

1933
December, 13

REVISIONAL CRIMINAL

Before Mr. Justice H. G. Smith

CHANDRA BHAN GUPTA, ADVOCATE (ACCUSED-APPLICANT)
v. KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY)*

*Criminal Procedure Code (Act V of 1898), section 108(a)—
Speech made by accused on special occasion at a meeting for
special purpose—No evidence that accused made any other
objectionable speech in past or intended to do so in future—
Accused, if can be proceeded with under section 108, Criminal
Procedure Code.*

Held, that section 108(a) of the Code of Criminal Procedure cannot properly be applied in respect of an isolated speech made by an accused on a special occasion and at a meeting for a special purpose when there is no evidence of his having made any other objectionable speech in the past or of his having any intention of doing so in the future. *Emperor v. Chiranjī Lal* (1), *Emperor v. Bal Gangadhar Tilak* (2), and *Beni Bhushan Roy v. Emperor* (3), referred to and relied on. *Gudri Chaudhry v. Emperor* (4), and *Ramphul Singh v. Emperor* (5), distinguished.

Messrs. *Jagat Narain* and *R. F. Bahadurji*, for the applicant.

The Assistant Government Advocate (Mr. *H. K. Ghosh*), for the Crown.

SMITH, J.:—This is an application in revision on behalf of Mr. Chandra Bhan Gupta, an advocate, who has been called upon by a Magistrate of the first class of the Lucknow District for security under sections 108/118 of the Code of Criminal Procedure in the form of a personal bond for Rs.5,000 with two sureties, each in that same sum.

It appears that on the 13th of June last a meeting was held in the Amin-ud-daula Park, Lucknow, to protest against the treatment accorded to certain revolutionary prisoners in the Andaman Islands. In the course of the meeting, Mr. Chandra Bhan Gupta made a speech which was taken down in shorthand by a Sub-Inspector

*Criminal Revision No. 119 of 1933, against the order of Chaudhri Akhter Husain, I.C.S., Sessions Judge of Lucknow, dated the 31st of August, 1933.

(1) (1938) I.L.R., 50 All., 854.

(2) 19 Bom., L.R., 211.

(3) (1907) I.L.R., 34 Cal., 991.

(4) (1932) A.I.R., Pat., 213.

(5) (1933) A.I.R., Lah., 236.

of Police. That Sub-Inspector has proved that he took down the speech in shorthand, and afterwards wrote it out in longhand. Evidence was also given by two witnesses, Sant Bakhsh and Asghar Husain. These witnesses were present at the meeting, and signed the Sub-Inspector's shorthand notes after hearing them read over. These witnesses gave from memory some of the things said by Mr. Chandra Bhan Gupta.

This was the extent of the evidence on the prosecution side. Mr. Gupta admitted making a speech on the occasion in question, but he said that his speech was not correctly reported. He put in a written statement in which he explained at some length the views which he says he holds, and the views which according to him he expressed on the occasion in question. He also put in a copy of his speech as it was reported by the Sub-Inspector, in this copy he made certain alterations to bring the speech as reported into conformity with what, according to him, he actually said. In his written statement he said that he was not to be understood to admit that the Sub-Inspector's report of the speech was otherwise accurate verbatim, but he admitted that apart from the portions to which he took definite objection, the Sub-Inspector's report of the speech was substantially correct. In defence he called two witnesses, both advocates, who were present at the meeting on the 13th June, and both spoke at it. One of these witnesses, Mr. H. K. Dhaon, presided at the meeting. These witnesses gave their impressions of what Mr. Gupta said in his speech. The learned Magistrate who decided the case said at the end of his judgment that Mr. Gupta "preached the worst form of sedition to an excited public in days when public is easily excited against the Government". He accordingly ordered Mr. Gupta to furnish security under sections 108/118 of the Code of Criminal Procedure in the form which has already been set forth. There was an appeal to the learned Sessions Judge, who was of opinion that the order of the Magistrate was entirely justified, he accordingly dismissed the appeal.

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This application in revision was then presented in this Court.

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I have had translated the speech said to have been made by Mr. Gupta on the occasion in question. It seems to me that the following points clearly emerge :

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(1) he expressed complete lack of faith in Governmental inquiries;

(2) he belauded the motives of the revolutionary prisoners in the Andamans;

(3) he maintained that the course of history is on the side of the methods adopted by those prisoners, and alleged that nations that have attained freedom have attained it by the methods adopted by "our revolutionary brothers";

(4) he reprobated the action taken by the Government against these prisoners, who, according to him, were brave men who thought only of the freedom of their country, and were prepared to give their lives for it;

(5) the only remedy, he maintained, is the substitution for the present Government of a real national government.

According to the Sub-Inspector's report of the speech, Mr. Gupta also urged his hearers to follow in the steps of the revolutionary prisoners. This, however, is one of the portions which are alleged to have been incorrectly reported. According to Mr. Gupta, what he said was that his hearers ought to keep in mind the self-sacrifice of those men in order to put an end to their sufferings.

