

Surendra Narayan Adhicary Vs. Emperor

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Court : Kolkata

Decided On : May-10-1911

Reported in : (1912)ILR39Cal522,16Ind.Cas.327

Judge : Caspersz and; Sharfuddin, JJ.

Appellant : Surendra Narayan Adhicary

Respondent : Emperor

Judgement :

Caspersz and Sharfuddin, JJ.

1. The appellant, Surendra Narayan Adhicary, has been convicted under Section 124A of the Indian Penal Code, on a charge of sedition, in that he made manuscript copies of certain seditious writings and circulated them through the post to one Durjodhan Das, a student in the Malda Zilla School. It is conceded, and we have satisfied ourselves, that the writings are seditious. But it has been urged by learned Counsel for the appellant, first, that the appellant did not post or publish the packet in question; secondly, that he did not write the incriminating matter; and, thirdly, that the sentence of two years' rigorous imprisonment is too severe, because the seditious writings were intercepted by the Head-master and were not read by the addressee.

2. We have examined the evidence, and in our opinion the facts are beyond all reasonable doubt. The Post-master proves that the packet was posted at his office, and he saw the appellant, with whom he was acquainted, at his post-office on a market day, the 13th August 1910 (the date of posting the packet), being such a day. The khas-mahal tahsildar gives similar evidence, and we believe these witnesses. Moreover, it is not necessary to prove the actual fact of posting in a case as this. In *Reg. v. Lovett* (1839) 9 C. & P. 462 which was a case of seditious libel, it was ruled that if the manuscript of a libel be proved to be in the handwriting of the defendant, and it be also proved to have been printed and published, this is evidence to go to the Jury that it was published by the defendant, although there be no evidence given to shew that the printing and publication was by the direction of the defendant. The Jury found Lovett guilty.

3. The substantial question in this case is whether the appellant wrote the manuscript papers. As to this, there is direct evidence and the evidence of comparison of the handwriting with the admitted or proved handwriting of the appellant. There are also certain circumstances connecting the appellant with contents of the packet sent to Durjodhan Das.

4. The appellant was a private tutor, and three of his pupils have deposed to having seen him write. They say that the manuscript papers are in his handwriting, and that they saw him write them. The relation of tutor and pupil is an intimate one; the appellant and these boys were constantly together, and the appellant had no reason to apprehend that his pupils were watching his proceedings, which he conducted unsuspectingly. In the circumstances we think that the three witnesses are witnesses of truth. They are also amply corroborated. In no sense were the boys accomplices of the appellant in the commission of the offence of sedition. It has been urged that the statements made by the boys to the Police Inspector were not produced in Court. But we accept the explanation that no statements were recorded; the Inspector made notes for his report, and the provisions of Section 161 of the Code of Criminal Procedure were not followed.

5. Then, there is the evidence of comparison of handwritings. Mr. Hardless, Junior, the expert witness, has deposed to the identity. He no doubt has received a

training on the subject. But he has not much experience, his age being only 22, and he does not know Bengali to any great extent. We have preferred to make the comparison for ourselves, and, so far as we can see, the writing in the seditious papers is that of the appellant. We may add that the deposition of the expert witness is very illegible, and that his cross-examination was stopped by the Magistrate for reasons which we do not appreciate. With regard to the papers with which the comparison has been made, there is no denial that they were written by the appellant; a comparison may, therefore, be legitimately made with these papers.

6. Lastly, the circumstantial evidence that the appellant wrote the seditious papers is exceedingly strong. The printed originals of the manuscript copies sent to Dnrjodhan Das were found in the locked bag of the appellant, and he produced the key of that bag. The paper of the copies, in texture, water-mark, and general appearance, corresponds exactly with the folded papers found in the possession of the appellant. The judgment of the Magistrate deals fully with the various details of the case for the Grown, and we need not consider it further.

7. On the question of sentence, we observe that the appellant is a young man, and that his offence amounted to an attempt only. Section 124A, however, includes an attempt in the definition of the offence of sedition. Attempt does not imply success. The intention of the appellant is plain from the fact that his covering letter was addressed to Durjodhan and others, and from the direction to his addressees to circulate the seditious papers to others. The copies having been posted and sent on by the appellant, their further progress was independent of the volition or action of the appellant.

8. The corruption of the minds of the young, whether by means of obscene matter or seditious writing, is a most serious offence. The appellant has never expressed any contrition. In these views, we are unable to find any principle on which the severity of the sentence passed can be diminished. The appellant was working on a system; his offence was not a solitary lapse from the dictates of law and loyalty.

9. Affirming the conviction and sentence, we dismiss this appeal.

