

# **Masji Tato Rawool And Ors. vs State Of Maharashtra on 16 February, 1971**

**Equivalent citations: (1971)3SCC416, 1971(III)UJ369(SC)**

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**Bench: S.M. Sikri, P. Jaganmohan Reddy, I.D. Dua**

## **JUDGMENT**

I.D. Dua, J.

1. Masji Tato Rawool), Janabai alias Rajani and Sahadeo Atmaram Rawool (original accused Nos. 1, 5 and 6) are the three appellants in this appeal by special leave. They challenge their conviction by the Bombay High Court on State appeal against their acquittal by the Additional Sessions Judge, Ratnagiri. Originally six persons, including the three appellants, were committed by the Civil Judge and Judicial Magistrate, First Class, Sawantwadi in Ratnagiri District for being tried Under Section 148, Section 302 read with Section 149 and Section 302 read with Section 34, I.P.C. Masji Tato Rawool was in addition charged Under Section 323, I.P.C. The occurrence in question lead resulted in the death of Shankar Timji Rawool. The prosecution story may now be briefly stated.

2. Tato Masji Rawool, accused No. 2 resided in his house in hamlet known as Dongar Maharchi Wadi in village Namale in Sawantwadi Taluka iq Ratnagiri District. With him lived his wife Bhagirathi, (accused No. 3), his two sons Masji accused No. 1) and Bakharam (accused No. 4) and his two daughters Mathubai, aged 12 years and Janabai (accused No. 5) who was married to Shantaram Mulik of Kondure. The deceased Shankar Timaji Rawool also belonged to the Rawool brotherhood and was distantly related to the accused persons being their Bhauband. He resided in his own house in the same Wadi along with his ailing mother, his brothers Shivram, Arjun and Hari and Shiv Ram's wife Vatsala. He had two more brothers by name Vasu and Sahadeo, who resided in Bombay. There was no love lost between the family of the deceased Shankar and that of the accused Nos. 1 to 5. These two families had since about 8 or 10 years been on inimical terms with each other. Accused No. 6, Sahadeo Atmaram Rawool had his own scores to settle with the family of the deceased and his enmity with that family could also be traced back to 8 or 10 years. About a fortnight before the occurrence in question Shankar, deceased, had lodged a complaint against accused No. 6 and his two brothers for having out stems from his (Shanker's) land. On December 8, 1964 Sahadeo (accused No. 6) came to the house of accused No. 2 & started abusing Shankar who was sitting in his own house When Shankar protested the other accused persons, namely, Tato, Sakharam and Masji sided with Sahadeo and challenged Shankar to come out, threatening him with death if he did so. Shankar keep quiet. On the following day at dawn Hari and Arjun, brothers of the deceased, went to their Kolamb land with plough Shivram left his house at about 6 a.m. and went to

his paternal aunt Shevantabai who lived at Kumbharwadi. At about 7 a.m. accused, Masji, Sakharam and Janabai (Nos. 1, 4 and 5 respectively) went towards their Mangar with sticks and after some time they and accused No. 6 also armed with a stick, came out of their Mangar and passed by the house of Sundarabai (P.W. 5), widow of Sonu Sawool. In the meantime Shankar also came out of his house and while going by the footway he was accosted by accused Nos. 1, 4, 5 and 6 near the spot known as Gothan. Seeing them he started running away in order to escape but they caught him and started beating him with sticks. As Shankar shouted for help, his sister-in-law Vatsalabai & other persons who were near about, hearing his call for help, came out. They saw the four accused (Nos. 1, 4, 5 & 6) beating him. Shankar, as a result of beating, fell down with his face upwards. By that time Shivram returned to his house and on being informed by his mother about the beating, he also went to the place where Vatsala was standing. In the meantime accused Nos. 2 and 3 also came out of their houses and went towards the place of occurrence. Bhagirathi (accused No. 3) had brought with her two Palkovatas and Tato (accused No. 2) was armed with a stick. Bhagirathi gave one Palkovatas to her son Masji (accused No. 1) and the other to her daughter Janabai (accused No. 5). Janabai then gave blows with her Palkovata on the legs of the deceased. Masji (accused No. 1) gave four or five similar blows to the deceased on the right side of his chest. Hari, who also happened at that time to be coming by the road was noticed by accused No. 1 Masji who threw a stone at the former hitting him on his back. Hari fell down feeling giddy and was carried home by Vatsala and Shivnam. Shankar had by that time died on the spot. When Shankar was being attacked his black dog also came to the spot and was hit by accused No. 1. The dog was later examined by a veterinary doctor whose evidence was also recorded in the case. This, broadly speaking, is the prosecution story so far as relevant for our purpose.

