Home Deptt

1909

Political

May A

No 87-89

[CONFIDENTIAL.]

CALCUTTA RECORDS.

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1909.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

POLITICAL—A.

Proceedings, May 1909, Nos. 87–89.

Result of the appeal in the Karur sedition case.

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POLITICAL—A, MAY 1909.

Nos. 87—89.

RESULT OF THE APPEAL IN THE KARUR SEDITION CASE.

Please see the extract* from the *Civil and Military Gazette* dated 9th April 1909. We have had no report from Madras though we have waited long for it. We may call for one. Draft telegram put up.

* *Vide* unprinted papers.

A. L.,—1-5-09.

H. G. STOKES,—1-5-09.

TELEGRAM TO THE GOVERNMENT OF MADRAS, NO. 679 (POLL.), DATED THE 3RD MAY 1909 Pro. no. 87.

TELEGRAM FROM THE GOVERNMENT OF MADRAS, NO. 292, DATED THE 4TH MAY 1909. Pro. no. 88

For information. A draft letter to the India office is placed below.

A. L.,—6-5-09.

H. G. STOKES,—6-5-09.

H. A. STUART,—6-5-09.

LETTER TO THE INDIA OFFICE, NO. 699 (POLL.), DATED THE 6TH MAY 1909. Pro. no. 89

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APPENDIX I.

Extract from the "Madras Mail," dated Madras, the 25th March 1909.

MADRAS HIGH COURT—24TH MARCH.

[*Before Mr. Justice Benson and Mr. Justice Sankaran Nair*].

THE KARUR SEDITION CASE.

To-day their Lordships delivered dissenting judgments in the appeal preferred by Krishnasawmy Sarma against the conviction and sentence of transportation for five years passed on him by the Sessions Judge of Coimbatore, in the Karur sedition case.

Mr. Justice Benson confirmed the conviction and sentence and dismissed the appeal. In the course of his judgment he said that the chief offence alleged against the appellant was one under section 124-A., Indian Penal Code. It was suggested, rather than argued for the appellant, that the conviction was unsustainable in law, as the prosecution had not proved the exact words alleged to have been uttered by the accused. His Lordship did not agree in that contention, as it was opposed to the language of the Code and the decisions of the Madras High Court in similar cases. Under section 124-A., the gist of the offence was the attempting to bring the Government into hatred or contempt. The section merely indicated the various means by which the offence might be committed. It might be committed even in dumb show, where no words were used, or by dramatic action. It might be committed by means of pictures. For example, if His Majesty was represented as cruelly killing some person or committing some other vice ; in such cases no words were necessary to constitute the offences, but there would be no difficulty in letting the accused know with what he was charged. Even if the substance of the speeches was not entered in the charge, this would only amount to an irregularity under section 225, which would not vitiate the proceedings. That statement of the law was in accordance with the recent decision of the Madras High Court in Chidambaram Pillay's case. There the charge did not contain the substance of the words uttered, but notes of the speeches were filed, and it was held that the accused had sufficient notice of the subject matter of the charge. In that case their Lordships held that the notes taken by the Police Officers could be safely acted upon. The circumstances of the present case and the character of the evidence for the prosecution were similar to those in Chidambaram Pillay's case, with this difference, that the charge in this case set out the substance of the speeches of the accused. The speeches were delivered in Tamil, and the notes made by the Police Officers were taken in Tamil. The charge did not set out the whole speech, but set out the English translation of the passages relied upon by the prosecution. There was no suggestion that the translations were not correct. The defence was that the appellant did not use the words alleged, or any words substantially to the same effect, and that so far as they imputed to him sedition, the case was concocted by the Police. The only question was whether the appellant uttered the words, or words in substance equal to them. The Sessions Judge and the Assessors were unanimous in finding the appellant guilty, and His Lordship had no doubt their finding was correct.

