Matadin And Ors. vs State Of U.P. on 6 March, 1979

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Author: S. Murtaza Fazal Ali

Bench: A.D. Koshal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. In this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, the appellants have been convicted under Section 202 read with Section 149 and sentenced to imprisonment for life. They have also been convicted under Section 148 I.P.C. and sentenced to one year's R.I. They are further convicted under Section 324 read with Section 149 for which they have been sentenced to two years' R.I. The sentences have been directed to run concurrently. All the appellants were acquitted by the learned Sessions Judge but the High Court on appeal by the State convicted them of the various charges mentioned above.

2. We have gone through the judgment of the High Court and that of the Sessions Judge. We find ourselves in complete agreement with the judgment of the High Court. It appears that all the four eye-witnesses P.Ws. 1, 2, 5 and 14 have given consistent and cogent evidence which has been accepted by the High Court after discussing their evidence. The High Court observed as follows:

> Nothing was shown to us in the statements of the eye-witnesses by the learned Counsel for the respondents on account of which their statements may be rejected. We have not come across any material contradiction on which their statements could be rejected. On the other hand we find that the statements of these witnesses are corroborated by facts and circumstances. In our opinion these witnesses are natural and probable witnesses and their statements do not suffer from any inherent defects or improbability. The occurrence took place in broad daylight and three of the eye-witnesses were injured witnesses. Their presence at the spot cannot be doubted. There was sufficient light and in this light these witnesses could see the occurrence.

3. The learned Sessions Judge had rejected the evidence of the eye-witnesses on wrong, unconvincing and unsound reasons. The Sessions Judge appears to have been swayed by some insignificant omissions made by some of the witnesses in their statement before the Police and on the basis of these omissions dubbed the witnesses as liars. The Sessions Judge did not realise that

the statements given by the witnesses before the Police are meant to be brief statements and could not take the place of evidence in the Court. Where the omissions are vital, they merit consideration, but mere small omissions will not justify a finding by a court that the witnesses concerned are self-contained (self-condemned?) liars. We have carefully perused the judgment of the Sessions Judge and we are unable to agree that the reasons that he has given for disbelieving the witnesses are good or sound reasons. The High Court was, therefore, fully justified in reversing the judgment passed by the trial Court. We are satisfied that this is a case where the judgment of the Sessions' Judge was manifestly wrong and perverse, and was rightly set aside by the High Court. It was urged by Mr. Mehta that as other appellants excepting Matadin and Dulare do not appear to have assaulted the deceased, so they should be acquitted of the charge under Section 149. We, however, find that all the appellants were members of the unlawful assembly. Their names find place in the F.I.R. For these reasons, we are unable to find any ground to distinguish the case of those appellants from that of Matadin and Dulare. The argument of the learned Counsel is overruled. The result is that the appeal fails and accordingly dismissed. The appellants who are on bail, will now surrender to serve out the remaining portion of their sentence.