

Emperor Vs. Shankar Shrikrishna Dev

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Court : Mumbai

Decided On : Jul-13-1910

Reported in : (1910)12BOMLR675

Judge : N.G. Chandavarkar, Kt. and ;Heaton, JJ.

Appeal No. : Criminal Appeal No. 117 of 1910

Appellant : Emperor

Respondent : Shankar Shrikrishna Dev

Judgement :

N.G. Chandavarkar, Kt., J.

1. The seditious character of the publication called the ' Ekashloki Gita,' has not been disputed by Mr. Weldon in arguing this appeal on behalf of his client, who has been convicted by the District Magistrate of West Khandesh under Section 124 A of the Indian Penal Code. The petitioner made a declaration, under Section 4 of the Press Act XXV of 1867, that he was the owner of a certain press called the ' Atmaram Press,' where the book in question was printed. The District Magistrate has held mainly on the strength of that declaration, and one or two other circumstances, that it must be presumed that the petitioner was aware of the seditious character of the book and that he did take part by its publication in bringing Government into contempt.

2. A declaration, made under Section 4, is intended by the legislature to have a certain effect, namely, that of fastening responsibility For the conduct of the press on the person declaring in respect of matters where public interests are involved. Therefore, when a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption I have spoken of as one that may be drawn is not conclusive; it is not one of law but of fact and it is open to the accused to rebut it. By what I am saying, I do not wish it to be understood that registered owners of printing presses, who have made declarations under Section 4 of the Act, can lightly escape from the responsibility which they have taken upon their shoulders by means of that declaration. The law would not require an owner to make a declaration for nothing. The object is to create a sense of responsibility, so that if any public mischief occurs owing to any action or conduct of the press, the law can at once know who must prima facie be held responsible for it. While that is so, on the other hand, the Courts should be careful to draw no inference of guilt against the declarant from the mere fact of declaration but must consider the surrounding circumstances and probabilities to enable them to arrive at a conclusion whether the declarant had a hand in the printing and publishing so as to bring him within the operation of Section 124 A of the Indian Penal Code, where the charge is under that section.

3. Now, in the present case there is the declaration to start with, and if it had stood alone, I should have presumed the guilt of the appellant, especially when there is the proved fact that the writer of this seditious publication has been his friend. But there are other facts and circumstances to be considered, which make it reasonably doubtful whether the appellant had ever read the book and had acquainted himself with the nature of it either before or after it had been printed. When the writer of the book sent it to the press for printing, he corresponded, not with the present appellant, but with one Ran-dive, the manager, and another person, by name Killedar, also employed in the press. It is true that the writer deposited Rs. 350 with the appellant to defray the expenses of the printing but from that circumstance it does not necessarily follow that the appellant had read

the book or had been informed of its character and contents. After the printing work had been done by the press, the appellant appropriated the whole sum of Rs. 350 towards the printing charges and then ensued a dispute between the writer and the press. The writer appealed to the appellant and urged that, when he had deposited-Rs. 350, it had been understood that Rs. 300 only were to be for the printing charges and that Rs. 50 were to be reserved for the writer's private expenses. The appellant declined to be moved by any consideration of that kind and Class the writer to understand that as it was a purely business transaction, he could not allow his 'love' for him as a friend to interfere in a matter of profit and loss concerning the press. Had the appellant been aware of the seditious character of the publication and undertaken its printing in his press with the object of propagating disloyal ideas and fostering a sense of hatred of the Government, it is probable that he would not have adopted this tone of a business man while writing to the author of the publication and insisted on getting every penny out of the job. That is how it strikes me-unless I must assume that the appellant, having joined the writer in the printing and publication, with sedition as their object, turned round against his own friend. But I do not think we ought to assume that in at least a criminal case, where we have the further fact to consider, and that is with reference to the principal features of the publication. It is not only seditious, but, in my opinion, it is also venomous; and the venom is all the more dangerous because it is presented to the reader in the garb of metaphysics, philosophy, and religion, which so readily appeal even to the average Hindu intellect. At the outset the writer takes a single verse from the Bhagavad Gita, where Krishna clinches his whole argument on the subject of devotion to duty with the advice to Arjuna to gird himself for war and fight with his enemies. The writer of this publication puts his own gloss on the verse. He explains it to mean that we should make war with ourselves in the faithful discharge of our daily duties. That seems a very innocent gloss, but, as he proceeds, after sixteen pages he brings out his main object in publishing the book in one sentence. He says :-' Swarajya cannot be obtained without victorious war'. Having let the venom out in that way, he takes to his philosophical strain again until he comes to page 69 where again a distinctly seditious utterance is found. Thus at fairly long intervals he brings out in the book his libels aimed against the Government and there he intersperses them with his

views on philosophy and religion. No reader is likely to detect this dangerous character of the book, unless he reads it carefully through, and follows the somewhat abstruse reasoning, which runs through the pages, with close attention. I do not mean that the philosophy and religion found in the pages are of a solid character or such as to give one a high opinion of the writer's intellectual capacity. But it is a book written deliberately with the object of presenting two faces to the reader-one as a spiritual enlightener and the other as the enemy of the Government. The former is in evidence on every page, the latter comes in occasionally.

4. In this state of the facts I do not think it would be safe to presume that the appellant was aware of the real nature of the book. The cumulative effect of the surrounding circumstances I have dwelt upon is such as to make it probable that the appellant had not read the book or that he had known its seditious object. The evidence being thus evenly balanced and equivocal, a reasonable doubt arises as to the guilt of the appellant, the benefit of which must be given to him.

5. For these reasons the conviction and sentence must be reversed, and the appellant acquitted. The fine, if paid, must be refunded.

Heaton, J.

6. The accused in this case was charged under Section 124 A of the Indian Penal Code, to put it briefly, with exciting, or attempting to excite, disaffection. No exciting of disaffection is proved. No attempt has been made to prove it, as it very seldom is, in these cases. The substantial charge, therefore is one of attempting to excite disaffection. In *Emperor v Ganesh Balvant Modak* (1909) 12 Bom. L.R. 21, which came before us some time ago, we held that an attempt to do a thing must necessarily involve some intention; for a man cannot be said to attempt to do that which he has absolutely no knowledge of doing, and no intention to do. Applying that principle here it is impossible to convict the appellant under Section 124 A, unless we find that he had an intention of exciting disaffection. The evidence has been considered by the Magistrate and he came to the conclusion that there was the intention. This conclusion he reached by a series of presumptions; a method

to which I know of no objection on principle but one which needs careful treatment in practice. To me it seems that the evidence falls very far short of proving intention even by a process of presumptions. It does seem to be the that the appellant took some active part in the negotiation with the author of the book, and certainly had knowledge that book was being printed at the Press, of which he was the registered proprietor. But the established facts show that the Press printed the book at the cost, for the benefit, and on account of the author; and they do not suggest that the book was one which would be read on behalf of the press proprietors, before it was printed. If, however, the book were obviously a seditious publication, and were one, the sedition in which would be patent even to a casual reader, the condition of things in this case would be very different from what it is. But we have here a book of considerable length, a book that I should imagine is very hard reading. It deals with philosophical and religious questions. No doubt sedition is there, but it is occasional, and it is interspersed in one or two sentences in one place, and one or two sentences at another, frequently at long intervals. It would take very careful reading of that book to enable the reader to realise that he was perusing a seditious publication. That being so I am not prepared to go anywhere near the length of presuming that the accused had any knowledge whatever that the book which was being printed at his press was a seditious publication. Finding myself unable to make that presumption, it seems to me that I am bound to agree with the conclusion that he must be acquitted of the charge on which he has been tried.