His Lordship then reviewed the evidence for the prosecution at length, particularly the evidence of the Police witnesses, the Inspector's writer and the Station House Officer, who had attended the lectures under the orders of their superiors. The examination and cross-examination of the witnesses were conducted so imperfectly that it was not clear as to what particular speech of the accused the Inspector's writer's evidence had reference to. It was contended by the defence that there was not sufficient light for taking notes, but His Lordship had no doubt, from the evidence, and taking the circumstances into consideration, that it was possible to take notes in the twilight in the clear atmosphere of the Coimbatore District. It was strongly urged, on behalf of the appellant, that the notes of the speeches of the two Policemen bore internal evidence of concoction, in that the names of the persons present at the lectures were the same and were written in the same order. But this was satisfactorily explained by the fact that one of the Police witnesses arrived a little late and left a blank space in his notes and afterwards filled up the blank, after consultation with his brother Police Officers. His Lordship thought that there was so much internal similarity in the substance of the report that there must have been some consultation between the two Police Officers. The Station House Officer nowhere in his evidence said that he wrote his notes at the lecture. His Lordship came to the conclusion that notes were taken at the lecture by the Police Inspector's writer, and the Station House Officer wrote his notes in consultation with the former, afterwards. His Lordship, however, thought that the writer's notes were entirely trustworthy and were admissible in evidence under section 178 and 179 of the Indian Evidence Act, as having been made when the lecture was fresh in his memory. There was no motive for the Police Officers to concoct the case against the accused, especially when there was evidence that the accused was living on good terms with the Police and had travelled with them and that they had messed together and attended

theatres together. The case against the accused did not merely depend on the Police evidence. There was corroborative evidence from independent witnesses, viz., that of the Brahmin contractor, Krishnasawmy Iyer, and the Assistant Station Master and Booking Clerk of the Karur Station. These witnesses were natives of the Tanjore and Tinnevelly District, and were not likely to be at the beck and call of the local Police, or to assist the Police in bringing a false case. Though the evidence of some of the prosecution witnesses softened the effect of the words used by the lecturer, it lent no support to the defence plea that the words used were not seditious. The defence had called a large number of responsible witnesses—men who said either that the accused did not utter the seditious words or that they did not remember him uttering them, but His Lordship was not satisfied that they could tell the exact words, as they did not take any notes and gave their evidence long after the lecture was delivered. Both sides were agreed that an interruption took place in the course of the lecture, but as to the cause of this interruption His Lordship preferred the prosecution version, viz., that the interruption was caused when the accused used violent language, as being the more probable theory.

On the whole, His Lordship came to the conclusion that the Police witnesses had no motive in preferring a false case, and that they made their notes in the execution of their duty and under the orders of their superiors, and that the notes were in the hands of their superiors on the following day. The language attributed to the accused was of such a character that it was impossible to suppose it to be innocent, or that it was misunderstood by the Police, as suggested by the defence. The notes were taken at the lecture by the 2nd prosecution witness and by the 4th prosecution witness, when the lecture was still fresh in their memory. The prosecution evidence gave a more natural and probable account. His Lordship did not think the sentence was severe, being less than that imposed by the Court in similar cases.

As, however, Mr. Justice Sankaran Nair dissented from His Lordship, it would be necessary to refer the case to a third Judge.

