

THE WELLS 1977 REPORT

RE: P. R. SARKAR

REPORT OF TRIAL

1. I am instructed by Messrs. Kenwright and Cox, solicitors, of 38, Chancery Lane, London W.C.2, to draft a report of the trial before the Sessions Court. Patna, Bihar, India, of Mr P.R. Sarkar, the founder and leader, or Guru, of the movement known as Ananda Marga. It is an important part of the background of the trial that this movement and its various offshoots were banned by the Government of India in June, 1975, under emergency powers taken under the Maintenance of Internal Security Act. (M.I.S.A.)
2. On the 17th December, 1975, Additional Judge R.B. Singh settled the charges (or counts, in the English legal terminology) on which Mr Sarkar was to be tried, namely, conspiracy to murder, abettment to murder and abettment to causing the disappearance of evidence (under sections 221, 222, and 223 of the Code of Criminal Procedure). There were four co-accused, charged with the same or associated offences. The trial, in accordance with Indian Law, was before a Judge (R.B. Singh) sitting alone.
3. The next phase of the trial, the opening of the case for the prosecution, started on the 5th January, 1976. On the 10th August, 1976, the evidence for the prosecution having closed, in accordance with the Code of Criminal Procedure the Judge began to question Mr Sarkar and the four co-accused. When this stage was concluded, the leading prosecutor, Mr Gupta, addressed the Court, and he was followed first by Mr Nageshwar Prasad, senior advocate for Mr Sarkar, and by Mr Banerjee, senior advocate for the four co-accused. Judgment, in which all the accused were convicted of all the charges against each of them was delivered on the 26th November 1976, and the sentence of life imprisonment on each of the accused was passed on the 29th November 1976.
4. I must emphasise three points at the outset in submitting this report:-
  - i) I was not present throughout the whole of the trial. I was in Patna, but not (because it was thought inadvisable) in Court when the charges were defined in December 1975. I was again in Patna, and generally in Court for such parts of the trial as took place from the 6th January, 1976 until the 5th February, 1976. I did not return to Patna until the 9th August, 1976, and remained there, attending the trial, until the 26th November 1976, and was again present for the arguments as to sentence on the following Monday, the 29th.
  - ii) The prosecutor addressed the Court mainly in Hindi whereas senior advocates for the defence both spoke in English. I do not speak Hindi. Therefore I could not follow the prosecution argument only from passages translated to me by my Indian colleagues, from Mr Gupta's occasional passages in English, and from the newspaper reports which were both intelligent and fairly full.
  - iii) The written judgement is an extremely lengthy document, running into three hundred and thirty two paragraphs. No copy was available before I had to leave Patna, and although I made arrangements for a copy to be sent to me before I left, it only arrived after I had finished writing this report. I have, however, had an opportunity to revise the report in the light of the judgement. Page 81 of the judgement, which may have some importance, is missing from my copy.
5. From the foregoing it must follow that this report cannot be in any sense a complete one. It can only discuss certain crucial points and record some impressions. Equally it must be understood, since there will almost certainly be appeals on behalf of all the Defendants to the High Court in Patna and thence, in all probability, since under Indian Law the prosecution and defence can both appeal, to the Supreme Court in Delhi, that the case must still be regarded as Subjudice, with the restraints this condition properly imposes on comment.

