APPELLATE CRIMINAL.

Before Rankin and Mukerji JJ.

P. K. CHAKRAVARTI

v.

EMPEROR.*

1926

July 30

Newspaper—Reproduction of the contents of inflammatory leaflet by way of news—Liability of editor under s. 108 of the Criminal Procedure Code (Act V of 1898) and s. 153A of the Penal Code (Act XLV of 1860).

The mere publication of words having a tendency to promote class hatred is not sufficient to constitute the offence under section 153 A of the Penal Code. It must be the purpose, or part of the purpose, of the publisher to promote or attempt to promote feelings of enmity between different classes.

The intention to promote such feelings is to be gathered generally from the language itself, but other evidence of it is admissible. The words used are decisive when the intention is expressly declared. So also if the words naturally, clearly and indubitably have such a tendency, it must be presumed that the writer intended the natural result of the words employed.

In re Amrita Bazar Patrika Press (1) referred to.

But the words used and their true meaning are only evidence of the intention, and it is the real intention that is the test.

Joy Chandra Sarkar v. *Emperor* (2) : *In re Amrita Bazar Patrika Press* (1) : *Besant* v. *Advocate-General of Madras* (3) referred to.

The *Explanation* to section 153A of the Penal Code does not enlarge the provisions of the substantive section.

Where the editor of a newspaper reproduces, in the ordinary way as news, the contents of an inflammatory leaflet, inciting members of one community to violence against the members of another community,

* Criminal Appeal No. 348 of 1926, against the order of T. Roxburgh, Chief Presidency Magistrate of Calcutta, dated June 10, 1926.

(1) (1919) I. L. R. 47 Calc. 190, 225. (2) (1910) I. L. R. 38 Calc. 214.
(3) (1919) I. L R. 43 Mad. 146.

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without intent to utilize the same to promote or further class hatred, but in circumstances which show a genuine intention to reprehend it and get it traced to its source and stopped the provisions of section 153A do not apply, though some readers of the paper may be thereby induced to entertain unreasonable feelings against the members of another class or community. Such a publication, where the intention was to bring it to the notice of the proper authorities, is covered by the *Explanation* to the section.

Section 108 does not lay down that a person can be proceeded against thereunder for disseminating any matter which, in the opinion of the Court, has any tendency to promote ill-feeling between classes.

Sital Prasad v. *Emperor* (1) not followed.

Held, also, that there was no necessity, under section 118 of the Code, in the circumstances of the case, to order the execution of a bond.

The facts of the case were as follows. An outbreak of communal rioting had occurred in April 1926 in certain parts of the town of Calcutta, and one of the causes of the disturbance or its continuance was the circulation of inflammatory leaflets, in the vernacular, calculated to incite Hindus and Mahomedans to violence against each other. An Urdu leaflet, printed on yellow paper, was circulated warning the Mahomedans that Bengalees had joined the Marwaris, and were attacking Mahomedans, and had killed and wounded hundreds of them, set fire to their *bustees* and looted their shops. It recommended Mahomedans to kill all Marwaris, Bengalees and up-country Hindus. The "Forward", a daily paper published in Calcutta, in its issue of the 27th April 1926, reproduced the contents of the leaflet, with an English translation and transliteration, under the heading—"*Yellow Urdu Leaflet: Attempts at Incitement: Will Mahomedan Leaders Intervene*"—and added the following introductory comment:—

It is not difficult to trace the source from which the leaflet emanates. Let us wait and see what steps the guardians of "law and order" take in the matter.

(1) (1915) I. L. R. 43 Calc. 591, 595.

On the 30th April Mr S. N. Roy, Deputy Secretary to the Government of Bengal, by order of the Governor in Council, granted sanction authorizing Mr. E. H. Hartley, Assistant Commissioner, Detective Department, to institute proceedings under section 108 (*b*) of the Criminal Procedure Code against P. K. Chakravarti, the editor, and Pulin Behary Dhur, the printer and publisher, of the "Forward" in respect of the above publication. Mr. Hartley, accordingly, filed an application under the section, on the 1st May, against them before the Chief Presidency Magistrate who instituted proceedings thereunder. On the 4th June he discharged the printer, but ordered the editor to execute a recognizance in the sum of Rs. 500 to be of good behaviour for six months.

