

Emperor Vs. Parimal Chatterjee and ors.

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Court : Kolkata

Decided On : Jul-12-1932

Reported in : AIR1932Cal760

Appellant : Emperor

Respondent : Parimal Chatterjee and ors.

Judgement :

C.C. Ghose, J.

1. In this case the learned Additional Sessions Judge of Dacca, disagreeing with the verdict of the jury who found the accused not guilty of the charges framed against them under Sections 117 and 302, I. P. C., has made a reference to this Court under the provisions of Section 307, Criminal P. C.

2. The facts are as follows : On the night of 28th/29th July 1931, after information had been received from D. I. B., Dacca, that seditious leaflets were likely to be posted on several places that night, police patrols were instructed to be on the look out for anyone doing this. After patrolling for some time, about 2 a.m., two constables in plain clothes were proceeding northwards along a western road when they saw ahead of them three persons doing something outside the gate of the public library. The three then went, northwards; and the constables, on reaching the gate of the library, saw there a tacently posted leaflet printed in English and headed 'Blood calls for Blood.' At a short distance northwards from

the library, there is a level-crossing and to the south thereof there is a road running eastwards. At the level-crossing, two groups of patrolling police and two members of a defence party had met earlier and they were sitting together. They did not notice any thing wrong with the said three persons who passed quite close to them; but when the two constables, who had been following them, came up and told the police party what they had found, the whole police party joined in-following them. The three persons went to the railway station where they were arrested in a third class waiting shed. The names of the three persons are Parimal Chatterjee, Santimoy Ganguly and Omiya Bhusan Sen. The ages of the first two are 18 years and the last was aged 15 years. On Parimal copies of the leaflet and other papers were found, and on Santimoy an electric torch and a copy of the leaflet. When Omiya was arrested he threw into the adjoining river a packet which was recovered by a boatman and found to contain flour paste.

3. The three youths were then taken to the thana and a first information report was lodged. At the trial, no evidence was adduced by the defence nor did the accused make any statement in Court to explain why they had been at the railway station at 3 a.m. The posting of the leaflets on the gate in question had been done between 1 and 2 a.m. in the morning, and the leaflets were removed by the police shortly thereafter or at any rate early in the small hours of the morning; the public had had no occasion or opportunity to see the leaflets and to read the same and this is clear from the evidence of the witnesses who were called by the prosecution. It was argued before the learned Sessions Judge that inasmuch as the public had not seen or read the leaflets in question, there had not been any abetment or instigation or incitement within the meaning of Section 117, I. P. C., and that in the events which had happened, the prosecution of the three youths in question was not maintainable. The learned Sessions Judge was of opinion that it was not necessary to show that any member of the public should have been incited. Section 117, I. P.C., runs as follows:

Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

4. 'Abetment' is defined in Section 107, I. P. C. Three things are essential to complete abetment as a crime. There must be an abettor; he must abet; and the abetment must be of an offence. Section 107, I. P. C., lays down that a person who instigates another to do a thing abets him to do that thing. In this sense it makes instigation tantamount to abetment. The word 'instigate' literally means to goad or urge forward or to provoke, incite, urge or encourage to do an act. A person may however not only instigate another, but he may co-operate with him and his co-operation may consist of counsel or, conjoint action. In either case, there is an abetment. It is not difficult to see why a person who aids another in the commission of a crime is regarded as an abettor. Nor is it difficult to imagine why one who plots a crime and thereby facilitates its commission should be placed in the same category. An abetment may be complete though the effect contemplated was not caused.

5. It is clear therefore that there must be abetment of the commission of an offence by the public generally or by any number or class of persons exceeding ten. If however there is no abetment within the meaning of Section 117, I. P. C., there is no offence; in other words, if the public have not been instigated or incited, etc., there is no offence. A mere intention or preparation to instigate is neither instigation nor abetment. On the facts stated in this case, the public were not instigated or incited; the leaflets in question were removed before the public could see or read them; the posting and the removal were in the dead of the night; there is no evidence that the people who removed them, i. e., the police read the leaflets in question; even if the police or the two constables referred to above read the leaflets, they could not be classed as the public. In this view of the matter, I am of opinion that the case against the three youths in question does not come within the purview of Section 117, I. P. C. But Mr. Khundkar refers us to the illustration to Section 117, I. P. C, and argues that it was not necessary that the public should have read the leaflets in question. In my opinion, either the public should have read the leaflets in question or that the leaflets should have been exposed to public gaze. On the facts stated in this case, the two conditions referred to above have not been satisfied and in my opinion, the true meaning of the illustration to the section is that either the public should read the offending leaflet or that it should have been posted in a public place at a time when it was possible for the

public to read the same.

6. Taking all these facts into consideration, I am of opinion that this reference should be rejected and that we ought not to interfere with the verdict of the jury in this case. The accused who are on bail will be discharged from their bail bonds.

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