The Mukhabarat used torture and the murder of children to suppress opponents of the Hussein regime. The Al Da'wa was outlawed in Iraq and a death sentence was imposed on all persons affiliated with it. There was no evidence that any of those on whom the respondent informed were actually killed.

The Motions Judge set aside the decision of the Board. This was an appeal and a cross-appeal from that decision.

Held, the appeal should be allowed and the cross-appeal dismissed.

Appeal:

The definitions of crimes against humanity refer to serious crimes or other inhumane acts committed against "any civilian population". There was cogent evidence before the Board that Iraq's policy, known to the respondent, was to kill not only members of the Al Da'wa, but also their relatives up to the third degree. Furthermore, it was reasonable to infer that at least some of the students on whom the respondent informed were not terrorists, and, therefore, were civilians. There was therefore before the Board sufficient evidence of inhumane treatment of civilians to sustain a finding of crimes against humanity. There was no need to answer the question of whether

terrorists could be "civilians" within the definition of such crimes.

Cross-appeal:

The respondent submitted that there was, before the Board, no evidence of his complicity in a crime against humanity in view of the absence of evidence that any harm befell the alleged victims. The respondent relied on *Sivakumar v. Canada (Minister of Employment and Immigration)* in support of his contention that the appellant had to prove that the students he informed on, or their families, were harmed as a result of his activities. That case, however, did not support the position advanced by the respondent. In *Sivakumar*, the Board had failed to make a finding of fact as to the acts committed by the LTTE, whether those acts amounted to crimes against humanity and whether the refugee claimant knew of those acts and had a shared purpose with the LTTE. *Sivakumar* does not stand for the proposition that a claimant must be linked to specific crimes as the actual perpetrator or that the crimes against humanity committed by an organization be necessarily and directly attributable to specific acts or omissions of a claimant. This Court has accepted the notion of complicity defined as personal and knowing participation (*Ramirez v. Canada (Minister of Employment and Immigration)*) as well as complicity through association whereby individuals may be rendered responsible for the acts of others because of their close association with the principal actors (*Sivakumar*). In the present case, there were none of the lacunae found in the Board's reasons in *Sivakumar*. The Board herein anticipated the teachings of this Court in *Sivakumar* and no fault was to be found with its approach on the liability of the respondent as an accomplice who facilitated or intended to facilitate the persecution of targeted civilians by identifying them to the persecuting authority. When an informant such as the respondent has directed those at the most violent point in the chain of command to their victims, he can hardly exonerate himself by saying "you can't prove anyone I informed on was actually killed or tortured".

statutes and regulations judicially considered

Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, August 8, 1945, 82 U.N.T.S. 279, Charter of the International Military Tribunal, Art. 6(c).

An Act to amend the Immigration Act and other Acts in consequence thereof, S.C. 1992, c. 49, s. 118.

Criminal Code, R.S.C., 1985, c. C-46 , s. 7(3.76) (as am. by R.S.C., 1985 (3rd Supp.), c. 30, s. 1).

Federal Court Act, R.S.C., 1985, c. F-7 , s. 18.1(3)(*b*) (as enacted by S.C. 1990, c. 8, s. 5).

Geneva Conventions Act, R.S.C., 1985, c. G-3 , ss. 3 (as am. by S.C. 1990, c. 14, s, 2), 4 (as am. *idem*, s. 3).

Immigration Act, R.S.C., 1985, c. I-2 , s. 82.3 (as enacted by R.S.C., 1985 (4th Supp.), c. 28, s. 19; S.C. 1990, c. 8, s. 55).

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), being Sch. V of the *Geneva Conventions Act*, R.S.C., 1985, c. G-3 (as am. by S.C. 1990, c. 14, s. 6), Articles 50, 75.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), being Sch. VI of the *Geneva Conventions Act*, R.S.C., 1985, c. G-3 (as am. by S.C. 1990, c. 14, s. 6), Articles 2, 4.