P. K. Chakravarti, thereupon, appealed against the order to the High Court.

Mr. N. K. Bose (Advocate), *Babu Suresh Chandra Talukdar* and *Babu Jahnabi Charan Das Gupta*, for the appellant.

Mr. A. K. Basu, for the Crown.

RANKIN, J. In this case the appellant, Mr. P. K. Chakravarti, has been ordered to enter into his own recognizance in the sum of Rs. 500 to be of good behaviour under section 108, Criminal Procedure Code. The order has been made in respect of an article in the issue for the 27th April of this year of a newspaper called the "Forward", which is a newspaper printed in English and circulated in Calcutta. The circumstances at the time of the publication are shortly these. An outbreak of rioting having occurred some little time before in parts of this city, it was after some time brought to notice that one of the causes of this outbreak or, at least of its continuance, was the fact that certain

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people were circulating inflammatory leaflets in the vernacular in the streets—leaflets calculated to incite members of different communities to violence against one another. The particular pamphlet, which is animadverted on in the article in question, was a pamphlet in Urdu printed on yellow paper and circulating apparently for the benefit of the Mahomedans. What the appellant has done as editor is this. He has printed the pamphlet in an English translation. He has also given a transliteration in English letters of the original Urdu; and what he says is that this pamphlet was being circulated and that it is not difficult to trace the source from which it emanated. Then he adds "Let us wait and see what steps the guardians of 'law and order' take in the matter". The head-lines of the article are: "Yellow Urdu Leaflet: Attempts at Incitement: Will Mahomedan Leaders Intervene". At the end of the translation, there is an extract from what appears to be a daily paper circulating among the Mahomedans. That extract does not seem to require a special description. It is not alleged that there is anything in the history of the "Forward" to give the article a special meaning or to be evidence of any special intention as regards this article. It so happened that, in the next column, there was printed an appeal signed by eminent Hindu and Mahomedan gentlemen earnestly praying the members of both communities to cease attacking one another: this appeal is also printed *verbatim* and all the signatures are copied out. One has, therefore, to approach this matter on the basis that, unless in the mere copying of the Urdu pamphlet there is enough to entitle the Chief Presidency Magistrate to make his order under section 108, Criminal Procedure Code, there is nothing else against the present appellant, and the order cannot be supported.

It will, I think, be convenient if I commence by giving an illustration. In the course of the recent riots it has happened that a Hindu has been badly assaulted and murdered by a Mahomedan, or that a Mahomedan has been assaulted and murdered by a Hindu. If the next morning, in a newspaper printed in English and circulating in Calcutta, there appeared a statement, as an ordinary item of news, to the effect that Babu so-and-so was going down a certain street, and was attacked and murdered by men of the opposite community, nobody would suppose that that piece of news, unless it was written up and made an excuse for incitement to ill-feeling, would of itself be any breach of the law. But it is perfectly plain that, in some circumstances, such an item of news might have some tendency with some people to induce them to entertain feelings of hatred or enmity towards the class to which the offending person belonged. It is, therefore, of great importance that the Court should consider carefully whether it is really the law that any person who prints or publishes anything which, in fact, has any tendency to promote ill-feeling between classes has committed an offence or has rendered himself by that mere fact liable to proceedings under section 108 of the Criminal Procedure Code. In substance, my opinion of this case is that the newspaper here has given its readers in the ordinary way a perfectly legitimate and sensible piece of news, without any intention to utilize that piece of news for the purpose of promoting or furthering class hatred, and that even if the news is of such a character that it is possible to suppose that some people reading it may momentarily or foolishly be induced to entertain unreasonable feelings towards a class of other people, this is not enough to bring it within the mischief either of section 153 A of the Indian Penal Code or of

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section 108 of the Criminal Procedure Code. In my judgment, there is no reason to say that this editor, because he has published the pamphlet itself and a translation of it for the benefit of his English readers, has gone out of his way to utilize this information for an oblique purpose, namely, the promotion of class hatred. Apart altogether from the fact that the very next column contained an appeal in the contrary sense, the only comment that the editor made was "Let us "wait and see what steps the guardians of 'law and "order' take in the matter". That being my view of the facts of the case, I propose to say something about the law for the purpose of showing why I do not think that the order made by the learned Chief Presidency Magistrate was justified.

