

Mafta and ors. Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Dec-20-1990

Reported in : 1990(2)WLN261

Judge : Kanta Bhatnagar and; Yad Ram Meena, JJ.

Appeal No. : D.B. Criminal Appeal No. 76 of 1987

Appellant : Mafta and ors.

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. M.L. Garg, Mr. Garglearned Counsel

Judgement :

Kanta Bhatnagar, J.

1. In the case of murder of one Jagsi, resident of village-Suliva, trial was conducted against nine persons viz, Mafta, Narsa, Surta, Sona, Masunga, Shanti, Kastura, Raja and Karta by the sessions Judge, dirohi for the charges Under Sections 148, 302, 452, 157 and 302/149 I.P.C. Raja and Nava accused died during the pendency of the trial. Vide judgment dated July 21,1986 the learned Sessions Judge acquitted Sona, Masunga, Shanti and Kastura of the charges levelled against them. By the same judgment Mafta, Narsa and Surta were held guilty Under Section 304 Part-I I.P.C. and sentenced to imprisonment for life and a

fine of Rs.100/- in default of payment of fine to undergo one months R.I. each. They were also convicted Under Section 148 I.P.C. and sentenced to one years R.I. and a fine of Rs.100/- in default of payment of fine to undergo one months R.I. each. Mafta was also convicted Under Section 452, I.P.C and sentenced to one year R.I. and a fine of Rs. 100/- in default of payment of fine to undergo one months.R.I.

2. Feeling dissatisfied by their conviction and sentences the three accused viz. Mafta, Narsa and Surta filed appeal being No. D.B. Criminal appeal No. 313 of 1.986. They also filed appeal through the Superintendent, Central Jail, Udaipur bearing No. 23 of 1987. The State of Rajasthan preferred appeal-bearing No. 76 of 1987 against the acquittal of Sona, Masunga, Shanti and Kastura. As all the three appeals arise out of the same judgment we propose to decide them by one common judgment.

3. Briefly stated the prosecution case against the accused was that Jagsi deceased and his younger brother Popat were doing labour at Ahmedabad. Popat took away Savita, daughter of Hamira, eight months prior to the date of the occurrence i.e. July 20,1984 and kept her as his wife. This caused annoyance to Hamira and his brothers. On July 19,1984 Jagsi came to village Suliva from Ahmedabad. On July 20,1984 on the occasion of the death of Ajja, father of Kastura, the caste follows had assembled at his house, shantilal, brother of the deceased and his father Dhanna had gone to the field in the morning. Jagsi and his wife Radha(P.W.

4) were there at the house near the house of Ajja where caste follows of the village and another village Mandar had assembled. Jagsi also went to the field in the morning and returned with Samratha(P.W.

5) his cousin. Savita took food at the house of Jagsi. Radha(P.W.

4) asked Jagsi also to take good but he wanted to take the food after sometime. At that time appellant Mafta went to the house of jagsi and asked him to accompany him to the place where panchas were, so that decision about Savita may be taken Jagsi told Mafta that only when Savita's father, who was at Ahmedabad will come

he will talk about her, Mafia pushed Jagsi and took him with him. Radha(P.W.

4) and Samratha (P.W;

5) also went outside. They saw nine accused giving a beating to Jagsi, Surta, Mafta and Narsa were armed with axes and remaining accused with lathis. Samratha (P.W.

5) remained at a distance and on being threatened ran away from there. Radha(P.W.

4) went to the field and informed her brother-in-law Shanti Lal and father-in-law Dhanna about the incident. Shanti Lal went to the police station Mandar and lodged the report Ex. D/1 on the basis of which F.I.R. Ex.P/9 was chalked out. Hamir Singh (P.W. 13), In charge of that Police Station went to the site and conducted necessary investigation. He then entrusted the investigation to Govind Singh(P.W. 14), S.H.O. of that body of jagsi was conducted by Dr. Umed Singh(P.W.