United Nations Convention Relating to the Status of Refugees, July 28, 1951, [1969] Can. T.S. No. 6, Art. 1F.

cases judicially considered

applied:

Ramirez v. Canada (Minister of Employment and Immigration), reflex, [1992] 2 F.C. 306; (1992), 89 D.L.R. (4th) 173; 135 N.R. 390 (C.A.); *R. v. Wigman*, 1985 CanLII 1 (S.C.C.), [1987] 1 S.C.R. 246; (1987), 38 D.L.R. (4th) 530; [1987] 4 W.W.R. 1; 33 C.C.C. (3d) 97; 56 C.R. (3d) 289; 75 N.R. 51; *Sivakumar v. Canada (Minister of Employment and Immigration)*, 1993 CanLII 3012 (F.C.A.), [1994] 1 F.C. 433; (1993), 163 N.R. 197 (C.A.); leave to appeal to S.C.C. denied [1994] 2 S.C.R. ix.

APPEAL and cross-appeal from a Trial Division decision (*Sumaida v. Canada (Minister of Citizenship and Immigration)* (1995), 116 F.T.R. 1; 35 Imm. L.R. (2d) 315) allowing an application for judicial review of an Immigration and Refugee Board decision that the respondent was a Convention refugee but that he should be excluded pursuant to the combined effect of the *Immigration Act* and Article 1F of the United Nations Convention

Relating to the Status of Refugees. Appeal allowed; cross-appeal dismissed.

appearances:

I. John Loncar for appellant.

Maureen N. Silcoff for respondent.

solicitors of record:

Deputy Attorney General of Canada for appellant.

Vandervennen Lehrer, Toronto, for respondent.

The following are the reasons for judgment rendered in English by

[1]Létourneau J.A.: This appeal and cross-appeal raise the following issues:

(a) whether terrorists are civilians within the definition of crimes against humanity and, therefore, can be victims of such crimes;

(b) whether the Motions Judge [(1995), 116 F.T.R. 1 (F.C.T.D.)] was justified in returning the respondent's refugee claim to the Immigration and Refugee Board (the Board) with a direction that the Board determine whether the members of the Al Da'wa cell in Manchester, England, were civilians as that term is used in the definition of crimes against humanity;

(c) whether the Motions Judge erred when she sustained the Board's finding that the respondent was guilty of a crime against humanity despite the absence of evidence that any harm befell the alleged victims or that any crime was committed against them;

(d) whether the Motions Judge could issue specific directions to the Board to consider matters that were not argued and decided before her.

Preliminary Issue

[2]At the beginning of the hearing, the Court raised with the parties the fact that there had been no certification of a serious question of general importance and questioned whether the appeal and the cross-appeal were properly instituted. The issue was reserved and the parties were given until December 17, 1999 to file written representations. Counsel for the appellant did so and filed a brief indicating that Direction 17, issued by the Chief Justice of the Federal Court pursuant to section 118 of *An Act to amend the Immigration Act and other Acts in consequence thereof*, S.C. 1992, c. 49, suspended the requirement that a serious question of general importance be certified by the Motions Judge. After reviewing Direction 17, section 82.3 [as enacted by R.S.C., 1985 (4th Supp.), c. 28, s. 19; S.C. 1990, c. 8, s. 55] of the *Immigration Act*, R.S.C., 1985, c. I-2 and section 118 of the amending legislation, I am satisfied that the proceedings were properly commenced as the appellant had obtained leave to appeal to this Court pursuant to the *Immigration Act* as it stood before the 1992 amendments. I will now address the merits of the appeal and cross-appeal. However, a short review of the facts is necessary for a better understanding of the issues.

Factual and Procedural Background

[3]The respondent is a citizen of Iraq and Tunisia. His father is a high-ranking diplomat serving the regime of Saddam Hussein. During his studies in England between 1983 and 1985, he joined the Al Da'wa, a group opposed to Hussein and his government. In the early 1980s, the objective of the Al Da'wa was to overthrow the Hussein regime and establish an Iranian style theocracy in Iraq. Its members engaged in active international terrorism. However, the evidence also disclosed that the cells outside Iraq were non-violent and were involved primarily in recruiting and in organizing propaganda and anti-Hussein demonstrations.