3. The trial Court on appreciation of the evidence felt that only four accused persons (Nos. 1, 4, 5 and 6) were present at the alleged beating of the deceased with sticks and only they took part in such beating. They had encircled the deceased and given him at least 7 or 8 stick blows hitting him on the head and back. From this kind of attack, according to the trial Court, one would normally expect some weal marks or marks of contusion or some abrasions on the dead body. But none were found by the doctor as shown in her postmortem notes and her evidence in Court.

On this reasoning the trial Court observed :

So, this medical evidence is in direct conflict with the story of stick beating. It is difficult to believe that the beating of sticks by four persons and that too from all sides and holding the sticks in both the hands, would not leave any mark of contusion, abrasion or even a weal mark on the dead body. An attempt was made on behalf of the prosecution to suggest that the incised wounds which were seen on the dead body were caused, on the same part of the body where stick blows were given. Dr. Thakur stated in examination-in-chief, (vide paragraph 3) that if a blow was given with a stick on the same part a blow inflicted with Palkovata a fracture could be caused. But in cross-examination she has stated in clear terms that from the description of the injuries given in the postmortem notes (Ex. 22) she could not say whether stick blows were inflicted. She added that fractures were below the seat of injuries and this suggested that they must have been caused only by heavy cutting

instruments. So, the medical evidence completely falsifies the version about stick beating as narrated by the prosecution witnesses. In the inquest panchanama (Ex. 31) also there is no mention of any contusion or weal mark. However, one abrasion on the left wrist over an area of one inch by one inch is mentioned. Barring this, the rest of the injuries are shown to be incised wounds and the panchas have given their opinion that the injuries appeared to have been caused by cutting weapon. Assuming that there was one abrasion, it cannot be necessarily attributed to stick beating. It may have been as well caused by falling. At any rate, if the story of the witnesses about stick beating was to be believed, then there should have been some contusions or visible marks on the dead body. Their absence goes a long way to negative the version of the witnesses regarding stick beating.

The Court continued :

Then the second part of the prosecution story is about beating by Palkovatas. It is the say of these witnesses that after Shankar fell down, accused No. 8 Bhagirathibai and accused No. 2 Tato, who are both old, came to the spot and Bhagirathi had two Palkovatas in her hand and accused Tato had a stick. Now, it is the say of all these witnesses that none of the accused, who were beating Shanker with sticks, were shouting. So, one fails to understand as to why Bhagirathi & Tato should come out after Shankar had fallen on the ground ? Their further version that Bhagirathi gave one Palkovata to Janabai appears to be somewhat improbable. Let us assume for the sake of argument that she came with two Palkovatas. But it does not look probable that instead of giving the Palkovata to accused No. 4 Sakharam, or accused No 6 Sahadeo, she would give it to her young newly wedded daughter Janabai.

The final conclusions of the trial Court on the charge of rioting and murder were expressed thus :

Thus, the total effect of all the evidence adduced in this case is that the evidence only creates some suspicion against the accused, but at the same time it creates graver suspicion about the veracity of the statements of witnesses who are said to have actually witnessed the incident. It is rather doubtful that they have told the whole truth and nothing but the truth. There is some force in the argument advanced on behalf of the defence that the use of the word was purposeful with a view to seeing if any others could be as well roped in. In these circumstances I think it highly risky to depend on the evidence of the so called eye witnesses. As I stated above, it is clear that some incident took place in which Shankar received injuries and accused No, 4 also received injuries. But that does not, therefore, mean that the story told by the prosecution witnesses is necessarily true. Even looking to the story itself it appears to be improbable that accused Nos. 2 and 3, who are old persons, and accused No. 5 who is a young married girl who had come to her parents only a few days before, would take part in an attack of the type described by the witnesses. So, I am not inclined to believe that all the accused in this case formed an unlawful assembly and

they went armed with sticks and Palkovatas and attacked Shankar as described by the witnesses.

4. All the accused were given benefit of doubt and acquitted of the offences charged: Sakharam, accused No 4, was found to have admitted that there was a scuffle between him and four persons (Shankar, deceased, Arjun, Hari and Shivram) and that he had inflicted on Shankar, deceased, two or three blows with Palkovata in the exercise of the right of private defence. According to this accused he had been taken unawares by the aforesaid four persons who were armed with Palkovatas and sticks. Apprehending death at their hands he snatched a Palkovata from them and gave Shankar, deceased, two or three blows with it. Thereafter throwing the Palkovata at that spot he ran home. According to his version the other accused persons were not present at the time and place of the scuffle. Out of the 14 injuries found on the body of the deceased six were fractures and three (Nos. 3, 6 and 7) were on vital parts of his body. Injury No. 8 was also grievous. This left four incised wounds, which were not grievous injuries. The plea of self-defence set up by accused No. 4 was not accepted. But he was given the benefit of being the author of only one or more of the incised injuries, not being grievous and was convicted Under Section 324, I.P.C.

