

Sadaram, Son of Gurbux Kalar

Vs

The State of Madhya Pradesh

Criminal Appeal No. 1 of 1969

(G. K. Mitter, A. N. Grover JJ)

04.03.1971

JUDGMENT

MITTER, J. -

1. Accepting the appeal of the State from the judgment of the Additional Sessions Judge, Betul, acquitting all the thirteen accused before him in Sessions Trial No. 92 of 1965, the High Court of Madhya Pradesh convicted the appellant before us under Section 302 of the Indian Penal Code and sentenced him to rigorous imprisonment for life. According to the Sessions Judge, the prosecution had not produced any witness who could be relied on but the High Court took a different view and held that although three of the eye witnesses, namely Gopal Singh (P.W. 1) Gurnam Singh (P.W. 3) and Moti Singh (P.W. 4) might be termed interested witnesses whose evidence had to be viewed with caution, there were at least two police witnesses, Sub-Inspector, Shyamrao (P.W. 7) and constable Laxmanrao (P.W. 6) who could not be placed in the same category and whose testimony could be relied on as corroborating that of the interested witnesses in convicting Sada Ram.

2. The relevant facts about which there can be no dispute are as follows. The appellant had once been in the employment of Gopalsingh, P.W. 1 and used to assist him in running his liquor shop. Subsequently he started running a liquor shop on his own in an adjoining village to that of Gopalsingh's and became a serious competitor of his in business. Rivalry led to enmity to such an extent that Gopal Singh, had to engage a number of persons known as "Pahalwans" to act as his body guard. Some of these were Gurnam Singh, Thansingh, Motisingh and the deceased Mathura Pahalwan. There were criminal proceedings against both the parties; as a result of the frequent troubles a special police guard was posted at Amla Police Station on August 13, 1965, which was the Bhujlia day. Apparently people in that locality are in the habit of going out in procession to perform some ceremonies on that day. Gopalsingh had invited people to his residence to attend the function at his place. After the "Pooja" had been performed and the Bhujlia Procession had left Gopalsingh's house, Mathura Pahalwan who had stepped down on to the road from the platform outside the house was injured by a spear which pierced his chest. The impact was so great that Mathura was unable to speak and almost immediately afterwards became unconscious. He died within a short time thereafter between 6.30 and 7.00 p.m. without regaining consciousness.

3. The prosecution case was that a conspiracy had been hatched by Sadaram and his associates who were put on the Sessions trial to murder Gopalsingh and some of his body guards. At about 6.30 p.m. when Gopalsingh was performing the pooja in connection with the function Sadaram and his group came to the scene, some of them being armed with weapons like spears, farsha and axes while others had provided themselves with lathis. Stones were thrown towards Gopalsingh's house from a close-by lane which lay in the direction of Sada Ram's house. Mathuradas Pahalwan went forward

to investigate the source of the trouble but no sooner than he had set his foot on the road the appellant Sadaram emerged on the scene with a spear in his hand followed by the accused, Mishrilal armed with a farsha and Sadaram gave a spear thrust on the chest of Mathura. Sadaram also cried out that Gopalsingh and Thansingh should not be allowed to escape but left the spot soon after. Gopalsingh immediately rushed to the police station and lodged a First Information Report. The doctor who was summoned to attend on Mathura could render no aid. The Station House Officer came to the spot and started investigation as a result already lodged.

4. The Sessions Judge found himself unable to accept the story of stone-throwing as there were no marks on the doors and walls of Gopalsingh's house and also because this was not supported by at least one independent witness, Ramprasad (D.W. 4). He found himself unable to accept the story that in spite of a large number of stones having been thrown no one was hit. He also found himself unable to accept the evidence of Sadaram having thrust the spear into Mathura's chest. He did not accept the version given in the First Information Report as being authentic. The High Court held that the Sessions Judge's approach was not correct.

5. We have therefore to note the sequence of events starting from the First Information Report and the evidence of the eye witnesses to see whether the finding of the High Court was justified. The First Information Report, Ex. P-1 was lodged at Amla Police Station and purported to be recorded by the Station Officer, B. P. Tiwari at 7.05 p.m., the time of occurrence being noted as 6.45 p.m. If the First Information Report is correct it was lodged within 20 minutes of Mathura being struck with the spear and Gopalsingh could possibly have had no time to make up a story.

6. Gopalsingh's version as noted in the report was to the effect that Sadaram and members of his party had come to his house in the evening having provided themselves with arms as already noted. They started hurling abuses and pelting stones at his house whereupon his servants Mathura, Transingh, Gurnamsingh and others went out of the Varandah of his house. Shouting at others to kill, Sadaram struck Mathura with the spear on the left portion of his chest in the presence of all. Then his party took to their heels. The Station Officer Amla alongwith the Head Constable, Laxmanrao and others constables of the police station were also present there. His own servants Mohansingh and Kokasingh were also present on the spot. Mathura caught the spear with his hands and took it out but became unconscious. The police chased the members of Sadaram's party. Sadaram was still shouting that Thansingh and Gopalsingh should not be left alive.

7. The above report, if true, makes it clear that Mathura was not known or thought to be dead when Gopalsingh had left for the police station. He had been attacked by Sadaram in the presence of a fairly large number of persons including some police officers who had chased Sadaram's party. It follows that there should have been no difficulty in adducing the evidence of a fairly large number of persons who must have witnessed the whole incident.

