

Sadhu Singh Alias Surya Pratap Singh

Vs

State of U.P.

Criminal Appeal No. 86 of 1976

(R. S. Sarkaria, N. L. Untwalia, O. Chinnappa Reddy JJ)

(P. N. Bhagwati, V. O. tulzapurkar, R. S. Pathak JJ)

04.09.1978

JUDGMENT

CHINNAPPA REDDY, J. -

1. The appellant Sadhu Singh alias Surya Pratap Singh was convicted of the murders of Shyama Devi and Randhir Singh and sentenced to death by the learned VI Additional District and Sessions Judge, Allahabad. The sentence of death was confirmed by the High Court and the appellant has come up in appeal by special leave. Sadhu Singh's father Udai Raj Singh, Nagendra Nath Singh and Bhuleshwar Nath were also tried by the learned Sessions Judge. Nagendra Nath Singh and Bhuleshwar Nath were acquitted and Udai Raj Singh was convicted under Section 302, Indian Penal Code, read with Section 34 and sentenced to imprisonment for life by the learned Sessions Judge. There was an appeal by Udai Raj Singh against his conviction while the State preferred an appeal against the order of acquittal of Nagendra Nath Singh and Bhuleshwar Nath. Udai Raj Singh's appeal was allowed and was also acquitted. The appeal by the State was dismissed.

2. The case of the prosecution briefly was as follows : Randhir Singh owned about 45 bighas of land in the village of Nedula. His only son had died about 14 years before the occurrence and his widowed daughter-in-law Shyama Devi was living with him. Randhir Singh was aged about 70 years at the time of his death. Shyama Devi was aged about 35 years. Randhir Singh and Shyama Devi used to attend to the cultivation of land. Randhir Singh had a daughter who was living with her husband in another village about 20 miles from Nedula. Their daughter Deomani was living with her grandfather Randhir Singh and aunt Shyama Devi in the village of Nedula. At the time of the occurrence Deomani was aged about 13 years. As Randhir Singh had no male issue, Udai Raj Singh and his son Sadhu Singh wanted to grab his property. Randhir Singh apprehended danger to his life and in fact made a complaint Ex. Ka-53 and sought police protection. On March 26, 1973, at about 7.30 a.m. Deomani (PW 2) was sitting at the door of her house while Shyama Devi was tethering a cow in front of the house. At that time Randhir Singh was sitting in front of a cycle repair shop about 100 yards away and attending to the harvesting of his wheat crop. The four accused came to the house of Randhir Singh. Sadhu Singh was armed with a pistol, Udai Raj Singh was armed with a gun while Nagendra Nath Singh and Bhuleshwar Nath were armed with a spear and a gandasa respectively. Seeing Shyama Devi, Udai Raj Singh and the others shouted "Kill the Sali, she has become the owner of the property". Shyama Devi started running. Sadhu Singh chased her and shot at her with his pistol. He fired three shots. Shyama Devi fell down dead. Deomani (PW 2) started running to the place where her grand father Randhir Singh was sitting in order to convey the information to him. While she was going towards her grandfather crying and shouting, the four

accused also came to the place where her grandfather was sitting. Randhir Singh tried to escape by attempting to run into the house of Jagdeo. Sadhu Singh chased him and fired three shots at him. Randhir Singh also fell down dead. Thereafter, the accused persons ran away. The occurrence was witnessed, amongst others, by Mataphal, (PW 3), Jagbir Singh (PW 4), and Amar Nath (PW 5). Mataphal and Amar Nath witnessed the shooting of Randhir Singh only while Jagbir Singh witnessed the shooting of both Randhir Singh and Shyama Devi. After the accused persons ran away Deomani, Mataphal and other witnesses went to the spot where Randhir Singh had fallen and found him dead. Deomani got a report Ex. Ka-1 prepared by Mataphal. Deomani and Mataphal went to the Police Station at Sarai Mamrez, four miles away, and presented the report to the Sub-Inspector (PW 11) at 10.50 a.m. On receipt of the report PW 11 recorded the statement of PW 3 and then proceeded to the village for investigation. After holding the inquest, he arranged to send the two dead bodies for autopsy. PW 8 the Reader in Forensic Medicine conducted the post-mortem examination on the two dead bodies. He noticed gunshot injuries on both the dead bodies and opined that death was due to gunshot injuries in both the cases. The stomach contents of both Shyama Devi and Randhir Singh showed partly digested food. The Investigating Officer who looked for the accused persons did not find them in the village. Udai Raj Singh, Sadhu Singh and Nagendra Nath Singh surrendered themselves in the Court of Additional District Magistrate on April 2, 1973, while Bhuleshwar Nath surrendered himself on April 5, 1973. PW 11 handed over the investigation to the C.I.D. and later took over the investigation again from the C.I.D. on June 20, 1973. After completion of investigation a charge-sheet filed against the four accused persons.