5. The High Court on appeal agreed with the trial Court in rejecting the defence version given by accused No. 4 injury No. 1 on the person of the deceased Shankar was however, considered by the High Court to be stick injury which in its opinion could not be inflicted by a Palkovata. The Court then referred to some passages from Modi's Medical Jurisprudence and observed that from the nature of the injuries found on the person of the deceased at least some of them were impossible to have been caused by a Palkovata and that they were stick injuries. Injury No. 6 was one of such injuries, probably caused by a stick which may have momentarily stunned Shankar when he fell down. The evidence of the lady doctor who had conducted the postmortem examination was adversely criticised and it was observed that she was not sufficiently experienced. This criticism was mainly based on some passage found by the High Court in Modi's Medical Jurisprudence. That Court also observed that after rejecting the defence version the trial Court had no justification in refusing to accept the prosecution story as deposed by the eyewitnesses. The evidence of Hari and of the doctor who had examined the dog was also held to corroborate the prosecution story. Disagreement with the trial Court, the High Court thus accepted the evidence of the eyewitnesses. But even while doing so, the Court felt that there being enmity between the two families it was safer to consider the case of accused Nos. 2 and 3 separately from that of the remaining four accused persons because, according to the witnesses, the former two accused persons had come to the spot after Shankar had fallen. These two persons were given benefit of doubt but the appeal against accused Nos. 1, 4, 5 and 6 was accepted and they were convicted Under Section 302, read with Section 34, I.P.C. The conviction of accused No. 4 was altered from Section 324 to one Under Section 302 read with Section 34. The accused persons convicted by that Court being less than five in number they were also acquitted of the offence Under Section 148, I.P.C. Accused No. 1 was also convicted Under Section 323, I.P.C and sentenced to rigorous imprisonment for six months.

6. The only question canvassed at the bar of this Court is whether the view taken by the High Court is correct and whether that Court was justified in reversing an appeal the trial Court's order of acquittal and in convicting the present appellants. The Principal point requiring determination by

us, therefore, is whether the version given by the eyewitnesses is consistent with the medical evidence in regard to the injuries found on the person of the deceased or it is so materially inconsistent with the medical evidence that the story given by them must be held unsafe to sustain the appellant's conviction. This question assumes importance because of the admitted long-standing enmity between the two families. Such inimical relationship on the one hand provides notice for the offence and on the other it serves as an inducement to the members of one party to falsely implicate their enemies. Even when only some members of the rival group are involved in the offence quite often one finds a tendency also to falsely rope in some other members, or their relations who may be wholly innocent. In doing so the story is improved and modified to achieve this purpose. Exaggeration of the part played by the other side in the course of the incident is also quite common. The Court has, therefore, to be circumspect in the appreciation of evidence so that over-emphasis on the enmity factor does not cause either the innocent to be wrongly convicted or the guilty to be wrongly acquitted, for in either case justice would fail. Medical evidence in respect of the injuries suffered in such cases is helpful in appreciating the evidence of the witnesses to the occurrence.

7. Now the prosecution witnesses who claim to have seen the occurrence are unanimous and, as observed by the High Court, reference may be made to the evidence of only one witness. The High Court referred to the testimony of Sunderabai (P.W. 5) On the day of the occurrence she was tying bidis in her house at about 7 or 8 a.m. when she saw Shankar, deceased, going from his house towards the east by footpath 10 or 20 paces away from her house. Accused Masji, Sakham, Janabai and Sahadeo were going from their Mangar towards west with sticks. On the way they accosted Shankar who started running away but was chased & caught up. These persons beat him with sticks. As a result of the beating he fell down with his face upwards. Thereafter Bha girathi came to the spot with two Palkovata. Along with her came Tato, armed with a stick, Bhagirathi gave one Palkovata to Masji and one to Janabai. Masji gave two or four blows to Shankar with the Palkovata on the head and face: Janabai gave two blows on Shankar's legs. By that time Hari happened to come from his land. Masji threw a stone at him hitting at the back of his head. As Hari fell down he was removed by Vatsalabai and Shivram to their house. In cross-examination it was elicited that Shankar was given five or six blows with sticks. Each accused gave two blows Janabai who had a stick in her hand also gave stick blows to the deceased. The witnesses saw Shankar bleeding from his head. This evidence quite clearly makes out a case of merciless beating of the deceased by six persons mainly with sticks. Later the Palkovattas are said to have been used. Let us see how far the injuries found on his person on medical examination support this story. The injuries in the post-mortem report are described as follows:

1. Incised wound 3 "XXX" bone deep, transversely placed compound fracture of tibia, lower, third anterior aspect.
2. Incised wound 1-1/2" x 1/2 x 1/4" with avulsion of the skin, middle and anterior aspect of left.
3. Incised wound 2" x 1" x 2" deep transversely placed middle of right side neck directed upwards and backwards, Carotid vessels out.