8. We do not feel it necessary to examine the evidence of all the witnesses and it would be enough to scrutinise that of the witnesses referred to and relied on by the High Court in convicting the appellant. We consider it redundant to refer in detail to the evidence of Gopalsingh, P.W. 1, which is more or less on the lines of the first information report. According to the High Court, there was nothing in his evidence which would warrant a rejection of the testimony afforded thereby.

9. The second witness relied on by the High Court was Gurnam Singh (P.W. 3) a Pahalwan who was said to be present on the platform at the time of the occurrence and gave a version similar to Gopalsingh. It was the common version of Gopalsingh and Gurnamsingh in the witness box that

Sadaram had come out of a hut and attacked Mathura while his associate Mishrilal was present with a spear in his hand. Motisingh (P.W. 4) another Pahalwan also made a statement to a similar effect. According to this witness the Assistant Sub-Inspector Shyamrao (P.W. 7) and two constables were near at hand when Mathura was hit by the spear but the police Jamader, P.W. 8, was not there.

10. Mahendrasingh (P.W. 5) a resident of village Bodkhi also gave a version of the same kind. The High Court held that he could not be said to be a chance witness as his presence at the spot was not unnatural because of the celebration of the Bhujlia festival there. The High Court however did not place reliance on this witness.

11. According to the High Court the evidence of the above interested witnesses was corroborated by the Assistant Sub-Inspector Shyamrao, P.W. 7, who was an eye witness and who had been specially deputed to keep watch over the procession and to see that no untoward incident took place.

12. According to Shyamrao, P.W. 7, he had Laxmanrao were stationed in front of Gopalsingh's house and P.W. 8 Daniel was going along with the procession. All the Bhujlias came to Gopalsingh's house and he was receiving the processionists on the platform outside and Verandah of his house. Sadaram and his group some of whom were armed near Gopalsingh's house. Thereafter stones were showered from the direction of Sadaram's house. The witness and the Pahalwan went towards the place from which the stones were coming. It was at this moment that Sadaram struck Mathura with the spear. Mishri was also there with a farsha. Daniel was also trying to stop the stone-throwing. Both Sadaram and Mishri had come out of the hut of Bhaddu Nai and run towards the lane. Witness blew his whistle. He snatched away a farsha and a Lathi from the hands of some of the miscreants. The witness had gone to the house of Sadaram and found him present there. It was to be noted that he did not arrest him. He also said that he might have gone to the police station at about 11 in the night but he did not mention in his report that it was Sadaram who had struck Mathura with his spear.

13. According to Daniel, P.W. 8, when stones were being pelted at the Pahalwans he struck his lathi on the ground with the idea of putting a stop to the pelting of stones. Shyamrao, blew a whistle and said : "Somebody had struck Pahalwan with a spear catch him". The witness and others followed the persons who were pelting stones and went towards the house of Sadaram.

14. Shyamrao's evidence is wholly believed by his conduct and is contradicted by Daniel. If he had seen Sadaram striking a blow with a spear, one fails to understand why he should not have named Sadaram as the person who had done it and why he did not mention the same in the information which he gave in the evening and why he did not arrest Sadaram at his house when he went there.

15. To our mind, the matter is clinched by the above evidence as also the testimony and conduct of Tiwari, the investigating officer who had noted Gopalsingh's version in the First Information Report. According to his evidence Tiwari had proceeded to the spot of the occurrence at 7.30 p.m. and found Mathura bleeding profusely and about to breathe his last. He was there on the scene of the crime the whole of the night. He had a tank with Shyamrao at about 8.30 or 9 p.m. but he did not get Sadaram arrested that night.

16. It should be stated here that Sadaram was put under arrest the next day. In our view the conduct of the two Police officers, Tiwari and Shyamrao, is inexplicable if the First Information Report was correct and if Shyamrao's evidence is to be believed. Neither of these persons made any attempt to arrest Sadaram immediately although both were there and Sadaram, at least to the knowledge of

Shyamrao was in his house after commission of the crime. Shyamrao pretended to have actually witnessed the commission of the crime but he did not give out the name of the assailant of Mathura to Daniel. Tiwari although he was there the whole night made no immediate effort to apprehend Sadaram. Tiwari's conduct is only consistent with the theory that the First Information Report Ex. P-1 which was exhibited in Court was not a genuine document but was manipulated subsequently. Shyamrao's version about Sadaram's giving the spear blow to put it mildly was an unmitigated lie.

17. It therefore appears to us that although in all probability the spear thrust was caused by someone of Sadaram's group, there was no acceptable evidence to fasten Sadaram with the crime. The mention of Sadaram's name in the first information report must be ascribed to the bitter enmity and rivalry between Gopalsingh and Sadaram. In view of the unsatisfactory first information report, the oral testimony of Shyamrao, the conduct of Tiwari and Shyamrao is not apprehending Sadaram immediately, the only conclusion possible is that Sadaram was not named by anybody in the evening of August 13 as the assailant of Mathura and the evidence of the eye witnesses who spoke about having witnessed the occurrence cannot be accepted. The appeal is therefore allowed. We direct that Sadaram be set at liberty forthwith.

</html