

Matadin and Another

Vs

State of Maharashtra

Criminal Appeals No. 835 of 1997

(M. K. Mukherjee, D. P. Wadhwa JJ)

04.08.1998

JUDGMENT

D. P. WADHWA, J. –

1. These two appeals have been separately filed by two appellants against a common judgment dated 11-2-1997 of the Bombay High Court (Nagpur Bench) upholding the conviction of the appellants under Section 302 read with Section 34 of the Indian Penal Code (for short "IPC") and sentence of imprisonment for life awarded to both of them. The appellant Matadin in Criminal Appeal No. 835 of 1997 and the appellant Ramsingh in Criminal Appeal No. 171 of 1998 were respectively arrayed as Accused 4 and 1 in the trial court.
2. The appellants were tried along with four others for offences under Sections 147, 148, 149 and 302 IPC. During the trial, one of the accused died and three of them were acquitted. The learned Additional Sessions Judge held that the prosecution had failed to prove that the accused were members of an unlawful assembly and in prosecution of the common object of such assembly had committed the offence of rioting with deadly weapons. He, however, held that Ramsingh (in Criminal Appeal No. 474 of 1998) and Matadin (in Criminal Appeal No. 835 of 1997) committed offence punishable under Section 302 read with Section 34 IPC and sentenced each of them to imprisonment for life. Their conviction and sentence, as noted above, were upheld by the High Court.
3. Aggrieved, the appellants approached this Court under Article 136 of the Constitution and this Court did grant them leave to appeal.
4. Conviction of the appellants is based on the dying declaration of the deceased (Ashok) and the two eyewitnesses, namely, Satish Waghmare (PW 1) and Anil Singh Bias (PW 2). The incident, as it happened, can be best described by the statement which the deceased made to the police after he was attacked and consequent upon his death, became a dying declaration and in his dying declaration which was recorded at 11.30 p.m. on the same day by an Executive Magistrate, which are as under :

1. Report lodged by the deceased with the police :

"I reside in Gaushala Ward and do the business of selling vegetables. This day, 6-6-1986 at about 10.00 o'clock in the night, I, along with Anil Bias, Narayan Tondhare and Satish Waghmare were standing talking together in Paras Chowk. Matadin, Udelal, Shivdayal, Ramsingh and two other persons whose names are not known to

me, were also present there. When I started talking with Matadin, he said to me, 'do not be a rangdar (oversmart)'. On it, I replied, 'How a vegetable-seller like me can show rangdari (oversmartness)'. On it, Matadin said, 'maro sale ko' (abusive term). Thereupon, Ramsingh took out a knife and suddenly assaulted with it on my stomach and with the same knife, assaulted on my back also. After making assault, they ran away. Then, the person with me brought me to the police station. There was no old enmity between me and Matadin and Ramsingh.

This is my oral report. It has been read over to me. It has been recorded correctly as per my version.

Sd/- Ashok"2. Dying declaration of the deceased : "STATEMENT K. T. S. Hospital##

Shri Ashok alias Chataku, son of Rajasingh Chauhan, aged 25 years, by occupation vegetable-seller, resident of Gaushala Ward, Gondia.

I state on oath as under :

At about 10.00 o'clock, I along with Anil Bias, Narayan Tondhare, Satish Waghmare and others was standing in Paras Chowk. At that time, Matadin, Udelal, Shivdayal, Ramsingh and two other persons came there. Matadin talked with me and said to me, 'do not try to be a rangdar (oversmart)'. On it, I told him, 'I am a businessman and I am not showing rangdari (oversmartness)'. Thereupon, Matadin said, 'maro sale ko' (abusive term). Immediately, Ramsingh assaulted me with a knife on my stomach. Then all the persons ran away. Thereafter, I took Satish and Narayan with me and came to the police station and lodged a report. Then I was brought to hospital.

There is an injury caused by the knife on my stomach. I have no enmity with anybody. I cannot say as to why I was assaulted.

Sd/- Executive Magistrate, dated 6-6-1986 11.30 in the night"##

5. Both the Additional Sessions Judge and the High Court found enough corroboration in the statements of both the eyewitnesses to the dying declarations. Both the witnesses testified that when along with the deceased and two others they were sitting in the Paras Chowk, Matadin, Ramsingh, Shivdayal, Udelal and two others came there. The deceased addressing Matadin said "mama, Ram Ram". Matadin retorted as to why he was showing "rangdari" (oversmartness), to which the deceased replied that he was a petty shopkeeper and how could he show rangdari (oversmartness). At this Matadin, in abusing terms, said "maro sale ko". It was then that Ramsingh, who was wearing a button-knife on his waist, took out the same and stabbed with it in the abdomen of the deceased. While the deceased Ashok in his statement before the police said that Ramsingh not only assaulted him with his knife on his abdomen but also on his back, the prosecution case was that after Ramsingh had assaulted on his stomach, he (Ashok) along with his friends started running from the scene and it was Matadin who gave a blow with "gupti" on the back of the deceased. This giving blow with "gupti" by Matadin was stated by the two eyewitnesses but this part of the version has not been delivered by the trial court. However, the fact remains that the deceased suffered injuries not only on his stomach but also on his back as well. The stab wound in his abdomen was of the size 2 cm deep and 1/2 cm wide. The deceased was in hospital for about ten days when the doctors

amending him tried their best to save him but he died on 15-6-1986 because of injury in his abdomen.

