

## APPELLATE CRIMINAL.

*Before Cunliffe and Henderson JJ.*

SHIB NATH BANERJI

*v.*

EMPEROR.\*

1936

*June 18.*

*Class—Class or Community, Meaning of—Indian Penal Code (Act XLV of 1860), s. 505 (c).*

Sections like 505 of the Indian Penal Code, which deal with the liberty of the subject, must be construed very strictly in favour of the defence.

Sub-s. (c) of s. 505 is directed towards preventing clashes between real classes and real communities and not purely imaginary people. A speech by which the speaker is trying to foment a strike, when no strike has yet been started and is attempting to incite the prospective strikers against what are commonly known as black-legs, does not come under sub-s. (c) of s. 505 but under s. 117 of the Indian Penal Code.

### CRIMINAL APPEAL.

The material facts and arguments appear from the judgment.

*J. P. Mitter and Amiya Lal Chatterji* for the appellant.

*The Deputy Legal Remembrancer, Khundkar, and Anil Chandra Ray Choudhuri* for the Crown.

CUNLIFFE J. The appellant here was tried by the Chief Presidency Magistrate under s. 505, sub-s. (c) of the Indian Penal Code, and sentenced to undergo one year's rigorous imprisonment.

Section 505, sub-s. (c) is in the following terms:—

Whoever makes, publishes or circulates any statement, rumour or report with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community shall be punished.

It was proved in evidence that the appellant, who is a Labour Leader, made two speeches which are the subject of complaint under the section. It has been urged upon us that these are innocuous speeches, and

\*Criminal Appeal, No. 221 of 1936, against the order of S. K. Sinha, Chief Presidency Magistrate of Calcutta, dated Mar. 11, 1936.

1936  
Shib Nath  
Banerji  
 v.  
Emperor.  
 Cunniffe J.

more specially are they innocuous, if they are read as a whole without taking excerpts from either of them and setting them out separately. The learned Magistrate has referred to various passages and, during the course of the argument, I called the attention of counsel who appeared for the appellant to one or two other passages in the speeches. For reasons which will appear later, it is not advisable for me to express an opinion as to what, I think, is the cumulative effect in law of these various extracts. My learned brother and I think that the prosecution made a mistake in bringing the charge against the appellant under this sub-s. (c). It is a very narrow sub-section, as is apparent when one reads it. It appears to be directed towards preventing clashes between rival communities and rival classes. These kinds of sections in the Code which deal with the liberty of the subject, as it has often been said, must be construed strictly in favour of the defence. The prosecution, had they so wished, could have brought a charge against the appellant under another sub-section of the same s. 505, *i.e.*, sub-s. (b), which deals with speeches of a type which may cause alarm or fear to the public and because of which any person may be induced to commit an offence, to use the language of the sub-section, "*against the public tranquillity*".

It has been pointed out to us, however, by the learned Deputy Legal Remembrancer, when we indicated the legal difficulty under sub-s. (c), that there is a much more widely drawn section in the Code, namely, s. 117, which can easily be employed to deal with people who indulge in the luxury of speeches of this nature.

I said I would not express my opinion judicially as to what impression has been produced on my mind exactly by the passages cited from the two speeches, but I will confine myself to saying that *prima facie* I consider that they are of such a nature that they may be the subject of a prosecution under s. 117.

In these circumstances, we shall set aside the conviction and the sentence passed upon the appellant by the learned Magistrate and we shall order his retrial under s. 117, I. P. C., or such other section which may seem proper.

1936  
*Shib Nath*  
*Banerji*  
 v.  
*Emperor.*  
*Cunliffe J.*

The appellant will continue on the same bail, pending his retrial.

HENDERSON J. The appellant was the secretary or some kind of official of what is said to be a Trade Union among the employees of the corporation, and his present conviction is based on two speeches which he addressed to them. There seems to be no doubt that he was trying to foment a strike and it is only natural that the executive of the corporation should have taken steps to counteract any such agitation. This they did by pointing out to the members of the Union the disadvantages of embarking upon a strike. The present speeches were delivered as a result of this action and were intended to take away the effect of what had been said on behalf of the executive.

Shortly, among other things, the appellant said that they need not fear losing their jobs, because the history of other strikes will show that any person who takes the place of a striker, is beaten and so on. Thus the prosecution brought the present charge under s. 505(e) on the theory that the appellant was inciting the strikers against what are commonly known as "black-legs".

I am clearly of opinion that this sub-section was intended to deal with real classes and real communities and not to purely imaginary people. At the time the speeches were delivered, there were no strikers and no black-legs, and, as far as I know, possibly there will not be a strike.

I, therefore, agree with my learned brother that the conviction under this sub-section cannot be upheld.

1936  
Shib Nath  
Banerji  
v.  
Emperor.  
*Henderson J.*

So far as sub-s. (b) is concerned, there has been no sanction for a prosecution; further with great respect to my learned brother, I am bound to say that, after listening to the arguments addressed to us on this aspect of the case, I do not consider that the speeches delivered by the appellant would come under this sub-section either.

I, therefore, agree that this conviction and sentence should be set aside and the appellant retried as proposed.

*Retrial ordered.*

A.C.R.C.