It is settled law that section 153 A of the Indian Penal Code does not mean that any person who publishes words that have a tendency to promote class hatred can be convicted under that section. The words "promotes or attempts to promote feelings of "enmity" are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or part of the purpose of the accused to promote such feelings and, if it is no part of his purpose, the mere circumstance that there may be a tendency is not sufficient. It is quite true that whether or not the promoting of enmity is the intention to be collected in most cases, from the internal evidence of the words themselves, but I know of no authority for saying that other evidence cannot be looked at, and it appears to me that the Explanation shows quite conclusively that in any matter on which other evidence could assist it may be taken. The learned Chief Presidency Magistrate has himself pointed out that, even on the question of likelihood to promote ill-feelings, the facts and circumstances of

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the time must be taken into account, and something must be known of the kind of people to whom the words are addressed. Although other evidence is not excluded, it is true that from the nature of the case, the internal evidence of the words used and the meaning of the words used will very generally be decisive of the question whether or not the Court is confronted with a successful or unsuccessful attempt to promote feelings of enmity. They will be decisive in all cases where the intention is expressly declared: also "if "the words used naturally, clearly and indubitably "have such a tendency then it must be presumed that "the publisher intended that which is the natural "result of the words used" [*In re Amritu Bazar Patrika Press* (1)]. But the words used and their true meaning are never more than evidence of intention, and it is the real intention of the accused that is the test [*Joy Chandra Sarkar* v. *Emperor* (2): *In re Amrita Bazar Patrika Press* (1): *Besant* v. *Advocate-General of Madras* (3)]. I cannot assent to any doctrine of "constructive intention" such as the Magistrate has in this case adopted. So much for the meaning of the substantive part of section 153A.

When we come to the *Explanation* we have what the Judicial Committee has called "a delicate balanc- "ing of two important political considerations". "In "applying these balancing principles it is inevitable "that different minds may come to different results" [*Besant* v. *Advocate-General of Madras* (3)]. Now an *Explanation* is not the same as a *proviso*, but this particular *Explanation* cannot, in my opinion, be used to enlarge the provisions of the substantive section any more than a *proviso* can be used to enlarge the

(1) (1919) I. L. R., 47 Calc. 190, 225. (2) (1910) I. L. R. 38 Calc. 214.
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provision to which it is a proviso [Cf. *Guardians of the Poor of the West Derby Union* v. *Metropolitan Life Assurance Society* (1)]. Such things are put in constantly to enable certain classes of people to feel safe that the section will not penalize them if they are acting in a certain manner. In this case, the *Explanation* says that is is not an offence "to point "out without malicious intention and with an honest "view to their removal matters which are producing "or have a tendency to produce feelings of enmity or "hatred between different classes". Now, if the question were whether this article was hit by section 153A of the Indian Penal Code, in my opinion, there would be two answers. I should say, first of all, that, assuming it to have in some sense a tendency to promote ill-feeling in the minds of certain persons, it is quite plain to me that the editor or the publisher was not attempting to do anything of the sort, and that the reasonable explanation of the publication of this matter was the ordinary desire of the editor to publish a fairly important piece of news likely to be of some genuine interest to reasonable readers. I cannot imagine that anybody desirous of promoting ill-feelings on the part of the Mahomedans against the Hindus would publish in this newspaper in English and with the preliminary observations here used this pamphlet. I cannot suppose that the editor was desirous of effecting the result that the educated English-knowing Hindus reading this pamphlet would be inflamed against the Mahomedans as a class, rather than interested to know that this objectionable practice of incitement by pamphlet was being brought to the notice of the police. But, secondly, apart altogether from the fact that I do not think that it comes within

(1) [1897] A. C. 647.

the first part of section 153A of the Indian Penal Code, there is, in my opinion, no sufficient reason shown why it is not within the terms of the *Explanation* which *primâ facie* covers it. Malice is not to be imputed without definite and solid reason.