6. Before coming to the trial itself, some note must be taken both of the history of Ananda Marga and of the offences of which Mr Sarkar and his co-accused have been charged. The adherents of Ananda Marga claim that it is a religious and philosophical movement, with the removal of corruption from both public and personal life as one of its foremost aims and the promotion of good works to relieve suffering as one of its principal activities. The Government of India, on the other hand, view it as a dangerous organization whose leaders aim at a dictatorship in its place. Which of these two views is the more nearly accurate it is not within the scope of this report to establish, but it seems nonetheless appropriate to make two comments:-
1. On the one hand the movement has not been so conducted as best to allay the Government of India's fears and suspicions.
  2. On the other hand the Government has refused, or at least failed to respond to, invitations to set up a judicial enquiry to establish the truth of this matter.
7. The charges in this case relate to an agreement to murder eleven men said to have been defectors from Ananda Marga and to the actual murder of five of them. The charge relates to five murders but the evidence and the judgement deal with six. The abettment of conspiracy is alleged to have been made on or about the night between the 28th and 29th of July, 1970, and the actual murders are alleged to have been committed between the 28th of July and the 16th August 1970. The third charge against Mr Sarkar relates to instructions alleged to have been given by him on the 7th August, 1970, for the purpose of making the bodies of the victims unidentifiable. There are several reasons for the long delay in bringing these matters to trial, some attributable to the prosecution, some to the defence, but Mr Sarkar, although at all times available, was not arrested in relation to any of these charges until the end of December, 1971.
8. The first few weeks of the trial after it effectively began in January 1976, were occupied by the evidence of the principal prosecution witness, one Madhavanand. He had been a follower of Mr Sarkar's and an avadhoot in the movement; that is to say, a monk wholly dedicated to his work. He was, at the time of the alleged murders, the Commander of the Calcutta Circle of an organization of young Margis called Volunteer Social Service (VSS), which according to the prosecution was a para-military body whose members were trained in the use of weapons and was a branch of the movement; but according to Mr Sarkar it was not a part of the organization at all but was an independent body of young Margis dedicated to carrying out the physical aspects of the various works of relief planned and organized by another branch, the Education, Relief and Welfare Section (E.R.A.W.S.)
9. Madhavanand's evidence was to the effect that he, Mr Sarkar, two of the other accused, and several others not before the Court, were present in Mr Sarkar's bedroom on the night when Mr Sarkar directed the commission of these murders and that he himself played a leading part in planning and carrying them out. It was therefore the evidence of an accomplice. Given the vital difference that in England criminal trials are trial by jury whereas in India the institution of the jury no longer exists, there are many points of similarity between Indian and English law as to the reception of the evidence of an accomplice. The law of India can in this respect be briefly and I hope accurately summarised as follows:-
- i.) An accomplice must receive a pardon for his part in a crime from a competent authority before his evidence about it can be admitted. The question of what constitutes a competent authority is one of great importance on this case.
  - ii) Once a pardon, which is one of a qualified character subject to the Court's view of the truthfulness of the witness, an accomplice's evidence is admissible but,

iii) A court should not act on it unless it is corroborated by an independent witness in a material particular. One of my Indian colleagues referred me to a ruling of the Supreme Court the gist of which is that a Court considering the evidence of an accomplice should ask itself three questions: (a) Is his evidence credible in itself?

(b) If it be so, is it corroborated by an independent witness?

(c) If so, is the evidence of the corroborating witness acceptable?

10. It was common ground between the Court, the prosecution and the defence, that the whole of the case against Mr Sarkar and his co-accused rested on the evidence of Mahavananda. Applying the criteria set out in paragraph 9 above, if the pardon were not a valid one, the result must be an acquittal. If his evidence were not corroborated by the evidence of corroborating witnesses were not acceptable, the result must be an acquittal. The result in fact was the conviction of all the accused on all counts. The problem of law and fact involved under each head now must be briefly considered.
11. To take the above points in order, whether the pardon granted to Madhavanand was a valid one depends mainly on whether the new Code of Criminal Procedure which came into force on the 1st of April, 1974, or the old code, which it repealed is applicable. Under the new Code the District Magistrate who granted the pardon has no jurisdiction to do so. Under the old code he had jurisdiction. Which code is applicable appears to be, from my discussions with Indian Lawyers, a technical point of some difficulty. It is a matter on which the Higher Courts will have to adjudicate, The learned trial Judge interpreted section 284 (2) (b) of the Code of Criminal Procedure in such a way as to make the old Code applicable to the pardon but this ruling is open to question. He also overruled another objection on technical grounds to the validity of the pardon. Reducing the story of the murder of the six individuals the subject matter of the trial to a few sentences is shortly this:-