1) Medical Officer, Government Hospital Mandar. The postmortem examination report is Ex.P/1. The doctor noted following three incised wounds on the dead body:

(1) Incised wounds: 4 1/2x3"x1/2 horizontal placed beginning from Junction C5, C6 towards rt. side of neck.

(2). Incised wound 3' x3/4 x1/2 on scalp Just below postoccipit places obliquely slightly to right side.

(3). Incised wound 1' x 1/2' x 1/4 on scalp 2' behind Ant. protanelle.

4. The Doctor also found a number of bruises on the dead body. The cause of death according to the Doctor was shock because of original injury and haemorrhage due to multiple injuries and fracture of vertebra C5, C6, 7th and 8th rt.ribs. The other injuries were held to be contributory to it. The accused were arrested on July.22,1984 and in pursuance of information furnished by Mafts Narsa and Surta axes were recovered. On pursuance of the information furnished

by the remaining accused laths were recovered.

5. Upon completion of necessary investigation charge sheet was filed against nine accused in the court of Munsif Magistrate, Sirohi. The case on committal reached the Court of Session Judge, Sirohi. The learned Judge charge sheeted and appellants and their denial of the charges proceeded with the trial. In order to substantiate its case prosecution examined fifteen witnesses in all. The accused in their statements Under Section 313 of the Code of Criminal Procedure denied the allegations leveled against them. One defence witness Bhika was examined who state that Jagsi came out of the house of Ajja with a gun and hurled abuses. He asked Nava and Raja to come out. Jagsi pointed the gun towards Raja. Nava caused axe injury on the nest of Jagsi, Raja inflicted lathi blow on Jagsi. Jagsi fell down Dhira took the gun of Jagsi' which had fallen down. Jagsi died at the spot. The learned Judge placed reliance on the statements of Radha(P.W. 4) and Samratha (P.W. 5) and convicted the three appellants Mafta, Narsa and Surta. Nava and Raja Who died during the pendency of the trial were also held guilty. The remaining four accused viz. Sona, Masunga, Shanti and Kastura were acquitted by the trial court.

6. We heard Mr. M.L. Garg, learned Counsel for the appellants and Mr.V.S. Choudhary, learned Public Prosecutor for the State of Rajasthan.

7. Mr. Garg has assailed the findings of the trial court leading to the conviction of the three appellants on a number of grounds. It has been strenuously contended by him that all the witnesses examined by the prosecution to narrate the incident had turned hostile and the prosecution case solely rests on the testimony of Radha (PW 4) and Samatha(P.W. 5) who happened to be the wife and cousin respectively of the deceased. It has been urged by the learned Counsel that if the statement of these witnesses were disbelieved for the four accused then on the same statements conviction of the appellants should not have been based.

8. The learned Public Prosecutor submitted that there was no reason to disbelieve the testimony of the two eyewitnesses who were there in the house of Jagsi when-Mafia had taken out of his house. That when Radha(P.W. 4) had categorically stated about all the nine persons being the assailants, the learned Judge should

not have acquitted four, of them merely because Samratha (PW 5) had not implicated them.

9. At the very outset it may be observed that Manji(P.W. 7), Mava(P.W. 8), Galba (P.W. 9) and Ajja (P.W. 10) the persons who according to the prosecution were there at the house of Ajja have not supported the prosecution case and the case therefore hinges on the testimony of the wife and cousin of the deceased. Samratha(P.W. 5) has stated that he had come with Jagsi from the field and at the instance of Radha(P.W. 4) was taking food when Mafta came and took Jagsi from the house. The conduct of this witness of course is not normal in not raising a cry for the rescue of Jagsi. He had stated that he ran away from there in the way he did not tell anybody about the occurrence. According to the witness he told this fact to Teja, who has not been examined. However, his presence at the site cannot be disbelieved merely because he out of fear ran away from there. Radha (P.W. 4) happens to be the wife of Jagsi. Her presence at the time was natural. According to her she went after Jagsi and found the assailants causing injuries to him. The evidence of these two witnesses is specific on the point that Mafta, Narsa and Surta were armed with axes and had inflicted one blow each to the deceased.