4. Incised wound 1" x 1/2" x 1/4" near the back side of the right ear.
5. Incised wound 1/2" x 1/4" right ear lobule.
6. Incised wound 3" x 1" bone deep, verticle, near the right side of midline of vertex.
7. Incised wound 1-1/2" x 1/4" bone deep left side vertex near the midline.
8. Incised wound 1" x 1/2" bone deep transversely placed on right eye-brow, directed upward and backward destroying the right eye-ball.
9. Incised wound 1" x 1/2" x 1/4" nose with fracture of nasal bones and septum of the bone.
10. Incised wound 1" x 1/2" bone deep left side upper lip with compound fracture of maxilla.
11. Incised wound 1-1/2" x 1/2" bone deep right side chin with compound fracture of mandible.
12. Incised wound 2" x 1/2" bone deep left side chin with compound fracture of mandible.
13. Incised wound 3/4" x 1/2" bone deep left side mandible.
14. Incised wound 1" x 1/2" left side chin compound fracture mandible.

Injury No. 1 was 1" wide as explained by Dr. Shakuntala Thakur who has appeared as P.W. 10 in the trial Court. She did so after referring to the office copy of the postmodern notes. She is a B.A. and Master of Surgery. In examination-in-chief she explained that injuries Nos. 1, 10, 11 and 12 on the body of the deceased could be caused by means of a stick if on the same part after hitting with a stick a blow is given with a weapon like Palkovata. As stated in the judgment of the High Court, a Palkovata is a curved implement with a blade in from and handle of about 5 or 6", with a bill like curve and sharp edges. In cross-examination the doctor firmly stated that the injuries on the deceased might have been caused by sharp-cutting instruments. She was, however, unable to say from the description of the injuries given in the postmortem notes if stick blows were given to the deceased. Fractures mentioned in col, 17 of post-mortem notes, which were below the seats of the injuries could, according to her be caused only by heavy cutting instruments. Injury no 6 was considered by the High Court to be a stick injury and in the opinion of that Court it was impossible to hold this injury to be caused by a Palkovata. This injury is described in the post-mortem report as an "incised wound 3" x 4" bone deep verticle, near the right side of middle vertex". Now, no question was put to Dr. Shakuntala if this injury was such as could only be caused by a stick blow and that it was impossible to cause it by a Palkovata. We are unable to appreciate the reasons given by the High Court in support of its conclusion in regard to this injury. This was a matter for the doctor to clarify

and explain and if the High Court had any doubt in regard to the medical evidence the doctor should have been again summoned as a witness and questioned on this point. Her testimony does not appear to us to be so patently erroneous as to justify its rejection by the High Court in disagreement with the opinion of the trial Court. The High Court relied on some passages from Modi's book on Medical Jurisprudence for the purpose of discrediting the medical testimony. This was hardly proper and was far from fair on just even to the doctor who had appeared as a witness but was not questioned with reference to those passages. The High Court seems also to have erroneously ignored that according to the prosecution version all the accused persons had virtually surrounded the deceased and started beating him with sticks. This kind of beating would have resulted in much large number of stick injuries than held by the High Court, even assuming the High Court is right in so holding on the basis of some passages from Modi's book. The main question before the High Court was if it was safe to rely on the prosecution version about the occurrence as given by the witnesses and not if some injuries could be considered to have been caused by sticks. The entire approach of the High Court seems to be erroneous and difficult to sustain. We do not consider it necessary to express any considered opinion with respect to the contents of the stomach found at the time of post mortem because that would be a matter of speculation in the absence of reliable evidence on the question as to when the deceased had his last meal and what that meal consisted of.

8. It is true that the High Court is entitled on appeal against acquittal to reappraise the evidence in the same manner in which it does on appeals against conviction with the only difference that in the former case it has to bear in mind the verdict of acquittal by the trial Court. It is also true that under Article 136 this Court does not ordinarily reappraise evidence for itself for determining whether or not the High Court has come to a correct conclusion on facts. But where the High Court has completely missed the real point requiring determination and has also on erroneous grounds discredited the medical testimony and has further failed to consider the fact that on account of long standing enmity between the party of the accused and that of the deceased there is a tendency to involve innocent persons and to exaggerate and lead perjured evidence in regard to the occurrence, this Court would be justified in going into the evidence for the purpose of satisfying itself that grave injustice has not resulted in the case.

9. In the final result this appeal succeeds and allowing the same we acquit the appellants. Our attention has been drawn to the fact that accused No. 4 which has not appealed was also convicted by the High Court Under Section 302 read with Section 34, I.P.C. It may be recalled that he had been convicted by the trial Court under sec, 324 and from the record it does not appear that he had appealed against that conviction. Having not appealed, we are unable to make any order in his favour and indeed we have not considered his case which seems to be distinguishable from that of the appellants in this Court.