[4]Soon after joining the Al Da'wa, the respondent became disillusioned with them and chose voluntarily to report Al Da'wa members' names to the Iraqi secret police, the Mukhabarat. It is a brutal police organization which serves as Hussein's private army. It uses such means as vicious torture and the murder of children and infants to

suppress opponents of the Hussein regime. The Iraqi government had outlawed the Al Da'wa organization and imposed a death sentence on all persons affiliated with the party. The members that the respondent informed on were mostly students in England. He supplied information to Iraqi secret police on over 30 members. There was no evidence that any of those on whom the respondent informed were actually killed (see decision of the Board, Appeal Book, Vol. IV, at page 537).

[5]While in England, the respondent also did intelligence work for Israel's Mossad, mainly against the PLO. Eventually, he confessed to Iraqi authorities that he was working for Israel. He was pardoned on condition that he act as a double agent. Eventually, he returned to Iraq and joined the Iraqi Mukhabarat.

[6]While a Mukhabarat member, the respondent facilitated an arms sale to a PLO terrorist by the name of Abu al-Abbas. He was the well-known leader of the hijacking of the cruise ship the *Achille Lauro*.

[7]All of the above is public knowledge, here in Canada and presumably among Middle Eastern intelligence organizations, since the respondent discussed these and other spying activities in a published autobiography, *Circle of Fear* (Appeal Book, Vol. II, at pages 114 *ff.*).

[8]The respondent came to Canada in 1990, and in 1991 the Board heard his claim. He claimed to be a Convention refugee by reason of a well-founded fear of persecution in Iraq and Tunisia, on the ground of his political opinion.

[9]The Board accepted the respondent's claim with respect to his two countries of nationality on the ground of his political opinion. It was satisfied that the revelations in his book about working for Israel would put him in grave danger should he return to the Middle East. Thus, he satisfied the first part of the definition of a "Convention refugee".

[10]However, the Board found that there were serious reasons for finding that the respondent had committed crimes against humanity. This was based on the respondent's activities for the Mukhabarat in the U.K. and in Iraq, as well as on his voluntary supplying of arms to a known terrorist. While there was no direct evidence that anyone informed upon by the respondent had been killed, the circumstantial evidence made this probable (see Appeal Book, Vol. IV, at page 545). Accordingly, Article 1F of the Convention [*United Nations Convention Relating to the Status of Refugees*, July 28, 1951, [1969] Can. T.S. No. 6] applied to deny refugee status.

[11]The respondent successfully sought judicial review of the Board's decision in the Trial Division of the Federal Court. The Motions Judge set aside the decision of the Board and referred back to the Board the matter for a reconsideration restricted to the following topics:

(a) Were the members of the Al Da'wa cell in Manchester "civilians" as that term is used in the definition of crimes against humanity relied on by the Board in its decision?

(b) Does the respondent's membership in the Mukhabarat justify his exclusion from Canada under Article 1F of the Convention?

(c) Does the respondent's participation in the arms sale to Abu al-Abbas justify his exclusion from Canada under the Convention?

The appeal

[12]The appellant submits that the Motions Judge erred in holding that a crime against humanity cannot be perpetrated against a terrorist and in failing to recognize that there was ample evidence before the Board that the killing of opponents or presumed opponents by the Hussein regime extended also to non-terrorists and, therefore, to members of the civilian population.

[13]Article 1F(a) of the UN Convention relating to the status of refugees excludes from the scope of its protection "any person with respect to whom there are serious reasons for considering that . . . he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes". In this instance, the Board referred to the London Agreement of August 8, 1945 and, more specifically, to Article 6(c) of the *Charter of the International Military Tribunal*

(Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis) [82 U.N.T.S. 279] which reads:

Article 6

. . .

