

## CRIMINAL REFERENCE.

Before C. C. Ghose and Costello J.

EMPEROR

v.

PARIMAL CHATTERJI.\*

1932

July 12.

*Abetment—Instigation, what is—Posting of leaflets, when an offence—Indian Penal Code (Act XLV of 1860), ss. 107, 117.*

An abetment may be complete, though the effect contemplated was not caused.

The word "instigate" means to goad or urge forward or to provoke, incite, urge or encourage to do an act. A mere intention or preparation to instigate, however, is neither instigation nor abetment.

In order to constitute an offence under section 117 of the Indian Penal Code by posting leaflets it is necessary that either the public should have read the leaflets or that they should have been exposed to public gaze.

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The material facts appear from the judgment.

*The Deputy Legal Remembrancer, Khundkar* (with him *Sudhangsushekar Mukherji*) for the Crown. There cannot be any doubt that the leaflet in question contained a violent instigation for the spilling of blood. It was posted on the gate of a public library at the early hours of the morning. Though the object of the accused was frustrated by the prompt action of the policemen who removed the leaflet before the public could read it, yet the intention of the accused was clearly to incite the public. The taking away of the leaflet before the next morning is not of much importance, because actual reading by the public is not necessary. Section 117, Indian Penal Code, Illustration. Had the leaflet been posted at such a public place in broad daylight the offence would have been complete, even if no one read

\*Jury Reference, No. 6 of 1932, by H. D. Benjamin, Additional Sessions Judge of Dacca, dated Jan. 10, 1932.

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it . It makes no difference that the posting of it took place at the latter part of the night. In this case there is evidence to show that at least the two policemen read it. It might have subverted them. It is not necessary that the act abetted should have been committed. *Queen-Empress v. Sitanath Mandal* (1).

In any case, it was clearly an attempt to instigate and the conviction can be converted into one for attempt. In a Reference under section 307 of the Code of Criminal Procedure, the Court has ample power to do so.

*Sureshchandra Talukdar* (with him *Radhikaranjan Guha* and *Rajkumar Chakrabarty*) was not called upon to reply.

*Cur. adv. vult.*

GHOSE J. 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 of the Indian Penal Code, has made a reference to this Court under the provisions of section 307 of the Code of Criminal Procedure.

The facts are as follows: On the night of 28th-29th July, 1931, after information had been received from the District Intelligence Branch, 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 any one 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 men went northwards; and the constables, on reaching the gate of the library, saw there a recently 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 anything 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 Primal Chatterji, Santimay Ganguli and Amiyabhooshan Sen. The age of the first two is 18 years and the last was aged 15 years. On Parimal copies of the leaflet and other papers were found, and on Santimay an electric torch and a copy of the leaflet. When Amiya was arrested, he threw into the adjoining river a packet which was recovered by a boatman and found to contain flour paste. The three youths were then taken to the *thânâ* 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 of the Indian Penal Code and that, in the events which had happened, the prosecution of the three youths in question was not maintainable. The learned Sessions

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Judge was of opinion that it was not necessary to show that any member of the public should have been incited.

Section 117 of Indian Penal Code 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.

“Abetment” is defined in section 107 of the Indian Penal Code. 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 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.

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 of the Indian Penal Code there is no offence; in other words, if the public have not been instigated or incited, 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 of the Indian Penal Code. But Mr. Khundkar referred us to the illustration to the section 117 and argued that it was not necessary that 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.

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.

COSTELLO J. I agree.

*Reference rejected.*

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