

Tarapada Mitra and ors. Vs. Emperor

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Court : Kolkata

Decided On : Jan-20-1933

Reported in : AIR1933Cal603,145Ind.Cas.814

Appellant : Tarapada Mitra and ors.

Respondent : Emperor

Judgement :

Rankin, C.J.

1. We have before us the appeals of three parsons who were tried by the learned Chief Presidency Magistrate of Calcutta sitting as a, Special Magistrate under Ordinance 10 of 1932. There were four accused at the trial. Abani Ranjan Sarcar, Ashoka Kumar Chatterjee, Tarapada Mitra and Nirmal Kumar Guha and the case against them, in short, was this: On the 14th September last very early in the morning at about 4 o'clock the accused Abani and Ashoka were seen coming out of Sitaram Ghose Street and entering Amherst Street. They were seen by two constables and Abani was seen carrying with him a brown paper parcel. We have been shown the parcel; it is not a very large parcel but one of a cylindrical shape. The constables challenged those two people and they said that they were on their way to Sealdah to catch a train to Khulna. The accused Abani was asked what was in the parcel and he said there were warm clothes. The constables felt the bundle and proceeded to open it and they found a quantity of revolutionary leaflets which have been described quite correctly by the Magistrate as leaflets inciting all

and sundry to indiscriminate assassination. There was an envelope found on Abani by the constables which shows that Abani was a person who had been entrusted with the duty of disseminating these leaflets and that they were to be published broadcast on the night of the 16th all over Bengal. These people were taken to the thana and there another letter was found upon Abani but nothing incriminating was found upon Ashoke. The place where they were found was about the junction of Sitaram Ghose Street and Amherst Street and it is now clear enough on the admission of both these accused and the other accused Tarapada that these two people had spent the night at a place called 61 Sitaram Ghose Street where Tarapada had for some months been living. There is definite evidence of that and, in particular, there is evidence that Ashoke had a meal on the previous night with Tarapada at that place.

2. It is not disputed on behalf of the prosecution that there is a train for Khulna at about 5 o'clock in the morning and from the letter found on Abani it would seem clear enough-and this is the prosecution case-that these people were going to Khulna and probably also to Jessore. So far as Abani is concerned that is reasonably plain. The Chief Presidency Magistrate convicted Abani and there is no appeal by Abani before us. He was caught red handed. The Chief Presidency Magistrate also convicted Ashoke and Tarapada and the question is whether there is evidence against those two sufficient to bring home to them the offence of which they have been convicted. The offence of which Tarapada is convicted-and the same is true of Ashoke-is an offence under Section 506 read with Sections 117 and 120-B, I.P.C., that is to say, conspiracy to instigate the public to commit criminal intimidation. I see no reason to take any exception to the form of the charge. It may or may not be a duplication to have Section 117 as well as Section 120-B; but in view of certain arguments and decisions it was thought safer to put it in that form. There can be no objection, in my judgment, to that. It was said as regards the accused Nirmal that the charge under Section 120-B was perhaps introduced merely in order to enable him to be tried with the other people. It would be seen, when I come to deal with this accused, that he was convicted of publishing these very same leaflets not in red colour but in white colour. I see nothing wrong whatever in Section 120-B being introduced if it were necessary to justify a joint trial.

3. The question however is whether the evidence against, in the first place, Tarapada and, in the second place, Ashoke is sufficient to justify their conviction. I have read very carefully and more than once the judgment of the Chief Presidency Magistrate and, as regards Tarapada, I have the greatest difficulty in seeing that there is any tangible evidence or case against him sufficient to justify a finding that he was taking part in any way in this project of distribution of these revolutionary leaflets. It is quite true that Abani who had these leaflets had spent the night at 61, Sitaram Ghose Street; it is quite true that is the mess where Tarapada had for some time been living but there is no proof at all whether Tarapada was or was not a fellow conspirator with Abani and the Magistrate's observations as to probability, while they may be true, undoubtedly are not based upon evidence which proves them. It is of course quite easy to put the hypothesis that 61, Sitaram Ghose Street, was the center of an organization though only temporarily and that Tarapada was really the person who had got these two people to come to his house, provided the leaflets and arranged everything. That may be quite a reasonable suspicion, but there is no evidence whatever. In my judgment Tarapada must therefore be acquitted. The case against Ashoke is very different. There the position is that he was found at this distinctly early hour of the morning in company with Abani who was carrying the leaflets in a brown paper parcel. When they were challenged they told the constables that they were going to Sealdah to entrain for Khulna. There is no reason why Ashoke should not innocently be going to Khulna; as far as we know, he appears to have come from Khulna. The question is whether his association in these circumstances with Abani is sufficient to justify the finding that he knew of Abani's mission as regards the pamphlets and not only knew of it but was taking part in it. They had spent the night in the same place, 61 Sitaram Ghose Street.