Crimes against humanity: namely, murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal whether or not in violation of the domestic law of the country where perpetrated. [Emphasis added.]

[14]Basically, the definitions of crimes against humanity refer to serious crimes or other inhumane acts committed against "any civilian population". However, there is no definition of the words "civilian" or "civilian population" used in these definitions found in the various international agreements or, for that matter, in section 7(3.76) of the Canadian *Criminal Code* [R.S.C., 1985, c. C-46 (as am. by R.S.C., 1985 (3rd Supp.), c. 30, s. 1)].

[15]At the hearing, counsel for the appellant made an extensive review of the provisions (sections 3 and 4) of the *Geneva Conventions Act* [R.S.C., 1985, c. G-3], the *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of the Victims of International Armed Conflicts (Protocol I)* [being Sch. V of the *Geneva Conventions Act* (as am. by S.C. 1990, c. 14, s. 6)] (Articles 50 and 75); and the *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)* [being Sch. VI of the *Geneva Conventions Act* (as am. *idem*)] to the said Conventions (Articles 2 and 4) in an effort to establish that, if in times of war fundamental rights and humane treatment are guaranteed to prisoners of war, to the civilian population and to persons who are not taking or have ceased to take part in hostilities, then a similar if not greater protection is to be given in times of peace to every person, including terrorists, from crimes against humanity. The appellant's contention is attractive, but I do not need to rule on it as I agree with his second submission that there was before the Board sufficient evidence of inhumane treatment of civilians to sustain a finding of crimes against humanity.

[16]As a matter of fact, the factual circumstances that the Board considered did not require it to adjudicate on the issue of whether terrorists could be "civilians" within the definition of such crimes. In finding that there had likely been victims of crimes against humanity, the Board not only referred to the Al Da'wa members, but also to their families within Iraq. This is made manifestly clear in the following passage of the Board's decision:

The claimant personally participated in exposing large numbers of persons and their families to probable torture and execution by providing information about the identity of 30 to 35 members of Al Da'wa in the U.K. to the Mukhabarat. He did this with wanton and callous disregard for the safety of these people and their families in Iraq. [Appeal Book, vol. IV, page 545]. [Emphasis added.]

[17]There was cogent evidence before the Board that Iraq's policy known to the respondent was to kill not only members of the Al Da'wa organization but also their relatives up to the third degree, through assassinations either in Iraq or abroad (see decision of the Board, Appeal Book, Vol. IV, at pages 537, 541 and 542).

[18]Moreover, the Al Da'wa group on whom the respondent informed was composed of University students (see decision of the Board, Appeal Book, Vol. IV, page 536). While it is true that there are members of the Al Da'wa organization who are involved in terrorism, it is very unlikely that all these dissenting and somehow activists students living in England were terrorists. Indeed, the Motions Judge acknowledged that the evidence "disclosed that the cells outside Iraq were not violent and were involved primarily in recruiting and organizing propaganda and anti-Hussein demonstrations" (Motions Judge's decision, at page 3). It is reasonable to infer that at least some of them were not terrorists and, therefore, were civilians.

[19]Thus, in my view, the Board's finding that civilians were targeted victims of the respondent's crimes against humanity referred to two classes of civilians: students in U.K. who were members of Al Da'wa and their families in Iraq. Such finding was sufficient to meet the definition of "crime against humanity". Although determining whether terrorists are members of the civilian population raises a theoretically interesting question, the factual circumstances of this case and the evidence before the Board were such that the resolution of that question was not

material to a refugee status determination. Consequently, the Motions Judge should not, on that basis, have interfered with the Board's finding that the respondent participated in crimes against humanity.

The cross-appeal

[20]At the hearing, the respondent who cross-appealed from the Motions Judge's decision did not challenge her jurisdiction under paragraph 18.1(3)(*b*) of the *Federal Court Act* [R.S.C., 1985, c. F-7 (as enacted by S.C. 1990, c. 8, s. 5)] to issue directions to the Board as she was referring the matter back to it:

18.1 . . .