10. The learned Judge has disbelieved the testimony of Radha for Sona, Masunga, Shanti and Kastura because Samratha has stated that they were neither having lalis at the time nor did they participate in the crime. This being the position there is substance in the arguments of the learned 'counsel for the appellants that Radha has tried to implicate a number of person falsely.

11. Mr. Garglearned Counsel for the appellants vehemently argued that incident, even if any, must not have taken place in the way Radha narrates because this is the admitted position that Jagsi had brought a gun from the field on that day. According to the learned Counsel this substantiates the defence version that Jagsi might have gone outside and the quarrel ensued and some persons might have caused injuries to him. Radha has admitted that on the relevant date her husband had brought a gun from the field and that gun was later on taken away from her house by the wife of the witness Samratha. Samratha(P.W. 5) has also admitted that on that day Jagsi had brought the gun of his father from the field and he and

the witness had come to the house of Jagsi. He, however denied the fact of gun being taken away by his wife from the house of Jagsi had brought the gun from the field that day. According to the prosecution witness the gun was empty. We find force in the argument of the learned Counsel for the appellants that prosecution has also not brought true facts on record. The origin of the quarrel is not known. The reason might be that the important witnesses have turned up hostile. It has been admitted by Radha(P.W. 4) and Samratha(P.W. 5) that on account of. Popat taking Savita, daughter of Hamira, to Ahmedabad the relations between Hamira and his relatives and Jagsi were strained. This is also the admitted position that on the relevant date panchas of Sulive and Mandar Villages had assembled at the house of Ajja and Mafta had come to take Jagsi there for the decision on the issue of Savita being taken away by Popat. As to what exactly transpired immediately after Jagsi leaving the house is known. The neighbourers; whose presence at the vicinity is stated have set been examined by the prosecution. However, Radha (P.W. 4) and Samratha(P.W. 5) going outside and seeing Jagsi being injured cannot be disbelieved. From their statements the specific overt act of causing axe injury by Mafta, Narsa an and Surta is established. True it is that the recovery of the axe do not connect the appellants with the commission of the crime because no blood was detected on them. However, the learned Judge in our opinion had good reasons to place reliance on the testimony of Radha and Samratha for holding Mafta, Narsa and Surta authors of the three incised wounds of Jagsi.

12. The medical evidence has been carefully looked into by the learned Judge. As the Doctor has stated that mone of the three incised injuries could be individually sufficient to cause death, the learned Judge was right in not holding the case Under Section 302 I.P.C. td be. made out. The portions of the body affected by the axe blows indicate the intention of the assailants to cause bodily injuries likely to cause death and therefore, the case has rightly been, held to fall Under Section 304 Part-II I.P.C.

13. A pertinent question however would be whether the three convicted appellants can be held responsible fop forming an unlawful assembly and: liable for conviction Under Section 148 I.P.C. the learned Judge held Raja author of the injuries by lathi sustained by the deceased be caused the witnesses have

specifically stated about his causing injury on the waist of the deceased. The evidence against Nava is of the same type as that against Sona, Masumga, Shanti and Kastura whom the learned Judge did not hold guilty and acquitted. The conviction Under Section 148 I.P.C. is because the learned Judge has held the presence of the three appellants and Raja and Nava. The presence of Nava according to the learned Judge can be taken to be established in view of the statements of Bhika (D.W.1) who has stated about the deceased armed with gun asking Raja and Nava to come out and on their doing so, pointing the gun towards them and Nava and Raja causing injuries to the deceased.

