

Supreme Court of India

Mata Prasad And Ors. vs State Of U.P. on 8 February, 1994

Equivalent citations: 1994 (1) ALT Cri 644, 1994 (1) Crimes 611 SC, JT 1994 (1) SC 515, 1994 (1) SCALE 412, 1994 Supp (2) SCC 19, 1994 (1) UJ 338 SC

Bench: K J Reddy, G Ray

JUDGMENT

1. This appeal is directed against the judgment dated October 22, 1982 passed by the Lucknow Bench of Allahabad High Court in Criminal Appeal No. 544 of 1976 and 545 of 1976 modifying the conviction and sentence passed by the learned Additional Sessions Judge, Gonda in Sessions Trial No. 222 of 1974. Nine accused persons including the six appellants in this appeal faced trial in the said Sessions case on charges under Sections 120B, 148, 302 read with 149 and 147 I.P.C. for murdering one Radhey Shyam on April 23, 1974. The learned Sessions Judge convicted accused Nos. 1, 5 and 6, namely, Amrika, Nauranglal and Raja Ram under Sections 120B, 148, 302 read with 149 I.P.C. and sentenced them to suffer two years' rigorous imprisonment under Section 148 and the imprisonment for life under Section 302 read with Section 149 I.P.C. No separate sentence was, however, awarded under Section 120B I.P.C. The learned Sessions Judge also convicted the accused No. 3, Mata Prasad, accused No. 4, Bachcha Lai and accused No. 2, Ambar, under Sections 147, 302 read with 149 I.P.C. and awarded sentence of one year rigorous imprisonment for the offence under Section 147 and life imprisonment under Section 302 read with Section 149 I.P.C. The accused Nos. 3 and 4 were also convicted under Section 120B but no separate sentences was passed on that count. Accused No. 7, is Kapil Deo, was also convicted under Sections 147, 120B and 302 read with 149 IPC and one year's rigorous imprisonment was awarded for the offence under Section 147 and imprisonment for life for the offence under Section 302 read with Section 149 I.P.C. No. separate sentence was awarded under Section 120B I.P.C. Accused No. 8, Hara Prasad, and accused No. 1, Amrika, were convicted only under Section 302 read with Section 149 I.P.C. and the learned Sessions Judge awarded life imprisonment for the said offence. The said accused persons preferred two appeal before the Lucknow Bench of the Allahabad High Court being Criminal Appeal Nos. 544 of 1976 and 545 of 1976. Both the said appeals were heard analogously and were disposed of by a common judgment. Both the said criminal appeals were partly allowed. So far as accused No. 4 Bachcha Lai, is concerned, the High Court set aside the conviction under Section 120B I.P.C. but upheld the conviction under Sections 147, 302 read with 149 I.P.C. but on consideration of the facts that at the time of commission of the offence he was aged only 16 years, the High Court suspended the sentence by giving benefit of the Section 30 of the U.P. Children Act and directed to furnish personal bond of Rs. 5,000/- and two sureties of like amount-one of such sureties to be furnished by an elder member of the family. The conviction under Section 120B I.P.C. was set aside in favour of all the appellants. In both the said appeals the conviction and sentence passed by the learned Sessions Judge against Mata Prasad, Naurang Lal, Amrika and Raja Ram under Sections 148, 302 read with 149 I.P.C. were upheld by the High Court. Accused No. 8, Hard Prasad, accused No. 9, Babu Lal, were acquitted in view of 35 setting aside the conviction and sentence under Section 120B I.P.C. The conviction and sentence of accused No. 7, Kapil Deo, under Sections 147, 302 read with 149 I.P.C. were upheld by the High Court. As aforesaid, the instant appeal has been preferred by the accused Nos. 1, 2, 3, 5, 6 and 7, namely, Amrika, Amber, Mata Prasad, Naurang Lal, Raja Ram and Kapil Deo.

