

CRIMINAL REVISION.

Before Bartley and Henderson JJ.

NEPAL CHANDRA BHATTACHARJYA

v.

EMPEROR.*

1938

Dec. 5.

Class enmity—“Class,” What is—Capitalist, if a class—Indian Penal Code (Act XLV of 1860), s. 153A.

If the word “capitalist” is susceptible of accurate definition at all, that definition must be with reference to a world system of economics. “Capitalist” is altogether too vague a term to denote a definite and ascertainable class so as to come within s. 153A of the Indian Penal Code.

Emperor v. Maniben L. Kara (1) approved of.

On a construction of the speech delivered by the accused, it was held that no attempt was made to incite hatred or enmity, the audience being merely asked to unite in order to improve their condition.

CRIMINAL REVISION.

The facts of the case were that on November 9, 1937, the accused delivered a speech in Hindusthani at a meeting at a place called Sonai Maidan, Garden Reach, in Calcutta, under the auspices of the Dock Workers Union. The speech, as summarised by the trial Court, was as follows :—

In the first portion of the speech the accused has alleged that Bird & Co., who are brokers of the Port Commissioners, realised a profit of rupees six lakhs from twelve thousand workers at the rate of rupees fifty per head per month. He has characterised the company as blood-suckers and the labourers as blood-givers. The opening lines of the speech appear to ask the workers of Bird & Co. and Martin & Co. to consider how they can beat the blood-suckers in restoring their blood. He has proceeded to say that there are two classes of people, namely, the capitalists and the labourers and that the creed of the former is to suck the blood of the poor labourers, who are starving, though as a matter of fact they feed and clothe the world. He points out that the blood-givers also should have a creed so that they can get back their blood by beating the blood-takers. Then he says that the capitalists to establish their regime have instilled into the heads of the labourers that their condition is due to their bad luck. He points out that there is no such thing as luck and tells his audience to forget it so that they

*Criminal Revision, No. 731 of 1938, against the order of M. H. B. Lethbridge, Sessions Judge of 24-Parganas, dated July 6, 1938, confirming the order of T. N. Gupta, Magistrate, First class of Alipore, dated May 11, 1938.

1938

*Nepal Chandra
Bhattacharjya
v.
Emperor.*

can tighten their grasp and lower the heads of the capitalists by the dint of the bludgeon. He then asks his audience to consider themselves as masters and capitalists as their wives and bad women. He has then referred to the strike in the Calcutta Jetty by the men of the Port Commissioners in which the wages for the labourers were raised to Rs. 18 from Rs. 15. He then describes the relationship between the capitalists and the labourers as between a tiger and human being. He advises his audience to repair to the tiger's lair in the jungles and says that the people should come in thousands so that the tiger may not escape. It is the duty of the men to shoot down the tiger whenever there is opportunity for it. Then he describes the story of the master and the servant. He says the servants purchased some oil for besmearing it on the feet of their master. They used half the oil for this purpose and their master gave them a reward of Rs. 10. After this they put the other half of the oil on their respective *lâhis*. When their master heard of it he hastened to raise their wages. He concludes his speech by pointing out that whoever has come to the world must have a share in it and has asked his audience to stick to this principle and fight on it so that peace can prevail in the world.

The accused was put upon his trial before Mr. T. N. Gupta, Magistrate, First class of Alipore, on a charge under s. 153A of the Indian Penal Code. The charge ultimately framed was to the effect that by the speech he promoted enmity between the employees of Bird & Co., Martin & Co. and other employees of labour and the employers thereof.

The case for the defence was that as secretary of the Port Trust Employees' Association, since 1928, the accused has been convening meetings off and on, with the object of uniting the labourers and removing their grievances. He never did nor have any intention to promote feelings of class hatred in the speeches he delivered. The learned Magistrate convicted him of the offence charged, holding that employees and employers of the companies mentioned were ascertainable classes. On appeal by the accused, the learned Sessions Judge of 24-*Parganâs* held that the speech was really directed against the capitalists who were an ascertainable class and upheld the conviction of the accused. Thereupon the accused obtained the present Rule.

J. C. Gupta and *Sudhansu Bhusan Sen* for the petitioner. There is really nothing in the speech which amounts to promoting class hatred or enmity between His Majesty's subjects. On a proper construction thereof, the speech is really a criticism

of an economic system with a view to bring about a change therein. It is not preaching hatred against any particular class. It advocates merely that the labourers should have an equitable share in the income. It also asks the labourers to organise and unite in order to redress their grievances. Even if, in an attempt to create a consciousness in the labourers as to their conditions and rights, any one says something which tends to create disaffection, it does not come under s. 153A. See Explanation to s. 153A.

Further, the speech is not aimed at any definite or ascertainable class or classes of His Majesty's subjects. The opening words show that it is addressed to the workers of the world in general. Except a reference to Bird & Co. and Martin & Co., in one or two places, as brokers in labour contract, there is no reference to any specific company or their employees in the whole of the speech. Also, there is no evidence that any workers of either Martin & Co. or Bird & Co. were present at the meeting. There is also no evidence to bring it under the first clause of s. 153A, because the speech is not malicious. All these difficulties were felt by the Public Prosecutor who amended the charge at the last stage of hearing. That amendment, however, did not improve matters. Even if it be held that there was an attempt to promote enmity against the capitalists in general, it would not come under s. 153A, inasmuch as it has been repeatedly held that capitalists were not an ascertainable class. *Emperor v. Maniben L. Kara* (1); *P. K. Chakravarti v. Emperor* (2); *Zaman v. Emperor* (3) and *Joy Chandra Sarkar v. Emperor* (4) discussed.

