

Masra Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-07-1992

Reported in : 1992(1)WLN125

Judge : Milap Chandra Jain and; B.R. Arora, JJ.

Appeal No. : D.B. Criminal Appeal No. 27 of 1985

Appellant : Masra

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Milap Chandra Jain, J.

1. This appeal has been filed against the judgment of the learned Sessions Judge, Jalore dated November 24, 1984 by which he has convicted the accused-appellant under Section 302, I.P.C. and has awarded life imprisonment.

2. The case of the prosecution may be summarised thus. On October 18, 1983 at 8.15 p.m.. Lalgar Swami P.W.-1 resident of Tapi (Sanchores) lodged report Ex.-P/1 in the Police Station, Sarvana [Jalore] to the effect that he alongwith his brother Songar [deceased] and Harsinga Nai PW-2 was going to meet Bagekhan P.W.-5 to cultivate his (Baga Khan's) land situated on the boundary of the village Tapi,

Songar [deceased] was on the mare and was going ahead of them, near the river Looni, the accused Masra came out from the babool bushes with an axe in his hand and asked Songar (deceased) to stop, he gave an axe-blow on his head, he fell down from the mare, they (Lalgar and Harsinga) ran towards Songar, meanwhile the accused Masra gave another blow with his axe on his neck and, thereafter he ran away. It has further been stated in it that as a result of the attack, Songar died, they started weeping. Harsinga went to the village and informed the inmates of the village, Kesra Ram came and saw the accused running away with an axe and leaving behind Kesraram and other villagers there he came to lodge report alongwith Sarpanch. Thereon, F.I.R. Ex-P/10 was drawn and case was registered under Section 302, I.P.C against the accused. On October 20, 1983, the accused was arrested and on information under Section 27, Evidence Act, Axe Article-1 was recovered. After completing investigation, a challan was filed under Section 302, IP.C. in the court of the. Munsiff-cum-Judicial Magistrate, Sanchore who committed him to sessions.

3. The prosecution examined Lalgar P.W.-1 and Harsinga P.W.-2 as eye-witnesses, Kesra Ram P.W.-3 who scribed the report Ex.- P/1 and attested the arrest memo Ex.P/6 of the accused, recovery memo Ex.-P/7 of Axe Article-1 and Ex.P/8 of clothes Articles-3 & 4 of the deceased, Dr. Mohanlal Doshi P.W.-4 who conducted the autopsy of the deceased Songar and prepared the post mortem report Ex.P/9, Bagekhan P.W.-5 with whom the deceased Songar, Lalgar P.W.-1 and Harsinga P.W.-2 were going to meet, Police Constable Ladu Ram, P.W.-7 who took the sealed packets to Forensic Science Laboratory, Jaipur and the investigating Officer Shri Chandan Singh P.W.6 and tendered and proved 15 documents.

4. In his examination under Section 313, Cr. P.C. the accused admits that he was arrested and denied the remaining prosecution story and evidence and said that the witnesses have given evidence against him due to enmity. He has also stated that Lalgar P.W.1 and Harsinga Nai P.W.2 used to come to his house in his absence, they have illicit relations with his wife, quarrel took place in between him and these witnesses prior to the occurrence and despite it they did not stop coming to his house in his absence. He has further stated that they have falsely

implicated him in this case so that he may remain in jail and they may continue to have illicit relations with his wife. In his defence, he has produced his wife Shanti D.W.1, aged 18 years. After hearing the Public Prosecutor and the learned Counsel for the accused, the learned Sessions Judge has convicted and sentenced him as said above.

5. It has been contended by the learned Counsel for the accused appellant that the learned Sessions Judge has not properly appreciated the evidence on record and it has seriously erred in accepting the testimony of Lalgar P.W.1 and Harsinga P.W.2. He further contended that the accused was not knowing that the deceased would be passing at that time from that place. He lastly contended that the medical evidence does not support the testimony of the said eye witnesses.