Each of the victims was a defector from the Ananda Marga movement, Madhavananda played a part in persuading each of them except Tapeswarananda who has already in effect in custody at Tatanacar when his journey started, to travel from Calcutta or its environs to see Mr Sarkar at Ranchi and to obtain his pardon - all of them having repudiated Mr Sarkar's leadership and Tapeswaranand having been tortured under his direction only a few days previously. The journey in each case took place by car or motorcycles at night, under escort. In each case the vehicle was stopped at an isolated place on the road, and the victim was told that before seeing Mr Sarkar he had to perform a ceremony or Puja in the jungle. The victim then went into the jungle under escort, and was told that he had to be bound and gagged (and in some of the cases, stripped) before performing this ceremony and, having accepted and consented to all this, the victim was duly stabbed or strangled to death. Further, after three of the murders had been committed, Mr Sarkar, according to Madhavanand, gave instructions for the disfigurement of future corpses to prevent identification. These instructions were transmitted to him by Sarveshwaranand and therefore in this respect Madhavanand's evidence was hearsay.
12. How far is this story an accurate or credible one? How did Mr Sarkar continue to exercise a spell over former followers who, disillusioned, had forsaken him? Why did they wish to receive his pardon? How can six grown men have been so gullible as to accept the various stories that were told them? Why were some of the victims found naked and others half-dressed - or can it be that six unidentifiable corpses found in the jungle were given, for the purposes of this trial, the names of defecting Margiis?
13. It is certainly not the least of the peculiarities of the case that Mr Sarkar should only have bethought himself of the somewhat obvious dangers of identification after three of the murders had been committed, and this difficulty

is aggravated by the fact that of two of the mutilated corpses, one was identified (I am told; I did not hear, and have not read this evidence myself) by a relation who had not seen him since boyhood, and in relation to the other there is a conflict of medical evidence whether death did not occur about ten days before the date alleged, -- i.e., before the date according to Madhavanand, of the conspiracy. All the evidence of identification of all the alleged victims was from photographs, none of it from witnesses who had seen the corpse concerned.

14. It would seem, both from Madhavanand's record and from the nature of his evidence, that there ought to be very strong corroboration indeed. The length of the trial itself speaks for the quantity of the corroborative evidence, but what of its quality? Without having heard it or read it, or having been able to understand much of Mr Gupta's argument in Hindi for the prosecution, my information about this is necessarily at secondhand. But the only witnesses who claim to have overheard any conversations relating to the conspiracy in which Mr Sarkar is alleged to have taken part are Vishokanand and Mrs Sarkar. Vishokanand was at the time of the alleged conspiracy and until September 1971, Mr Sarkar's secretary, and probably his evidence must be considered to be itself the evidence of an accomplice (and indeed the Judge appears to have recognised it as such) and in any event dismissal by Mr Sarkar and his departure with Mrs Sarkar alone raise a question mark as to the reliability of his evidence; this question must be even more important where Mrs Sarkar herself is concerned. Her position is that of a wife who has left her husband and gives evidence implicating him in a potentially capital crime, who says under cross-examination that she still loves him but will not cross the Court to speak to him while he lies there on his stretcher, weak and emaciated from long months of abstention from solid food.
15. Summarising the above it may fairly be said that the evidence of Vishokanand and Mrs Sarkar is suspect from the nature of its source and that the rest of the corroborative evidence is indirect. Of course that is not necessarily to say that it may not be important.
16. To an English lawyer's mind the question almost inevitably suggests itself whether, in the state of the prosecution evidence, an English Judge would not have stopped the trial when the prosecution closed their case. It does not follow from putting this question either that it would necessarily have been appropriate for an Indian Judge to have done so, or that Mr Sarkar is not guilty of the offences of which he has been convicted. But a question as to the satisfactory nature of the trial remains clearly in one's mind, particularly when it is remembered that, with the Ananda Marga and its offshoots and members in effect outlawed it was almost impossible for the defence to call witnesses.
17. At the conclusion of the prosecution case, a process prescribed as stated above by the Indian Code of Criminal Procedure was carried out, namely the questioning of the accused by the Judge in order to clarify any points in his opinion left ambiguous by the evidence. Whereas the intention, my Indian colleagues advised me, in laying down this procedure, was to help the accused, many of the questions put appeared to me to be purely cross examination, and the suggestion has even been made, with what truth I do not know, that the questions put by the Judge were prepared for him by the prosecution; but in view of the Judge's declaration in Court that his function in this respect was to close the gaps in the prosecution case, the suggestion is not incredible.