I turn now to section 108 of the Criminal Procedure Code. Broadly speaking, two views of its object have been canvassed before us. According to one view it applies only to a person who disseminates matter, *e.g.*, publishes spoken or written words, so as to commit an offence under section 153A. Such a person, it is said, is to be bound down to prevent his committing, within the jurisdiction of the Magistrate, a fresh offence against the section. According to the other view if the writer of an article had the intention to promote enmity, the disseminator may under the section be bound down, although he himself has had no such intention and has never been guilty of any offence under section 153A. In such a case he will usually be able to go on disseminating as before without incurring a forfeiture of his bond (which seems a little curious) but counsel for the Crown contends that a person disseminating objectionable matter may be regarded as a person likely to commit with the full intent an offence under section 153A, or some similar offence, and that this gives a meaning to the section as a preventive provision. A third view is that adopted by a Division Bench of this Court in *Sital Prasad* v. *Emperor* (1) that "in order to justify an order under "section 108 (*b*) one has only got to find that there are "words used in the leaflet; or matter complained of, "which are likely to promote feelings of enmity or "hatred".

Now clause (*b*) of section 108 uses the phrase "matter the publication of which is punishable under

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"section 153A". What section 153A says in effect is that the publication of matter is punishable if by such publication the person publishing is making a successful or unsuccessful attempt to promote enmity. This fits in awkwardly with the words employed in section 108 which require us to ask "of what matter is the "publication punishable?" To the question so put the answer seems to be "matter which is the vehicle "of an attempt to promote enmity". This seems to be the parallel to "any seditious matter" in clause (*a*). In this way there drops out of sight the important fact that, in theory at all events, the publication of such matter is only punishable as regards the person or persons making the attempt, that many persons may be engaged in the publication of the same matter and that it will constantly happen that some of these have no such intention as the others. Section 108 seems to assume that one has only to look at the "matter" to tell whether its publication is punishable or not. This is broadly true no doubt, but it is not the truth, and it ill-consists with section 153A under which no matter is set aside or classified except with reference to the intention of the particular person accused.

It may be observed that clause (*b*) of section 108 does not say "the publication (or first publication) of which "was punishable under section 153A", but "the pub-"lication of which is punishable under section 153A". As dissemination and publication do not seem to be different, and as section 153A uses neither term it may be that "the publication" means "the publication by "the disseminator", though the language is in that case very cumbersome.

Again the word "intentionally" was introduced into section 108 in 1923. The question arises whether this word was introduced in order to over-rule the

decision in the case of *Sital Prasad* v. *Emperor* (1), or merely to make clear that the dissemination of the matter in question is not done by mistake, or to require that the person disseminating had knowledge of the contents or of the character of the matter. The Chief Presidency Magistrate was of opinion that the word was introduced for the first of these purposes, but points out with great reason that if so the amendment fails to carry out the intention.

The present case can be decided without wrestling with all of these difficulties, but I desire to say that the rule laid down in the case of *Sital Prasad* v. *Emperor* (1) seems to me to be wholly inadmissible. The utmost that is warranted, on any view of the section, is that a person comes within its scope if he disseminates matter which reveals an intention to promote feelings of enmity between classes. Matter which has, in fact, a tendency to do so may be published *alio intuitu*, or even with an honest view to stop class hatred, with an inadequate appreciation of the circumstances or feelings of the persons to whom it is addressed, with an inadequate knowledge of the things discussed, or by reason of insufficient care and caution. Some tendency to excite class hatred may be almost unavoidable save by keeping silent on certain topics. As the Magistrate need not take action in the end, unless he deems it necessary, this may be no conclusive reason why section 108 should be inapplicable to such cases. But there certainly are some reasons. And as the Legislature has passed upon the matter and drawn the line in its own way, it is not for the Criminal Courts to abandon "intention"—the ancient and the statutory test—and to put in peril of their process persons of innocent intention. I cannot help thinking that if the Legislature had really meant to say that a Magistrate