2. The prosecution case in short is that the appellants Amber and Amrika are real brothers and Naurang Lai is collateral of Amrika while Raja Ram is servant of Amrika and Kapil Deo was in the gang of Amrika because he used to borrow money from him. Mata Prasad and Bachcha Lal were cousins and they were also close to Amrika who was an influential man in the locality. Hara Prasad and Babu Lal were also the friends of Amrika. Amrika was a chaukidar of the Police Station, Kotwali, Gonda. The deceased, Radhey Shyam, had taken three bighas land in the village form Radhika and Radhey Shyam had been put in possession of the said land and although Radhika had promised to execute the sale deed after consolidation, it was not done. Radhika later on sold the said land to the accused Hara Prasad about three years prior to the date of occurrence. The said Hara Prasad after one and a half year from the date of the said purchase had tried to take possession of the said land but such attempt was resisted by the deceased, Radhey Shyam. In view of such purchase and attempts for dispossession, there was enmity between the deceased and Hara Prasad. It is the prosecution case that Hara Prasad and Babu Lal planned to kill Radhey Shyam and on the evening of April 22, 1974, the accused Mata Prasad, Ambar, Naurang Lal, Raja Ram and Kapil Deo, Hara Prasad and Babu Lal conspired that Kapil Deo would bring Radhey Shyam and he would be killed. On April 22, 1974, Radhey Shyam had gone to Gonda but had not returned by 10 O' clock by night and the family members had gone to sleep. Next morning on April 23, 1974, at about 7.00 A.M. Radhey Shyam and Kapil Deo were seen coming from the east of the shop of Amrika by P.W. 3, Muni Ram. The said witness, Muni Ram, had also seen Radhey Shyam and Kapil Deo entering the shop of Amrika where Mata Prasad, Bachcha Lal, Amber, and Kapil Deo were armed with lathi, Amrika had a gun, Naurang Lal had a ballam and Raja Ram carried a pharsa and all of them started assaulting Radhey Shyam with their respective weapoas. On seeing the assault on Radhey Shyam, P.W. 3, rushed to the house of Baijnath which was at a distance of 1.1/2 furlong and informed them that Radhey Shyam was being assaulted by the said accused persons. On hearing the said assault, P.W. 1, Ballu, who is the sister of Radhey Shyam and P.W. 2 father of Radhey Shyam, rushed towards the shop of Amrika along with P.W. 3, Muni Ram, and on the way they met one Nakched who had also accompanied them. They, however, could not find anyone in the said shop but on moving a little further they saw that the body of Radhey Shyam was being dragged on by means of electric wire which was tied on the waist of Radhey Shyam. The accused, Kapil Deo and Amber held the hands of Radhey Shyam and Mata Prasad and Bachcha Lai held his legs. Amrika was found armed with the gun, Naurang Lal had ballam and Amber and Kapil Deo carried lathis. The body was being carried towards the chak road which was to the north of the shop of Amrika. On the cry being raised, the appellants and other accused ran leaving the body of Radhey Shyam. When Ballu, Baijnath and Muni Ram reached, they found that Radhey Shyam was already dead.

3. A written report about the incident was dictated by Baijnath to Muni Ram who transcribed the same and Baijnath lodged the report at the police Station, Kotwali and the case was registered by the Head Constable, Baldeo Prasad Pathak, at about 11.00 a.m. on April 23, 1974. Kalika Singh, Station Officer, Kotwali was present at the time of loading the report. He interrogated Baijnath and prepared the inquest of the body of Radhey Shyam being Ext. Ka 3 and despatched the body for post mortem examination. The Investigating Officer found blood in the field of Samokhan where the body was lying and the Investigating Officer collected the same and prepared the recovery memo. He also noticed the blood in the shop of Amrika and also from the chak road upto the shop of Amrika. The blood stained earth and plain earth from the respective place were collected and the