18. One more addition should be made to this necessarily incomplete narrative, After the conclusion of the evidence and of the prosecution argument the Judge interjected, during the argument of Mr Nageshwar Prasad for Mr Sarkar, that he woke up at three o'clock every morning and could not go to sleep again for worrying where the truth of this case lay. The law in this respect is the same in India as in England, that the prosecution must prove their case beyond doubt. What material or argument was produced, at this stage of the case, to remove the Judge's doubts?
19. As I indicated at the outset, while the case against Mr Sarkar and his co-accused is subject to appeal, comment must be confined within certain limits. These points it seems permissible to make:-
- i) The trial was conducted in a correct manner and the Judge's approach and attitude were properly judicial.
  - ii) The banning of Ananda Marga and the consequent difficulty of finding defence witnesses cast a heavy burden on the defence.
  - iii) It is very clear the prosecution badly wanted the convictions they ultimately obtained. What pressures were consequently placed on the Judge cannot now be ascertained.
  - iv) Perhaps at this stage two general criticisms, one of the learned Judge's admission of evidence, and the other of his Judgement, are permissible
    - (a) While clearly the evidence to prove the existence of a criminal conspiracy must often be of an indirect character, the scope of the evidence admitted in this case as to the history and philosophy of the Ananda Marga movement was in part such as to suggest that the issue being tried was not so much whether the Defendants actually conspired together as whether they might be disposed to conspire together.
    - (b) In his very careful and detailed Judgement, the Learned Judge gives the impression that he looked at the individual trees in great detail but did not detach himself from this task to view the wood as a whole. He does not seem to have satisfactorily answered the question why six adult (even if fairly young) men should have accepted without question the tissue of improbable explanations said to have been given to them by Madhavanand and his alleged accomplices to lure them to their deaths - even if it be granted that the type of ritual they had to perform had to be carried out naked in a dark place. Nor, in explaining the various contradictions and omissions in the various accounts Madhavanand gave of the relevant events, does the Judge seem to have asked himself the question whether, even if individual contradictions could be accounted for, the existence of so many of them were capable of being explained satisfactorily? Further, without assuming - and let me say clearly, I do not assume - any impropriety on the part of the officers of the Central Bureau of Investigation in carrying out their inquiries, it seems, to say the least, a little unrealistic to say, as he does, in relation to so many witnesses who were or had been adherents of Ananda Marga, that they could not have been influenced by pressure from the C.B.I. While the emergency is in force, any member or even former member of a banned organization is at risk, and is unlikely to need much prompting to give evidence of a kind that he thinks will please the prosecution. And as to the suggestion that Madhavanand did not appreciate that he might earn a pardon by inculcating Mr Sarkar and his co-accused, it is only necessary to say that almost every issue of an Indian newspaper appears to contain reports of a criminal trial in which the evidence of an "approver" is given; and an approver is an accomplice whose evidence is admitted because he has received a pardon. Madhavanand is not an unintelligent man.
20. It should be added that the prosecution asked for the death penalty in the case of Mr Sarkar but the Judge refused to act on this and imposed a sentence of life imprisonment.
21. Finally, the following appear to be some of the main points on which an appeal will be fought:-
- i) Was Madhavanand's pardon a valid one?
  - ii) Did the Judge make the correct approach to the evidence of Madhavanand?

21.           iii) Did the Judge direct himself correctly on Madhavanand's evidence and on the issue of corroboration?
- iv) Was the Judge's questioning of the accused carried out in conformity with the law?
- v) Ought there to have been separate trials in respect of some of the charges of murder or was the mode of the trial contrary to Section 219 (1) of the Code of Criminal Procedure?

Signed. W.T. Wells, Q.C.  
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