14. The learned Judge has totally disbelieved the testimony of Bhika (D.W.1) regarding the aggressive act of deceased Jagsi. His hurling abuses to Nava and Raja and pointing the gun towards when has been disbelieved. His statement as such should not have been pressed into service simply for holding Nava a member of the unlawful assembly. Apart from it as discussed above from the statements of Radha(P.W. 4) and Samratha(P.W. 5) it cannot be inferred. as to how the quarrel had started. The prosecution has also suppressed real facts. Independent witnesses have not supported the prosecution case. As such because of Nava in the line of the four accused acquitted by the trial court and the presence, of only four person viz. Mafta, Nava, Surta and Raja(since dead) being established, the number being less than five, the ingredients of an unlawful assembly are lacking and the conviction Under Section 148 I.P.C. cannot be sustained.

15. Mafta has been convicted for the charge Under Section 452 I.P.C. Section 452 I.P.C. deals with the cases of house trespass after preparation for hurt, assault or wrongful restraint, Radha has admitted that Mafta did not enter the house or the threshold. According to her he caught hold of Jagsi when he was in the door and took him out. So far as the apprehension to commit the hurt is concerned suffice it to say that Radha(P.W. 4) and Samratha(PW.5) had not stated so before the police i.e. the fact of Mafta having an axe at the time does not find place in their police statements to which their attention was drawn. As observed above, as to what exactly led to the quarrel not being evident from the record, all that can be said is that even if Mafta took Jagsi so that panchas may decide the matter relating to Savita being taken by his brother Popat, the ingredients of Section 452

I.P.C. being absent, this offence is not made out against Mafta.

16. The learned Judge has given good reasons for his conclusion that prosecution could not substantiate the case against Sona, Masunga, Shanti and Kastura. The opinion is based on the statements of Samratha (P. W.5) who has been relied for basing conviction of the three appellants viz. Mafta, Narsa and Surta. There is no ground for any interference in the finding of the learned Judge regarding; the acquittal of the four accused and the state appeal is liable to fail.

17. The above discussion leads to the conclusion that appellants Mafta, Narsa and Surta have rightly been convicted Under Section 304 Part-1 I.P.C. Their conviction and sentence Under Section 148 I.P.C. and the conviction and sentence of Mafta-appellant Under Section 452 I.P.C. are not made out and they are entitled to acquittal for those charges.

18. The learned Counsel for the appellants next argued that even if the prosecution case against the three appellants viz. Mafta, Narsa and Surta regarding the axe injuries caused to Jagsi is believed, still the sentence of imprisonment for life Under Section 304 Part-1 I. P.C. is excessive. We have already observed that the prosecution could not bring the real situation, which led to the quarrel. The admitted position is that Jagsi and Samratha were not invited at Ajja's house because Popat's taking Savita caused grievance to Hamira and others. The incident must not have taken place in the way and at the place as alleged by the witnesses because the witnesses have stated that the assailant was outside the house of aegis whereas the dead body was found at a distance. The place where from the witnesses have claimed to have seen the incident has not been shown in the site plan. It can therefore be said that the two witnesses must not have been present since the beginning of the quarrel and might have reached afterwards and at the time saw the appellants causing injuries to Jagsi. In such circumstances, the sentence of imprisonment for life appears to be excessive. The sentence of eight years R.I. in our opinion Under Section 304 Part-1 I.P.C, and increase in the amount of fine would in our opinion meet the ends of justice.

19. Consequently, the appeal filed by Surta, Narsa and Mafta appellants is partly allowed. They are acquitted of the charge Under Section 148 I.P.C. Mafta is also

acquitted of the charge appellants i.e. Mafta, Narsa and Surta Under Section 304 Part-1 I.P.C. is maintained. The sentence of imprisonment for life on this count is however reduced to eight years R.L The amount of fine of Rs.100/- is increased to Rs.1000/- each, in default of payment of fine if recovered shall be paid to Radha wife of deceased Jagsi. The appeal filed by the State of Rajasthan is dismissed. Appellants Narsa and Surta are in custody Mafta is on bail. His bail bonds are cancelled. The Chief Judicial Magistrate, Sirohi shall issue warrant of arrest against Mafta appellant to procure his attendance and shall send him to Jail to serve out the sentence awarded by this Judgment.

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