recovery report was prepared. In the shop of Amrika, he found a pair of Kharaon blade of pharsa, a gunny bag and wooden part of gun which connects the barrel to the butt of the gun and the said articles were also seized and sealed by preparing the memos. The Investigating Officer searched the house of Amrika and Ambar and seized the gun after such search. P.W. 5, Dr, Narendra Verrna, performed the post mortem examination and prepared report being Ext. Ka 7 and he found 17 injuries including incised wounds, punctured wounds, and lacerated wounds. At about 11.45 a.m. on the date of occurrence, namely, on 23.4.1974, an information was received from the district hospital through memo Ext. Ka 9, that the accused Mata Prasad was present there and the police constables were sent to the hospital to keep watch and arrest him after making G.D. entry being Ext. Ka 21. The said Mata Prasad was arrested and locked up in the police lock up at about 1555 hrs. on the same date. The accused Amrika was arrested and was locked up at about 1730 hrs. on the same day and the other accused persons surrendered in Court. The Investigating Officer interrogated prosecution witnesses and also the accused persons and prepared a site plan of the scene of occurrence. Later on further on investigation was taken up by the Circle Officer Ram Nagina Singh, P.W. 9.

4. 12 Witnesses were examined on behalf of the prosecution including P.W. 1, Ballu, P.W. 2, Baijnath and P.W. 3, Muni Ram. P.W. 3, Muni Ram, is the eye witness of the assault at the shop of Amrika and also an eye witness of the dead body being carried to the field of Samokhan. The other two witnesses, namely, P.W. 1, Ballu, and P.W. 2, Baijnath, had only seen the dead body being carried out by the said accused persons. The other witnesses proved the inquest, post mortem report, search of the house of Amrika and Amber and other details of various steps taken by the police.

5. All the accused denied the prosecution story and had pleaded that they had been falsely implicated on account of enmity. Each of the accused persons gave their respective version in support of the contention that Radhey Shyam, his father, Baijnath, P.W. 2 and the said eye-witness, Muni Ram, were inimical against the accused persons for different reasons. It was also contended on behalf of the accused persons that Radhey Shyam was a man of desperate character and was challenged on the charge of dacoity on a few occasions. The said Radhey Shyam was highly crossed because of the purchase of the said land by Hara Prasad and he with his associates wanted to assault hara Prasad and his friends. Mata Prasad stated that the deceased Radhey Shyam along with, three or four persons, came to the shop of Amrika and friend with a pistol at Mata Prasad and on his alarm, several persons arrived there and there was a 'mar pit'. It was the case of the accused that the villagers came to the scene of occurrence on hearing the noise of 'mar pit' and Radhey Shyam was assaulted by the villagers causing his death and his body was thrown in the field of Samokhan. A number of witnesses were examined on behalf of the accused persons. D.W. 1, Dr. R.S. Pandey, proved the injuries of Mata Prasad which were examined by him on April 23, 1974 at about 10.45 a.m. The said doctor noted four lacerated wounds on the hands of said Mata Prasad and he also advised for X-ray. He also stated that on examination of X-ray report, he found some metallic pieces around the injuries. D.W. 2, Ram Lakhan Singh, stated about the search of the house of P.W. 3, Muni Ram, at the instance of Kapil Deo. The said D.W. 3, Tej Bahadur Singh, is Station Officer of Kotwali, Gonda, and he also stated that Radhey Shyam was charge sheeted in the case of dacoity in which Kapil Deo and Naurang Lai were witnesses. D.W. 4, Dr. V.B. Singh, examined the injuries of Amrika at about 9.15 a.m. on April 24, 1974 and he found contusions on his person and proved the report prepared by him being Ext. Ka. 10. D.W. 5, Ram Shanker, was a Constable, who proved the

report lodged by one Smt. Banana against P.W. 3, Muni Ram. D.W. 6, Kesari Nandan Singh, stated about the special report sent in the office of Superintendent of Police.

6. The learned Additional Sessions Judge did not accept the defence case that Radhey Shyam was aggressor and he assaulted Mata Prasad and being a man of desperate character he suffered injuries during the 'mar pit' and being severely assaulted by the angry villagers who reached the spot, he had died. On the contrary, the learned Additional Sessions Judge believed the prosecution case that the said accused persons hatched a conspiracy to kill Radhey Shyam and also assaulted him with deadly weapons causing his death a alleged w by the eye-witness P.W. 3, Muni Ram.

7. Accordingly, the learned Additional Sessions Judge convicted all the said accused persons and awarded sentences under different counts as indicated hereinbefore.