Mr. Justice Sankaran Nair, in the course of his lengthy judgment, said that the accused was a boy 18 years of age and a native of Madras. From the Police notes it appeared that he went to Karur to canvas shares for a swadeshi Company and to promote the cause of swadeshi generally. There could be no possible doubt that if the appellant was proved to have uttered the words alleged against him that he was guilty of sedition. The only question for consideration was one of fact, as to whether he uttered those words. Section 124-A., Indian Penal Code, contemplated two classes of cases, and in the present case, existing disaffection was the gist of the offence. The culpability consisted in the disastrous consequences of the words, even though the words might have been innocent, but misunderstood by the audience. The charge, therefore, need not set out the exact words, nor need the words themselves be proved. Though the appellant was charged with exciting disaffection, he was not convicted of it, nor was there any evidence in respect of it. It was not enough that a person wrote certain words or even a seditious pamphlet and left it locked in his drawer to constitute the offence of exciting disaffection. It was not enough that he entertained intention to excite disaffection. According to Mr. J. D. Mayne, the offence required a distinct act, coupled with intention. The word "attempt" in section 124-A implied intention, as was decided in 19 Calcutta 44 and 22 Bombay 138. The words spoken or written were thus the gist of the offence of attempting to excite disaffection. The Chief Justice and Mr. Justice Miller did not take this view in the Chidambaram Pillay case. The culpability of "attempting" consisted in uttering seditious words and not in the consequences produced, so that the words written or spoken, which was the gist of the offence, must be set out in the charge, in the language spoken, with translation when necessary. To this effect was the ruling of the Chief Justice and Mr. Justice Miller, in the case of Subramanya Siva, where they held that the omission to set the incriminating passages in the charge was an irregularity. It might not be necessary to prove all the words uttered by the accused, but the incriminating words must be proved. English Common Law seemed to be perfectly clear that where words, written or spoken, were gist of the offence, they must be set forth verbatim and with particularity in the charge. Where the offence charged was treason or seditious conspiracy, and not seditious libel, then the words were not the gist of the offence, but merely evidence, and, therefore, it was sufficient to set forth the substance of the language used. The necessity of setting out the words became apparent when one turned to the question of intention. According to section 124-A, intention of the accused was necessary to be proved, and that intention must be primarily judged by the language of the speech as a whole. Whether the language was seditious or not was not to be left to a witness, but was for the Judge to decide upon, and for this the exact words and the whole of the speech must be taken down and filed in Court. Read together with the omitted passages in a speech, the word charged might bear a different meaning. The English rule as to what was to be set out in a charge was modified by the C. P. Code, and, according to this, His Lordship held that the actual words must be proved.

Dealing with the evidence, His Lordship remarked that as the Police notes, in Tamil, of the speech were filed in the Magistrate's Court, the accused was not prejudiced by the Tamil

passages not having been set out in the charge. His Lordship had no doubt in his mind that the evidence of the Police as to taking down notes of the lecture was false. The fact that there was a blank space left in the report of one of the Police Officers, in which he afterwards wrote down the names of persons present at the lecture, was immaterial, in the face of the assertion that the two Policemen had not compared notes at all with each other. It was strange that the sentences in the lecture pitched upon by the two note-takers and recorded were identical, when they did not compare notes. This extraordinary coincidence went to show that either both did not take notes at the Meeting, but made up a report together afterwards, with slight variations, to give them an appearance of independent notes, or only one of them took notes, and the other copied them. If, as the Public Prosecutor suggested, the Police were there to take notes of what they thought were inflammatory passages in the lecture, it considerably detracted from the value of the notes, as the Court had to judge of the whole lecture as one. The evidence of the defence witnesses, who were, many of them, men of property and position, and some of whom held positions under Government, from which they were liable to be removed if they committed perjury, was not to be rejected in the way the Sessions Judge had done. Nor was there justification in the evidence on record for the latter's observation "that their presence on the side of the defence merely afforded an index of the extent to which sympathy which sedition had permeated the respectable classes around Karur." It was unfortunate that the Police notes alleged to have been sent to the Superintendent of Police were not produced by the Crown. All the English cases cited in support of the prosecution were distinguishable as cases of treason, or of seditious conspiracy, where it was not necessary to prove the words. In the present case, as the notes recorded by the Police witnesses took only five minutes to read, while the lecture lasted for one hour, they could only be relied on for refreshing the witnesses' memory. In important particulars, the prosecution witnesses contradicted one another, and their statements seemed to show that they might have misunderstood the accused's plea for united action. His Lordship, therefore, came to the conclusion that the prosecution had failed to prove that the accused had uttered the incriminating words, and was, therefore, of opinion that the accused was entitled to an acquittal. In the view His Lordship took of the prosecution case it was unnecessary for him to consider the evidence for the defence. He, however, briefly reviewed it and remarked that there was no reason to reject it as the Sessions Judge had done, at any rate, His Lordship was not prepared to act on the prosecution evidence.