3. At the trial the prosecution examined PWs 2, 3, 4 and 5 as eye-witnesses to the occurrence. The learned Sessions Judge did not administer the oath to Deomani on the ground that she was a child but he satisfied himself that she understood the necessity to speak the truth. The learned Sessions Judge noticed that PWs 3, 4 and 5 were inimically disposed towards the accused and that there were circumstances in the case to support the defence allegation that they must have exercised some influence over Deomani. He thought that the implication of Nagendra Nath Singh and Bhuleshwar Nath could not be said to be free from doubt. However, he expressed the view that Deomani was a natural and convincing witness whose evidence was left unshaken despite lengthy cross-examination. Her evidence, according to the learned Sessions Judge left no room for doubt about the guilt of Sadhu Singh and Udai Raj Singh though her evidence against Nagendra Nath Singh and Bhuleshwar Nath could not be said to be free from "suspicion and influence". On those findings the learned Sessions Judge acquitted Nagendra Nath Singh and Bhuleshwar Nath and convicted Sadhu Singh and Udai Raj Singh as aforesaid. We may mention at this stage that the plea of the accused was one of denial. According to them they had been falsely implicated at the instance of Mataphal and Jagbir Singh. Both of them had developed intimacy with Shyama Devi. They also stated that they had no enmity either with Randhir Singh or with Shyama Devi.

4. Sadhu Singh and Udai Raj Singh preferred appeals to the High Court against their conviction, while the State preferred an appeal against the acquittal of Nagendra Nath Singh and Bhuleshwar Nath. The High Court, in its judgment, first considered the case against Sadhu Singh and recorded the following finding in regard to the evidence of Deomani (PW 2) :

We were taken through the entire statement of this child witness and we are of the opinion that she had not repeated any tutored statement, because she was able to give straight forward answers to a number of questions regarding details of the occurrence and the topography.... We are, therefore, satisfied that Deomani was able to see both the murders having been committed by Sadhu Singh in broad day light.

In regard to the evidence of other witnesses, while considering the case against Sadhu Singh, the High Court said : "We have scrutinized the statement of these eye-witnesses and there seems to be no reason for doubting their presence at the time of the two occurrences, as noted above. Having thus considered the oral evidence, we are of opinion that the prosecution case is substantially correct so far as killing of two persons by Sadhu Singh is concerned". Earlier the High Court had found that the witnesses other than Deomani were inimically disposed to the accused and could not be said to be independent witnesses. The High Court then proceeded to consider the case against Udai Raj Singh, Nagendra Nath Singh and Bhuleshwar Nath. The High Court was of the view that the case against Udai Raj Singh stood on the same footing as the case against Nagendra Nath Singh and Bhuleshwar Nath. Referring to the evidence of Deomani against these three persons, the High Court expressed the view that she was prevailed upon to implicate Udai Raj Singh, Nagendra Nath Singh and Bhuleshwar Nath. The High Court also expressed the view that the First Information Report could not have been dictated by a thirteen year old village girl like PW 2. Noticing the circumstance that the part attributed to these three persons was nothing more than exhortation despite the fact that they were armed with deadly weapons, the High Court came to the conclusion that they were falsely implicated. On those findings Udai Raj Singh, Nagendra Nath Singh and Bhuleshwar Nath were acquitted and the conviction and sentence of Sadhu Singh were confirmed.