(3) On an application for judicial review, the Trial Division may

. . .

(*b*) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal. [Emphasis added.]

[21]However, he contended that it was not appropriate for her to provide directions (a) and (b) previously cited. The only rationale for his contention was that the issues they relate to were not argued before her. I see no merit in this contention.

[22]Indeed, both issues to which the directions relate, i.e., the respondent's membership in the Mukhabarat and the arm deal with a PLO terrorist, were properly before the Board (see decision of the Board, Appeal Book, Vol. II, at pages 538, 539, and 542-545).

[23]The appellant had conceded before the judicial review hearing began that the Board had erred in its treatment of the arm sale issue. It would therefore be quite appropriate for the Board on a reconsideration of the matter to look anew at this matter and for the Motions Judge to so direct.

[24]Direction (c) to the Board results from a change in the law after the Board's decision was rendered: this Court in *Ramirez v. Canada (Minister of Employment and Immigration)*, reflex, [1992] 2 F.C. 306 (C.A.) held that mere membership in an organization principally directed to a brutal purpose, such as a secret police activity, may, by necessity, involve personal and knowing participation in the persecutorial acts performed by that organization. As the respondent's case was still in the judicial system when the change in the law occurred, it is appropriate that the reconsideration take such change into account and the Motions Judge made no error in so directing: *R. v. Wigman*, 1985 CanLII 1 (S.C.C.), [1987] 1 S.C.R. 246, at pages 257-258.

[25]More serious and deserving of consideration is the respondent's submission that there was, before the Board, no evidence of his complicity in a crime against humanity in view of the absence of evidence that any harm befell the alleged victims or that any crime was committed against them. It will be recalled that Article 1F of the UN Convention relating to the status of refugees requires for the exclusion of a claimant that there be "serious reasons for considering that . . . a crime against humanity . . . has [been] committed. This means that, in terms of standard of proof, what is required is more than suspicion or conjecture, but less than proof on a balance of probabilities. Consequently, he argues that the appellant had to prove that the very persons on whom he informed to the Mukhabarat, i.e., the students in England or the members of their families in Iraq or elsewhere, were hurt, tortured or killed as a result of his activities. At best, the evidence on these issues, he submits, amounts to nothing more than speculation on behalf of the appellant and the Board.

[26]The respondent relies on the decision of this Court in *Sivakumar v. Canada (Minister of Employment and Immigration)*, 1993 CanLII 3012 (F.C.A.), [1994] 1 F.C. 433 (C.A.), leave to appeal to the Supreme Court of Canada dismissed [1994] 2 S.C.R. ix.

[27]More precisely, he refers to this passage at page 449 of the decision to support his contention:

The importance of providing findings of fact as to specific crimes against humanity which the refugee claimant is

alleged to have committed cannot be underestimated in a case such as this where the Refugee Division determined that the claimant has a well-founded fear of persecution at the hands of the Sri Lankan government . . . . Given the seriousness of the possible consequences of the denial of the appellant's claim on the basis of section F(a) of Article 1 of the Convention to the appellant and the relatively low standard of proof required of the Minister, it is crucial that the Refugee Division set out in its reasons those crimes against humanity for which there are serious reasons to consider that a claimant has committed them. In failing to make the required findings of fact, I believe that the Refugee Division can be said to have made an error of law.

[28]With respect, I do not think that this excerpt replaced in its full and proper context sustains the position advanced by the respondent.

[29]In the *Sivakumar* case, the Board had failed to make a finding of fact as to the acts committed by the LTTE, whether those acts amounted to crimes against humanity and whether the refugee claimant knew of those acts and had a shared purpose with the LTTE. This appears clearly from the following excerpt of the decision of our Court [at page 448]:

The Refugee Division's reasons are deficient, however, because of the absence of factual findings of acts committed by the LTTE as well as of the appellant's knowledge of the acts and shared purpose with the LTTE, and the lack of findings in relation to whether those acts were crimes against humanity. The Refugee Division simply stated:

> Therefore, the panel believes that there are serious reasons for considering that the claimant, in his leadership position, must be held individually responsible for crimes against humanity committed by the LTTE and documented elsewhere in these reasons.