6. On the basis of the evidence on record, the learned Additional Sessions Judge held that Ramsingh assaulted the victim Ashok (deceased) with a knife on account of which he sustained injury to his abdomen resulting in his death and as such, he committed an offence punishable under Section 302 IPC. He further held that Matadin cried the words "maro sale ko" and in that way, instigated Ramsingh and the other accused, who were with him, to assault the victim Ashok but only Ramsingh assaulted him on the saying of Matadin on account of use of the words "maro sale ko" and thus Matadin was guilty of an offence punishable under Section 302 read with Section 34 IPC. It is apparent that the words "sale ko" were used in derogatory form and the word "maro" when translated could as well mean "beat" or "kill". The defence of the accused was one of total denial of the incident.

7. It was submitted on behalf of Ramsingh that the deceased succumbed to his injury after ten days of having suffered the same and from this it was sought to be argued that the injury was not such as would cause death of a person in the normal course. We do not think much could be said as far as the appellant Ramsingh is concerned. Dr. Pradip (PW 3) in his deposition stated that the injury caused to the abdomen of the deceased was sufficient in the normal course to cause death. This statement of Dr. Pradip has not been challenged.

8. Reference may be made to Explanation 2 to Section 299 of IPC, which is as under :

"299. Culpable homicide. - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

#Explanation 1. - * * *##

Explanation 2. - Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

#Explanation 3. - * * *"##

From the concurrent findings of fact by both the trial court and the High Court, which are based on proper appreciation of the evidence, we find that the ingredients of the offence of murder are present in the case of Ramsingh and he has been rightly convicted for an offence under Section 302 IPC.

9. However, the case of Matadin would appear to stand on a different footing. It was submitted that when he exhorted his fellows by saying "maro sale ko", he did not intend that the deceased should be killed. It was submitted that there was no premeditation, no enmity and Matadin never intended to cause death of the deceased. Reliance was placed on the statement of the deceased recorded by the police and the Magistrate. The version of the prosecution that he gave a blow with a "gupti" on the back of the deceased had been disbelieved. But then Matadin would be aware of the fact that Ramsingh was wearing a button-knife on his waist and on his exhortation he used the same by stabbing the deceased. He might not be sharing a common intention with Ramsingh to cause death of Ashok but the circumstances of the case and particularly when the trial court itself found that by

his words "maro sale ko" instigated Ramsingh and others to assault Ashok, he could nevertheless be guilty for abetment of an offence under Section 324 in view of Section 110 IPC, which reads as under :

"110. Punishment of abetment if person abetted does act with a different intention from that of abettor. - Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other."

Section 324 IPC reads as under :

"324. Voluntarily causing hurt by dangerous weapons or means. - Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

10. On the basis of the facts as found by the trial court and the High Court in the case of Matadin and the law applicable thereto, he is, therefore, liable to be convicted under Section 324 IPC read with Section 110 IPC.

11. The courts below have not found that the language which Matadin used exhorting his fellows was used in such a tone as to exhort them to kill Ashok or to cause grievous hurt to him by using dangerous weapons or means. When the words "maro sale ko" are used, it could mean "to beat" or even "to kill" a person. Though the witnesses have stated that these words were used by Matadin in an abusive way, but from that it could not be said that he exhorted his fellows to kill Ashok. We, therefore, set aside the conviction and sentence of Matadin under Section 302 read with Section 34 IPC and instead convict him under Sections 324/110 IPC. It was stated before us that he has already undergone rigorous imprisonment for a period of one year and four months. We will sentence him to suffer rigorous imprisonment for the period already undergone by him and to fine.

12. In the present case, what we find is that the victim was a vegetable-seller. At the time of the crime, he was 25 years of age. Ramsingh was a milk-vendor and Matadin was a Municipal Councillor. It was at the instigation of Matadin that Ramsingh inflicted stab wound which resulted in the death of Ashok. Though we found Matadin guilty of offence under Sections 324/110 IPC and sentenced him to undergo rigorous imprisonment for the period already undergone by him, we may further sentence him to a fine of Rs. 50,000 and in default of payment of fine, to undergo further rigorous imprisonment for nine months. We may also record the willingness of Mr. Lalit, learned counsel for Matadin, to pay the amount of fine so imposed. The fine so realised shall be paid to the heirs of the deceased Ashok under the provision of the Hindu Succession Act, 1956. We may also draw the attention of the courts to the provisions of Section 421 CrPC and particularly, to the proviso to sub-section (1) thereof which provides, inter alia, that in a case where an order for payment of compensation out of the fine imposed is made, the fine be realised even if the convict

had undergone imprisonment in default of payment thereof.

13. Criminal Appeal No. 171 of 1998 filed by Ramsingh is dismissed.

14. Criminal Appeal No. 835 of 1997 filed by Matadin, is partly allowed. The appellant Matadin is convicted for an offence under Section 324 read with Section 110 IPC and sentenced to undergo rigorous imprisonment for the period already undergone by him and to a fine of Rs. 50,000 and in default of payment of fine, to undergo further rigorous imprisonment for a period of nine months. The fine should be paid within two months and when realised, shall be paid to the heirs of the deceased Ashok under the Hindu Succession Act, 1956.

15. The appeals are disposed of accordingly.