5. The learned Counsel for the appellant very naturally relied upon the findings of the learned Sessions Judge and the High Court in regard to the case against Udai Raj Singh, Nagendra Nath Singh and Bhuleshwar Nath and argued that on those findings there was very little left of the prosecution case on the basis of which Sadhu Singh could be convicted. He submitted that Mataphal, Jagbir Singh and Amarnath were found to be inimically disposed towards the accused and had falsely implicated Udai Raj Singh, Nagendra Nath Singh and Bhuleshwar Nath. It was, therefore, impossible to accept their evidence against Sadhu Singh either. With regard to Deomani the learned Counsel argued that apart from the fact that she was a child witness, the High Court had found that she had been prevailed upon by the other witnesses to falsely implicate Udai Raj Singh, Nagendra Nath Singh and Bhuleshwar Nath. The High Court had also found that she could not have been the author of the First Information Report. On those findings, it was argued by the learned Counsel that there was no escape from rejecting the evidence of Deomani also.

6. The case has undoubtedly been complicated by the High Court speaking in two voices while dealing with the case of sadhu Singh on the one hand and the case of the rest of the accused on the other. We have already set out what the High Court said about the evidence of Deomani and the other witnesses. In view of the apparently contradictory views expressed by the High Court, we went through the entire evidence ourselves and we are satisfied that conviction of Sadhu Singh was correct.

7. According to the prosecution the time of occurrence was about 7.30 a.m. The time of occurrence was not seriously disputed in the trial Court or in the High Court but, before us an attempt was made by Shri Mukherjee to urge that the occurrence must have taken place during the course of night, a few hours after the two deceases had taken their night meal. He sought to derive support for this contention from the evidence of the doctor who deposed that there was partly digested food in the stomachs of the two deceased and that they should have taken their food 2 to 12 hours before their death. We do not see how the medical evidence is of assistance to the accused. The medical evidence fits in with the evidence of Deomani that Randhir Singh had his breakfast at 5.30 a.m. on the fateful morning. It does not appear that it was suggested either to Deomani or any of the other witnesses in cross-examination that the time of the occurrence was not 7.30 a.m. We do not have any doubt that the occurrence took place at 7.30 a.m. on the morning of March 26, 1973. Now, the

First Information Report was received by the Sub-Inspector of Police Station Saraimamrez at 10.05 a.m. A vague and general suggestion was made to PW 11 that the First Information Report was not lodged at the time when it was stated to have been lodged but was prepared later on after consultation. We are not prepared to give any weight to a suggestion of this nature. The report as soon as it was received must have been entered in the register of First Information Reports. No cross-examination was directed to discover whether this report was not entered in serial order in the register. We also find that the substance of the report was contemporaneously entered in the general diary of the Police Station an extract of which has been filed as Ex. Ka-3. The entry in the general diary shows that the First Information Report was received at 10.05 a.m. and that after registering the First Information Report the Sub-Inspector accompanied by certain named constables left the Police Station for the village handing over charge of the Police Station to a Head Constable. As is well known entries are made in the general diary about all the events that take place in the Police Station in chronological order and it is ordinarily difficult to fabricate false in the general diary. There was no suggestion to the Sub-Inspector in cross-examination with regard to the entry in the general diary. We are unable to discover any reason why the evidence of PW 11 to the effect that the First Information Report was received by him at 10.05 a.m. should not be accepted.

8. If the occurrence took place at 7.30 a.m. and if the first Information Report was lodged at 10.50 a.m. at the police station four miles away from the village, it is clear that there was no opportunity for any confabulation with a view to false implication. A suggestion was made to Mataphal and some of the witnesses that they were responsible for the commission of the murders. We can only describe the suggestion as fantastic. The suggestion would imply that Deomani was persuaded not to mention the names of the real assailants but to falsely implicate the accused persons and that this persuasion was by the very persons who were responsible for the murders. It is too much to believe that Mataphal was able to accomplish this task within an hour or two after the occurrence and take Deomani with him to lodge the first Information Report. We have to give great weight to the circumstance that within 2 1/2 hours after the occurrence the grand-daughter and niece of the two deceased persons presented the first information Report at the police station mentioning the names of the assailants. One of the criticisms against the First Information Report was the it revealed not the hand of an unsophisticated village girl of thirteen years but the hand of an experienced adult. It was particularly emphasized that Deomani stated that she dictated the report and Mataphal recorded what was dictated. We do not think that we will be justified in attaching importance to the use of the word 'dictated' Apparently what the witnesses said was that Mataphal wrote what was said by Deomani. The arrangement and the language must necessarily have been Mataphal's and not that of Deomani. It was argued that the report contained far too many particulars and that Deomani who had just witnessed the murders of her aunt and grandfather would not have been in a position to mention all the details which are to be found in the report. But having read the evidence of Deomani we are satisfied that the girl has a remarkable memory for even minute details and that if she mentioned many details in the report it was not a matter for any surprise. Further Mataphal the scribe of the report was himself a witness and he must have naturally assisted Deomani in preparing the report. We are, therefore, unable to agree with the comment of the High Court that the report was not that of Deomani but that it was prepared by Mataphal in the name of Deomani.