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could proceed under this section against any person who was found to have disseminated matter which in the opinion of the Magistrate had a tendency to promote class hatred, it would have said this very plainly in terms very different from those which it has employed.

This case, however, does not depend upon the Rule in *Sital Prasad* v. *Emperor* (1). The argument for the prosecution has been in this Court that what the appellant has done is to disseminate the Mahomedan handbill, that this handbill was without excuse under section 153A, and that it is enough that the appellant has intentionally disseminated it In my judgment this argument is unsound. What the appellant was accused of disseminating and what he, in fact, disseminated, was the article in the "Forward". There is nothing in section 108 or anywhere else to justify the distortion of his meaning, his purpose or act by looking to a part only of the article. He has quoted the handbill and objected to it in order to get it stopped. If this is not a mere colourable pretence which cloaks a real intention to incite Mahomedans to violence against Hindus, and if the article would not be taken by any reader in that sense, what difference can it make that the few vicious lines of rubbish have been quoted *verbatim* so as to be pilloried as well as reprehended? The word "disseminate" affords no answer; it would apply equally to a part of the handbill as to the whole unless the context altered the meaning of the part.

The present appellant was the editor of the paper when the article appeared in it. If any one is responsible for its publication under section 153A he is the man. If he is innocent under that section, I cannot see how he comes under section 108 as a person

(1) (1915) I. L. R. 43 Calc. 591.

disseminating matter the publication of which is "punishable under section 153A".

There is yet another aspect of the case. The most important thing in the end is the question under section 108 of the Criminal Procedure Code whether it is necessary to order the person summoned to enter into a bond. In the present case, the Chief Presidency Magistrate took the view that, if the editor had admitted that he had committed an error in publishing the handbill, no action would have been called for at all. But because the editor contended before him that he had not brought himself within the purview of the law, the Chief Presidency Magistrate says, "In other words, he is still of opinion, "even after the matter has been brought to notice by "these proceedings, that he can print pink and green "leaflets to-morrow. I, therefore, think that it is "necessary at least in the case of the editor to demand "security." I cannot say that I approve of that way of deciding such a case as this. It may sometimes happen that the contention on the part of the editor in such circumstances is so extravagant that the Magistrate may be justified in thinking that unless effective steps are taken, the editor intends, notwithstanding the decision of the Court, to go on as before. Merely because a person has insisted upon putting his case before the Court and taking its decision, to infer that it is necessary, after the decision has been given, to bind him down in order to prevent him from doing the same thing again is, I think, unwarranted. I cannot help feeling that, in any view of this matter, it is reasonably plain that there was no necessity in this case to order the execution of the bond. I quite appreciate that much damage may be done in times of riot by thoughtlessness as well as from an intention to promote class hatred. I quite

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see that the authorities were anxious to discourage as much as possible anything that would feed the spirit of the riots. But, in this case, we have to consider the matter from the point of view of the restriction which a careful Legislature has thought fit to put upon the liberty of the press. I can express my own view in the matter by saying that, if the Legislature intended to lay down that people could be proceeded against for publishing or disseminating any matter which, in the opinion of the Court, has a tendency—any tendency—to promote ill-feeling between classes, the Legislature would have said so in plain terms, and that the Court is unable to infer from what the Legislature has said in section 153A of the Indian Penal Code and section 108 of the Criminal Procedure Code that the Legislature has intended to go to that length.

For these reasons, I am of opinion that the order of the learned Magistrate should be discharged, and that the bond executed by the appellant should be cancelled.

MUKERJI J. I entirely agree.

E. H. M.