4. It seems that there is a train at this hour of the morning for Khulna and I suppose people must be allowed to go to the station at that hour of the morning to catch it. One cannot help thinking that perhaps the association is more readily explained by the assumption of guilty knowledge and intention on the part of Ashoke than by the failure to make such an assumption. It may even be a reasonable view that it is somewhat more probable than not that Ashoke was a fellow conspirator with Abani. But the question before this Court is not that. The

question is whether it is proved and for that purpose we have to remind ourselves that it is not enough that the prosecution theory is one theory which would explain the facts-it has got to be shown that it is the only theory which in a reasonable sense is compatible with the facts. Having very carefully examined the circumstances of the case, particularly in view of the very strong opinion expressed by the Magistrate, (I thought it necessary to examine it over and over again with considerable care.) I have not been able to satisfy myself that there is in this case proof that Ashoke was guilty of taking part with Abani. The Magistrate has proceeded very largely upon what he rightly regards as an untrue story told by Ashoke in his defence. It does not appear that at the time Ashoke told any untrue story; but at the trial at the time of the plea being taken he set up a story about having come to Calcutta to get a cycle repaired, and how he was staying the night at No. 61 Sitaram Ghose Street and was merely accompanying Abani to Sealdah Station not with the intention of going by train anywhere but merely keeping him company to Sealdah because Tarapada was going to do it and asked him to do it instead. I quite agree with the learned Magistrate that story is a tissue of untruths altogether.

5. The story was set up at the time of the trial in order to make out that he was not going from Sealdah by train to Khulna in company with Abani. That is the manifest purpose of it. The prosecution case, in my judgment, is quite right that he was going from Sealdah to Khulna in company with Abani. The learned Chief Presidency Magistrate is of opinion that the fact that he set up that false defence at the trial shows that he not only knew the contents of this paper parcel, but also that he was taking part with Abani in the conspiracy to disseminate these leaflets. I do not think so. One has to remember that false defences are very common. A person cannot be convicted merely because his own story is false. It is quite true that on this question of guilty knowledge the conduct of the accused at the time may be absolutely of the first importance.

6. It may provide quite good reason for hanging a man; his conduct at the time on a question of guilty knowledge may in probability and in truth be the best evidence in the world. But it is a different thing altogether to give a false defence later at the trial; and merely because that defence is false I do not think that we are entitled to

infer that he was taking part with Abani in the conspiracy. It has to be remembered that Abani was a conspirator and it by no means follows that he would be communicating the fact of this conspiracy to all and sundry and to every youth of his own age he met. He might quite well put up for the night with some young fellows Without taking all those young fellows into confidence. It would have been a very foolish thing to do in the circumstances in which he was. I do not conceal from myself for a moment that the case of Ashoke is very suspicious, but I cannot find any tangible material on which I think we would be justified in upholding his conviction. He must therefore be acquitted.

7. As regards Nirmal I have no difficulty. The only question there is whether the evidence of the sergeant and another witness is to be thrown overboard as a tissue of lies because though they say that they saw Nirmal distributing these leaflets, chased him and after he had tripped over a wire fence managed to catch him with the leaflets on him, their story is to be disbelieved altogether because of what is put down in the first information report and in the crime sheet. As regards that, the defence is a particularly unfavourable specimen of a hackneyed and unreasonable argument. There is no doubt that he was caught red-handed. The result is that Nirmal's appeal is dismissed but the appeals of Tarapada and Ashoke are allowed and they must be acquitted and discharged.

Costello, J.

8. I agree.

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