The Advocate-General, Sir Asoka Roy, and J. K. Mukherjee for the Crown. The two classes referred to in the charge are the employers of labour, namely Bird & Co. and Martin & Co. and their employees. They become ascertainable classes within the meaning

(1) (1932) I. L. R. 57 Bom. 253.

(3) [1933] A. I. R. (Cal.) 139.

(2) (1926) I. L. R. 54 Cal. 59.

(4) (1910) I. L. R. 38 Cal. 214.

1938

*Nepal Chandra
Bhattacharjya*
v.
Emperor.

of s. 153A of the Indian Penal Code, if they can be localised, as is the case here. The speech promotes enmity between these two classes. The observations of Beaumont C. J. in *Emperor v. Maniben L. Kara* (1) are not of much assistance. The doctrine has been very much limited by subsequent decisions of the Allahabad High Court. *Emperor v. Gautam* (2). It is not necessary that the classes should be so distinct and separate as to make it always easy to put an individual in one class or the other. Even the learned Chief Justice of the Bombay High Court distinguished his former decision relating to the meaning of the expression "capitalist" in the latter case of *Emperor v. M. R. Shetty*, Criminal Appeal No. 432 of 1932, unreported, and held that expressions like "Rajas", "Maharajas" and "Zemindars" were sufficiently definite classes to come within s. 153A. Also *Ram Saran Das Johri v. Emperor* (3). There are several other recent decisions on those lines reported in unauthorised reports. The speech clearly offends against the provisions of s. 153A and the Rule should be discharged.

BARTLEY J. This Rule was issued on the District Magistrate of the 24-*Parganâs* to show cause why the conviction of the petitioner under s. 153A of the Indian Penal Code should not be set aside.

Petitioner was convicted in respect of a speech made by him on November 9, 1937.

The charge ultimately framed against him was in effect that he promoted enmity between employers and employees, who are two different classes of His Majesty's subjects.

His speech, fairly construed, is an attack on the capitalist.

The gist of it is this :—

The Capitalist is the blood-taker, or blood-sucker ; Labour is the blood-giver. The world has two creeds only, Capital and Labour. Labour creates ; Capital takes the lion's share of the product. Their relation is that of man and tiger ; the one with the advantage destroys other.

(1) (1932) I. L. R. 57 Bom. 253.

(2) I. L. R. [1937] All. 69.

(3) [1934] A. I. R. (All.) 717.

Every person in the world has a right to share in its good things. That is the crux of the matter, and there can be no peace until this principle is fought for and established.

It is clear from this analysis that the speech cannot fairly be said to be an attempt to promote hatred or enmity. The language is not immoderate. The references to force are couched in homely vernacular idiom; the underlying idea clearly being that you get nothing in this world without fighting for it.

We are not, therefore, prepared to hold that, on the evidence, an attempt to promote hatred or enmity has been made out.

In the next place, in order to support a conviction under s. 153A of the Indian Penal Code, it must be shown that Capitalists are a class of His Majesty's subjects.

If the word "capitalist" is susceptible of accurate definition at all, that definition must be with reference to a world system of economics. We are in agreement with Beaumont C. J. when he said in *Emperor v. Maniben L. Kara* (1) that—

Capitalist is altogether too vague a phrase to denote a definite and ascertainable class so as to come within s. 153A.

Literally, the common factor in such a class is accumulated wealth. Economically, the common factors are, possibly, wealth plus investment. Practically, it is impossible to define the limits of any such classification, or to say how any speech would affect any given proportion of its components.

In the result, this Rule must be made absolute. The conviction of the petitioner and the sentence passed on him are set aside. He will be released from bail.

HENDERSON J. I have had the advantage of reading the judgment which has just been delivered by my learned brother, and have little to add.

1938

*Nepal Chandra
Bhattacharjya*v.
*Emperor.**Bartley J.*

1938

*Nepal Chandru
Bhattacharjya*

v.

*Emperor.**Henderson J.*

There is no real difficulty in assessing the effect of the speech delivered by the petitioner. It is an attack upon the capitalist system. A complaint is made that under that system there is bound to be an unfair distribution of the products of labour. The audience of the speaker were then told that their only hope is to unite, if they desire to improve their condition. This appears to me a fair and natural interpretation of the words actually used. This is the explanation given by the petitioner himself in his examination under s. 342 of the Code of Criminal Procedure, and I believe him.

In the circumstances, it seems to me impossible to bring this speech within the terms of s. 153A of the Indian Penal Code. It is very easy to use the word "capitalist" in making speeches; but before such a speech can be made the basis of a prosecution under this section, it is necessary to attach some clear and definite meaning to the term. The difficulty in doing so has been clearly expressed by the learned Chief Justice of Bombay, and I respectfully agree with what he said. But the difficulty does not end there; even if we are able to hold that in using the word "capitalist" the petitioner has described a class, he has referred to world-wide economic conditions, and the class in question could not possibly be a class of His Majesty's subjects.

I, accordingly, agree that this Rule must be made absolute.

Rule absolute.

A. C. R. C.