It was urged in the first place by the learned counsel for the applicant that the speech read as a whole cannot be described as being of a seditious nature. He made reference in that connection to certain observations made at the end of the judgment in the case of *Emperor v. Bal Gangadhar Tilak* (1). As regards the applicant's plea for the setting up of a national government, he made reference to the case *Beni Bhushan Roy v. Emperor* (2). His main contention, however was that

(1) 19 Bom., L.R., 211 (272).

(2) (1907) I.L.R., 34 Cal., 591.

the making of the speech in question was an isolated act on the part of Mr. Gupta, for which he could not legally be proceeded against under section 108 of the Code of Criminal Procedure. In support of that contention strong reliance was placed on the case of *Emperor v. Chiranji Lal* (1). The learned Judge who decided that case remarked as follows in the course of his judgment:

“To take proceedings under section 108 of the Criminal Procedure Code there ought to be evidence that, if not prevented, the person accused would continue to act in the way in which he had done. The words of the section are ‘disseminates, or attempts to disseminate’, and do not cover only one act, in which case the words would have been ‘has disseminated or has attempted to disseminate’. Both the courts deal with one particular offence as if they were trying a charge under section 153A of the Indian Penal Code, without inquiring into the reason why the applicant should be bound over. If the analogy of the action taken in this case were applied to other sections of Chapter VIII, evidence of the commission of one theft would be sufficient to bind a man over under section 110 of the Criminal Procedure Code, and one beating given by one man to another would be sufficient to bind him over under section 107 of the Criminal Procedure Code. When substantive offences are committed the law does not provide for an easy way of dealing with them under Chapter VIII of the Criminal Procedure Code. In the present case if Chiranji Lal, in spite of some of his notices being confiscated, had continued in other ways to give out other notices for publication, this would certainly have been a case to be dealt with under section 108 of the Criminal Procedure Code. In the present case what has been proved against him is the commission of *one* particular offence at one particular time

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(1) (1928) I.L.R., 50 All., 854.

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under section 153A, and there is no evidence whatsoever of his having done so before, or of his having an intention of doing so in the immediate future. In my opinion the proceedings under section 108 of the Criminal Procedure Code were not legally justified."

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This decision was considered in a case reported in *Gudri Chaudhry v. Emperor* (1), and was to some extent dissented from. The learned Judge who decided that case, however, held, in effect, that for the application of section 108 of the Code of Criminal Procedure there must be evidence to show that a repetition of the offence was probable, so that to that extent he was in agreement with the Allahabad decision that has been referred to. The Allahabad decision was also considered in a case reported in *Ramphul Singh and others v. Emperor* (2), but the facts there were distinguishable from those of the Allahabad case, and it is not necessary further to consider the above decision of the Lahore High Court.

In my opinion the contention raised on behalf of the applicant, and supported by the decision in *Emperor v. Chiranji Lal* (3), must prevail. Here, as in that case there is no evidence of Mr. Gupta's having made any other objectionable speech in the past, or of his having any intention of doing so in the future. In these circumstances, I think that the provisions of section 108(a) of the Code of Criminal Procedure could not properly be applied in respect of the isolated speech which he made on the 13th of June, 1933. That speech was made, as has been indicated already, on a special occasion, and at a meeting for a special purpose. In the view I take of the matter, it is not really necessary for me to consider whether the speech of Mr. Gupta contained any seditious matter, that is to say any matter the publication of which is punishable under section 124A of the Indian Penal Code. I feel bound to say, however, that in my opinion it can reasonably be held that by the speech

(1) (1932) A.I.R., Patna, 213.

(2) (1933) A.I.R., Lah., 236.

(3) (1928) I.L.R., 30 All., 854.

Mr. Gupta attempted to bring into hatred or contempt, and attempted to excite disaffection towards, the Government established by law in British India. The speech, however, was not of a particularly violent nature, and I doubt whether the Local Government, if approached under section 196 of the Code of Criminal Procedure for sanction to Mr. Gupta's prosecution under section 124A of the Indian Penal Code, would have thought it necessary to take any notice of the speech. That, however, is a matter which it is not necessary further to consider, though I must make it clear that Mr. Gupta was, in my opinion, seriously at fault in making the speech.

Holding that Mr. Gupta ought not to have been proceeded against under section 108 of the Code of Criminal Procedure in respect of this isolated speech, I set aside the orders that were made against him. I understand that he did not furnish the security demanded of him, and is accordingly in jail. He must be released at once.

Revision accepted.

PRIVY COUNCIL

KAMAKHYA DAT RAM *v.* KUSHAL CHAND
and connected appeals

[On appeal from the Chief Court of Oudh]

Will—Will of Oudh taluqdar—Bequest of taluqdari villages to son—"After him to his eldest son"—Absolute or life interest—Interpretation of will—Onus on appellant.

An Oudh taluqdar provided by his will that specified taluqdari villages were to pass to his son, S. R., "and after him to his eldest son under the rule of succession laid down by Act I of 1869." Other provisions of the will showed that when the testator wished to restrict his beneficiary to a life interest he knew the appropriate language to express his intention. The specified villages had not been made the subject of a declaration under U. P. Act II of 1900:

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*Present: LORD MACMILLAN, LORD WRIGHT, and SIR GEORGE LOWNDEN.