The appeal was argued by Mr. T. Rungachariar and Mr. P. Rajagopalachariar, High Court Vakils, Mr. E. B. Powell, instructed by Mr. T. Balakrishna Iyer, Public Prosecutor, Coimbatore, appearing in support of the conviction.

The appeal will be heard again by another Judge.

APPENDIX II.

Extract from the "Madras Mail," dated Madras, the 7th April 1909.

[BEFORE MR. JUSTICE WALLIS.]

THE KARUR SEDITION CASE.

In this case, which was referred to this Bench on account of the dissenting judgments of Mr. Justice Benson and Mr. Justice Sankaran Nair, His Lordship delivered judgment dismissing the appeal and confirming the conviction but reducing the sentence to one of rigorous imprisonment for three years.

His Lordship first traced the English law as to the form of the charge, but said that he agreed with Mr. Justice Benson that they had no concern with the English law, but were guided by the Criminal Procedure Code which did not purport to copy the English law. There was nothing in the Indian law which required that the exact words should be set out in the charge so long as the substance of the words was set out in the charge and the accused was not misled. It was enough that the substance of the words proved was the same as the words set out in the charge. Though the speech was in Tamil and the charge was in English there was nothing in the law which required the Tamil words to be set out. His Lordship then reviewed at length the evidence in the case and remarked that there was no motive for the police to fabricate seditious utterances against the accused. The notes appeared to have been originally taken not with a special view to institute a prosecution, but were only intended to keep the superior officers informed of what had been going on. As to what took place on the date in question there was direct conflict of evidence between the prosecution and the defence. He was unable to accept the evidence of the defence because one and all of the witnesses come with a manifestly false story as regards the interruption which took place during the lecture. The prosecution story as to the interruption was that it was caused when the accused stated that the guns of the sepoys should be turned to shoot white faces. The defence witnesses said that it was caused when the accused referred to the extravagant military expenditure of the Government and advocated national education. His Lordship remarked that the defence story appeared to him incredible. But it was not enough merely to disbelieve the defence evidence, the court must satisfy itself that the prosecution established its case. His Lordship was satisfied that the prosecution had established that the accused had uttered the most serious passages charged against him, namely, those in which he incited people to destroy public buildings as in Tuticorin and shoot the white faces.

As regards the police notes, His Lordship was also struck as were the other two Judges with the extraordinary similarity between the notes taken by the two policemen. His Lordship hesitated to draw any definite conclusion whether the one or the other of the two policemen wrote out the notes first and the other copied them afterwards or whether both were drawn up after consultation. If anything of the kind had been done, it was reprehensible. It appeared to him that the neatness of the notes must have been due to a desire on the part of the police to give their work a good appearance rather than to distort the words of the accused. His conclusion was that the notes could not be indiscriminately relied on, and that detracted from the weight to be attached to thier evidence. But he was not prepared to reject it in the circumstances of this case, when the prosecution was corroborated by other independent evidence which he did not see any reason to disbelieve.

In the result His Lordship did not see any reasons to disturb the finding of the District Judge and the Assessors, who had the advantage of seeing the witnesses and judging of their demeanour and credibility. As regards the sentence, the words uttered were certainly seditious and mischievous. He could not regard the incriminating speech as an isolated act, and the evidence as to his other speeches appeared to show that there had been a good deal of sedition mixed up with his *swadeshi* preaching. Considering his youth and inexperience, however, His Lordship thought that the accused should be dealt with more leniently, and that the ends of justice would be met with by a sentence of three years' rigorous imprisonment.

10/5/09

Exd.—R.W.A.
138 H.D

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