9. Deomani in her evidence as PW 2 gave a full account of the occurrence that took place on the morning of March 26, 1973. She was grilled in cross-examination for three days. She was subjected to a lengthy and rambling cross-examination about all that was said by her in chief-examination. She was questioned in great detail about the topography of Nedula village. She was questioned again in great detail about the consolidation proceedings and the disputes between the deceased and the accused. She was taken through every detail of the occurrence that took place on the morning of

March 26, 1973 and all that happened on that day after the commission of the murders. She stood the rigour of the cross-examination and Shri Mukherjee, learned Counsel for the appellant had to confess that he was unable to discover anything in her cross-examination to discredit her evidence. He, however, argued that the very fact that she was able to give such thorough answers showed that she had been well prepared to give evidence in the case. We do not agree with this submission of Shri Mukherjee. Most of the particulars and details which she gave in her evidence were elicited from her in cross-examination. Having put her through a grueling cross-examination and having failed to elicit anything to favour the accused, we do not think that the accused can very well turn round and now say that she must have been well prepared for the cross-examination also. As we said earlier her evidence reveals a remarkable capacity for observation, a keen eye for minute detail and a photographic memory. Both the trial Court and the High Court were right in holding that she had given evidence in a very natural and convincing manner and that her evidence was straightforward and not tutored. We are not prepared to accept the later comment that she was persuaded to falsely implicate the remaining three accused persons. It may be that having regard to the part attributed to the remaining three accused a Court may be justified in giving them the benefit of doubt and acquit them. It is one thing to give them the benefit of such a doubt and another thing to say that they were falsely implicated. The best that can be said in favour of the acquitted accused is that they were entitled to the benefit of doubt and not that they were implicated falsely. We are unable to agree with the comment of the learned Sessions Judge and the High Court that Deomani must have been persuaded by Mataphal and other to falsely implicate the remaining three accused. One of the comments of the learned Counsel for the learned Counsel for the appellant was that it was not established that Deomani was living with her grandfather at the time of the occurrence. The appellant himself in his statement under section 313 did not choose to dispute the fact that she was living with her grandfather. He was content to say that Deomani used to come to village Nedula sometimes. The very details of the topography of the village which Deomani has given do not leave any doubt on our minds that Deomani was residing with her grandfather since long. If she was living in the house of her grandfather she would undoubtedly be a natural witness to the occurrence. No doubt she is a child witness but she is an unusually intelligent child. We do not think her evidence suffers from any infirmity which would entitle us to discredit her. In regard to the remaining witnesses the High Court found that they were inimically disposed towards the accused persons but, by itself that cannot be a ground for total rejection of their evidence. Their evidence also implicates the appellant fully. It may be noticed here that firing of all the shots both at Randhir Singh and Shyama Devi have been attributed to the appellant only. If the witnesses were going all out to falsely implicate their enemies the principal of whom was Udai Raj Singh. Nothing could have been easier than to attribute one or more of the three shots fired at each of the deceased persons to Udai Raj Singh. That was not done by any of the witnesses. We do not consider it necessary to discuss the evidence of these witnesses in any great detail having regard to what we have said about the evidence of Deomani. Thus on a consideration of the entire evidence, we do not have the slightest doubt that the appellant Sadhu Singh was responsible for the murders of Shyama Devi and Randhir Singh. The conviction of the appellant under Section 302 is, therefore, confirmed. In regard to sentence the appellant has been under spectre of the sentence of death for over 3 years and 7 months. The evidence also gives an indication that the he was probably instigated directly or indirectly by his father. In the circumstances in place of the sentence of death. It is so ordered. The appeal is partly allowed.

</html