8. During the hearing of the appeal before the High Court, it was contended on behalf of the accused appellants that the evidence of the alleged eye witnesses namely, P.W. 1, is 2 and 3 should not be believed because they were all interested witnesses and were inimical for various reason as against the accused persons. It was contended that P.W. 3, Muni Ram, was the only eye witness of the alleged assault on the deceased but the said Muni Ram was himself implicated in criminal case where some of the accused persons were witnesses. He, therefore, made a false statement to implicate the accused. In any event, lone testimony of P.W. 3 not being corroborated by any independent witness should not be believed.

9. The High Court, however, did not find that the charge under Section 120B was proved against any of the accused-persons. The High Court, therefore, acquitted all the accused from the charge under Section 120B I.P.C. The High Court however, indicated reasons as to why the defence case could not be accepted and the prosecution case was acceptable and by indicating such reasons upheld the conviction of the appellants in the instant appeal with some modification as indicated hereinbefore and awarded the aforesaid sentences against the aforesaid appellants.

10. At the hearing of this appeal, Mr. Sushil Kumar, learned Senior Counsel, very strongly contended that the case of the prosecution could not have been accepted by the courts below and it was practically on surmise and conjectures, the High Court had found that the accused persons had committed the offences alleged against them. It was contended by him that although it was the case of the prosecution that when P.W. 1 and 2, namely, the sister and the father of the deceased were going with Muni Ram, P.W. 3 towards the shop of Amrika, they met one Nackched who also accompanied them but the said Nakched, who was independent witness, was not examined by the prosecution. Mr. Sushil Kumar also contended that immediately after the incident Mata Prasad had to be admitted in the government hospital, Gonda, with injuries on his person and he was advised for an X-ray report and such x-ray report revealed that he had suffered gun shot injuries because metallic pieces were found at the place of injury. The said fact clearly established the truth of the case of the accused that the Radhey Shyam assaulted Mata Prasad because of the old enmity and later on he suffered injuries when 'mat pit' followed such assault of Mata Prasad. Mr. Sushil Kumar has also contended that it has been proved not only by the oral evidences adduced on behalf of the accused persons but also on the basis of the documents proved on behalf of the accused persons that

the deceased was a man of desperate character and he was involved on charge of dacoity on a number of occasions. He has also submitted that the only eye witness, Muni Ram, was also involved in a criminal case in which some of the accused persons were witnesses. He has submitted that it does not require any imagination to hold that the said Muni Ram bore definite grudge against the accused persons and he falsely implicated the said persons. Mr. Sushil Kumar has also contended that normally Muni Ram was not expected to be present at the place of occurrence because 5 he belongs to a different village and he was only a chance witness. The explanation given by the said Muni Ram as to why he came at the place should not have been accepted by the courts below particularly when he was highly partisan witness. Mr. Sushil Kumar has contended that both Mata Prasad and Amrika suffered injuries at the time of occurrence which clearly established the case of the accused that because of the aggressive action taken by the deceased there had been a 'mar pit' for which both Mata Prasad and Amrika had to suffer injuries. The prosecution has absolutely failed to explain the injuries on the person of Mata Prasad and Amrika. Mr. Sushil Kumar has contended that although in a broad day light the alleged gruesome murder had taken place and a gun was fired thereby attracting the attention of the villagers and although the body of the deceased was carried by a number of persons upto the filed of Samokhan, no independent witness from amongst the villagers had come forward to depose on behalf of the prosecution in support of the prosecution case. Mr. Sushil Kumar has contended that in an appropriate case, for good reasons, the evidence of an interested witness may be accepted by the Court but in the facts and circumstances of the case, the evidence of P.W. 3, Muni Ram, cannot be accepted and in the absence of any corroborative evidence about the assault made on the deceased, no conviction was warranted. He has submitted that the other two eye witnesses, namely, P.W. 1 and P.W. 2, namely, the father and the sister of the deceased had no occasion to see the assault and they had deposed only about the dragging of the deceased upto the filed of Samokhan. Hence, they had no occasion to corroborate the testimony of P.W. 3. Muni Ram, about the actual assault made on the deceased, Radhey Shyam. Mr. Sushil Kumar has also submitted that in any event, Mata Prasad having suffered serious injuries including the gun shot injuries had ample justification to assault the deceased to save his life. He has contended that if a person was attacked with a pistol, the concerned person was bound to immobilise the assailant in order to save his life. In such circumstances, it is very difficult to weigh the force to be applied by way of self-defence in a golden scale and in the facts and circumstances of the case, Mata Prasad is entitled to get the benefit of right to self-defence. In any event, he could not be punished on a charge a murder even if it is accepted that he had exceeded the right of self-defence. Mr. Sushil Kumar has contended that the salient features of the case which clearly demonstrated the falsity of the prosecution case have been lost sight of by the courts below and on the surmises and conjectures the conviction and sentences were imposed on the appellants. He has submitted that it is preeminently a fit case where a judgment of acquittal warranted and the appeal, therefor, should be allowed by setting aside the conviction and sentences imposed on the appellants and they should be acquitted by this Court.