[30]It is in this context that our Court concluded that it was necessary for the Board to make findings of fact as to what the alleged crimes against humanity are. It was not sufficient to speak of atrocities without further clarification. Linden J.A. wrote [at page 448]:

However, the closest the panel came to documenting the LTTE's actions, as well as the appellant's knowledge of and intent to share in the purpose of those acts, and to determining whether those acts constituted crimes against humanity were vague statements about "atrocities" and "abhorrent" tactics committed by all parties to the civil strife in Sri Lanka. . .

[31]Our Court never required in that case that a claimant be linked to specific crimes as the actual perpetrator or that the crimes against humanity committed by an organization be necessarily and directly attributable to specific acts or omissions of a claimant.

[32]Indeed, short of that kind of direct involvement and of evidence supporting it, our Court accepted the notion of complicity defined as a personal and knowing participation in *Ramirez* (see page 438 of the *Sivakumar* decision) as well as complicity through association whereby individuals may be rendered responsible for the acts of others because of their close association with the principal actors (see pages 439-440 of the *Sivakumar* decision).

[33]Moreover, despite the Board's failure to make findings of fact as to specific crimes, our Court found therein that there was ample evidence that civilians were killed as part of a systematic attack on a particular group, that these killings constituted crimes against humanity, that the refugee claimant had knowledge of these crimes committed by the LTTE and that he had a shared common purpose with it evidenced by the "several positions of importance [that he held] within the LTTE . . . [and] from which it can be inferred that he tolerated the killings as a necessary, though perhaps unpleasant, aspect of reaching the LTTE's goal of Tamil liberation" (see page 450 of the decision).

[34]In that case, our Court thus found that the refugee claimant had committed crimes against humanity by virtue of his accomplice liability involving a shared purpose and knowledge. In reaching this finding, it satisfied the "specific crimes" standard it had alluded to not by requiring evidence pointing to specific victims that could be connected to the claimant, but by filling in the three lacunae found in the Board's deficient reasons, i.e., a finding that the LTTE was connected to "incidents in which civilians were killed" (see page 450 of the decision), a finding that the claimant knew of these acts and shared the purposes of the LTTE and a finding that the acts of the LTTE

amounted to crimes against humanity.

[35]In the present instance, there were no such lacunae in the Board's reasons. The Board clearly specified the kind of acts that it considered as crimes against humanity: the torture and killing of Al Da'wa members and their families. The finding that these people were targeted for execution is fully supported by the documentary evidence and the respondent's own testimony (see decision of the Board at pages 537, 539, 541 and 544). The Board also found as a fact supported by the documentary evidence and the respondent's testimony that the respondent knew of these acts as well as of the Hussein regime's policy in this regard, and shared a common purpose (see the decision at pages 536, 537, 539, and 541-544). Finally, it did a satisfactory analysis of killing and torture of civilians as crimes against humanity.

[36]In my view, in assessing the evidence before it and in coming to the conclusions it did, the Board anticipated the teachings of this Court in the *Sivakumar* case and I can find no fault with respect to its approach on the liability of the respondent as an accomplice who facilitated or intended to facilitate the persecution of targeted civilians by identifying to the persecuting authority those who should be persecuted. When an informant such as the respondent has knowingly directed those at the most violent point in the chain of command to their victims, it hardly lies in his mouth to say "you can't prove anyone I informed on was actually killed or tortured".

[37]For these reasons, I would dismiss the cross-appeal. I would allow the appeal, quash the order of the Motions Judge issued on November 10, 1995 in file A-947-92 and restore the decision of the Board rendered on December 12, 1991. I would issue no order as to costs as none was sought.

Strayer J.A.: I agree.

Noël J.A.: I agree.