6. The learned Public Prosecutor duly supported the judgment of the learned Sessions Judge, Jalore.

7. It is well proved from the evidence on record that the deceased Songar died on October 18, 1983 at 2.30 p.m. due to shock and extensive haemorrhage as a result of the injuries to his brain, spinal cord and large vessels and his death was homicidal in nature.

8. The question for consideration in this appeal is whether the accused appellant caused his death. Lalgar P.W. 1 and Harasinga Nai P.W.2 have stated on date that on the day of occurrence they were going to meet Bagekhan P.W.5 in connection of his field along with deceased Songar, he was on his mare and going ahead to them. They have further deposed that when they were near the river Looni, they saw the accused appellant Masra coming out from the bushes of babool with an axe in his hand, he asked the deceased Songar to stop and gave an axe blow on his head, they ran towards him and by that time he gave second blow on his neck with his axe and, thereafter he ran away. Lalgar P.W.1 has deposed that he remained on the spot and Harsinga P.W.2 went to the village and informed the villagers, Sarapanch Kesra Ram P.W.3 and other villagers came there, he told them that the accused Masra has killed his brother Songar and on his request Sarapanch scribed the report Ex.P/1. Nothing damaging could be elicited out in the cross-examination of these witnesses. Their testimony find corroboration from

the following facts and circumstances:

(a) Report Ex.p/1, lodged without delay at 8.15 p.m. In the Police Station, Sarvana at a distance of 11 miles from village Tapi.

(b) Report of the post-mortem examination of the dead body of Songar conducted on October 19,1983 particularly the three external injuries noted on the dead body:

(1) Incised wound 3' X 1' x brain deep vertically on mid parietal region of scalp in middle. The brain matter is coming out of wound.

(2) Incised wound 3 1/2' X 1 1/2' X 3' placed vertically on the left side of neck about 1' beneath ear.

(3) Incised wound 3' X 1/2' X 3' cavity vertically on left side of neck about 1' below the injury No. 1. . .

(c) Information Ex.P112 given by the accused under Section 27, Evidence Act, recovery of Axe Article 1 in pursuance thereof, the statement of Dr. Mohanlal Doshi who conducted the said post- mortem examination that the injuries noted by him in his post- mortem report Ex. P/9 could be inflicted by the Axe . Article 1 and the report Ex.P/14 of the Forensic Science Laboratory, Rajasthan, Jaipur that the axe Article 1 had human blood on it.

(d) Foot prints of the mare were noticed on the way and signs of movements and sitting of a man beneath the babool bushes were seen by the Investigating Officer Chandan Singh P.W.6 when he inspected the site the same day and they have been duly noted in the site plan Ex.P/11 and the site inspection memo Ex.P 13.

(e) A day prior to the murder of Songar Baghekhani P.W.5 had a talk with Songar, the former wanted to cultivate the latter's field, he asked to see his field the next day, he waited for him for a pretty long time, when Songar did not come he proceeded to the village Tapi,, near the river he found his dead body and Harsinga P.W.2 told him that the accused Masra had murdered him.

9. It has been contended by the learned Counsel for the accused appellant that Lalgar P.W.1 has deposed that the deceased Songar did not receive any injury on

account of his fall from the mare and this was highly improbable as the place where he fell down was hard. He also contended that it is not mentioned in the report Ex.P/1 and police statement Ex.D/1 that Lalgar told to Kesraram that the accused had killed the deceased. It is common experience that discrepancies do occur even in the statements of perfectly honest witnesses which are really due to differences in individual faculties with regard to observation, recollection and recital of details and unless there is any good ground to think that they are due to deliberate attempt to suppress or depart from truth, it is unfair to discard the direct testimony merely on account of such discrepancies when there is general agreement as to material circumstance.

10. Shanti D.W.1 wife of the accused Masra, has deposed that Lalgar P.W.1 and Harsinga P.W.2 still come to her house and due to this her husband was annoyed and her mother-in-law does not live with her. This provided motive to the accused for committing the said offence. Thus there is no force in the appeal.

11. In the result, the appeal is dismissed. The conviction and sentence of the accused appellant Masra are maintained.