11. Such contentions were, however, disputed by the learned Counsel for the State and it was contended by the said learned Counsel that the falsity of the case of the accused was clearly established and the High Court has given elaborate reasoning as to why the case sought to be made out by the accused persons cannot be accepted. He has submitted that the time and place of occurrence have been admitted by the accused. Blood stains were noted in the shop of Amrika and

trail of blood was also noted on the road through which the dead body was dragged. He has submitted that it has not been established by any cogent evidence that there was a 'mar pit' at the shop of Amrika and the villagers assaulted the deceased causing his death. Such allegation, according to the learned Counsel for the State, is a fanciful imagination without any basis and such case has been rightly rejected by both the courts below. The learned Counsel has submitted that both the learned Session Judge and the High Court have concurrently found that the accused-appellants committed the offence alleged against them. There is no occasion for this Court to set aside such concurrent findings based on proper reasons and evidences adduced in the case. He has, therefore, submitted that the appeal should be dismissed.

12. After giving our careful consideration to the facts and circumstances of the case and the evidences adduced in the proceedings, it appears to us that although actual assault on the deceased had not been seen by the other two eye witnesses and P.W. 3, Muni Ram, is the only witness for such assault on the deceased, the evidence of Muni Ram, appears to be quite convincing and does not deserve to be discarded as sought to be contended by Mr. Sushil Kumar. P.W. 1 and 2 on receiving the information that the deceased was being assaulted by the accused persons rushed to the shop of Amrika and they could not see the deceased and the accused persons there but only on proceedings little further from the said shop they could see some of the accused persons dragging the dead body and there after leaving it in the field of Samokhan. The place of occurrence and the time of occurrence as stated by P.W. 3, Mini Ram, is amply corroborated by the presence of blood stain in the ship and also trail of blood on the road and also by the very fact that the Mata Prasad got examined in the government hospital shortly after the incident and it has been admitted by Mata Prasad that there had been an incident in which the deceased was assaulted in a 'mar pit' in which he also received injuries. Although it was not admitted by him that he and his association had assaulted the deceased but the factum of incident at the time stated by P.W. 3 stands admitted by Mata Prasad. It has been explained by P.W. 3 that why he was coming near the place of incident and such evidence does to deserve to be discarded. It is also the case of the accused that pistol was used at the time of occurrence. Hence, if the injuries were caused to Mata Prasad by pellets, such injuries do not appear to be inexplicable and a plausible explanation of such injuries as given by the High Court does not appear to be fanciful or strained. The existence of enmity and bad relation between some of the accused and the deceased furnishes the motive for the said incident. Absence of independent witness and absence of corroboration of the assault by other independent witness require close scrutiny of the facts and circumstances of the case. In our view, the High Court has given cogent reasons as to why the prosecution case should be accepted. Excepting on the question of offence under Section 120B the High Court has upheld the conviction of the accused by concurring with the learned Sessions Judge. We do not find any reason to upset such concurrent findings. The deceased suffered multiple injuries on his person which resulted in his death immediately after the assault. Such injuries do not support any case for right to self-defence. We, therefore, find no reason to take any contrary view. The appeal, therefore, fails and is dismissed. The appellants were granted bail during the pendency of this appeal. In view of the dismissal of the appeal, the appellants should be taken into custody to serve out the sentences.