## APPELLATE CRIMINAL.

*Before Mr. Justice Mya Bu.*

1938
Nov. 22.

# LAY MAUNG *v.* THE KING. *

*Sedition—Political speeches and writings, manner of dealing with—Strong words and phrases—Spirit of the whole speech or article—Exciting contempt of Government—Ventilation of labourers' grievances against employers—Limited company and shareholders—Capitalists—" Class or classes of His Majesty's subjects "—Penal Code, ss. 124A, 153A.*

Great latitude is given to political speeches or articles. They must be dealt with in a free, fair and liberal spirit and one must not look merely to a strong word or phrase but to the whole article or speech. If, looking at the whole spirit and import of the article or speech, its necessary consequence is to excite contempt of His Majesty's Government, or to bring the administration of the law into contempt and impair its functions, then such article or speech comes within s. 124A of the Penal Code.

A speech delivered for the purpose of getting labourers to unite in making a demand for their real or fancied rights and privileges from their employers, and also to have some law promulgated for the protection of the labourers and for the improvement of the conditions under which they work, as the laws in existence are stated to operate favourably towards capitalists and detrimentally towards them, is protected by the Explanations to s. 124A. But not so, if the object of the speaker is to make the labourers feel discontented and dissatisfied with their lot which is attributed to the unfair operations of the prevailing laws and the alien character of the Government which is said to be favourable to the capitalists and prejudicial to the labourers and under whose rule the position of the Burmans is reduced to that of slaves.

*Queen-Empress* v. *B. G. Tilak*, I.L.R. 22 Bom. 112 ; *Regina* v. *A. M. Sullivan*, 11 Cox. 44 ; *Regina* v. *Burns*, 16 Cox. 355, followed.

A limited company or its shareholders as distinct from its employees cannot be designated as a " class or classes of His Majesty's subjects " within s. 153A of the Penal Code, and the term " capitalists " is too vague to denote a definite and ascertainable class to come within this section.

*Emperor* v. *Maniben*, I.L.R. 57 Bom. 253 ; *Raj Pal* v. *The Crown*, I.L.R. 3 Lah. 405, referred to.

*Chan Htoon* for the appellant.

*Tun Byu* (Government Advocate) for the Crown.

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* Criminal Appeal No. 1018 of 1938 from the order of the 2nd Additional Special Power Magistrate of Magwe in Criminal Trial No. 44 of 1938.

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MYA BU, J.—The appellant has been convicted under sections 124-A and 153-A of the Penal Code in respect of a speech which he delivered at Twingone in Yenangyaung on the 6th January last. His audience consisted of a large gathering of persons, mostly oil field labourers, who had assembled in response to the notice of a public meeting convened for the purpose.

The appellant was at the time president of a political organization or association known as the Dobama-asi-ayone at Rangoon. This organization has branches or kindred organizations at various centres of the country, but that at Rangoon was the main one. Its members are persons who style themselves "Thakins." Thus the appellant is known as Thakin Lay Maung.

The facts which led to the holding of the meeting at Twingone and to the delivery of the appellant's speech at that meeting may be gathered from the evidence, tendered by the defence, which is free from controversy.

Towards the end of December last the Dobama-asi-ayone of Yenangyaung passed certain resolutions to the effect, *inter alia*, that steps should be taken to have a Labour Protection Bill introduced in the House of Representatives and also to have more holidays and leave granted to oil field labourers by their employers. One of the members of that association was sent to Rangoon apparently to confer with the leading members of the association at Rangoon about giving effect to the resolutions. At the same time the Dobama Labourers' Asi-ayone by letter as well as by telegram requested the appellant and U Ba Hlaing (a Member of the House of Representatives representing one of the Labour Constituencies), to visit Yenangyaung in connection with the resolutions that they had passed. The result was that the appellant and U Ba Hlaing visited Yenangyaung and a public meeting of the oil field labourers

was convened. U Ba Hlaing acted as chairman of the meeting and Thakin Lay Maung delivered the speech which was recorded by a Sub-Inspector of Police of the Criminal Investigation Department in shorthand which was duly transcribed. The speech was in Burmese and the transcript covers more than eight pages of closely written foolscap.

The charges framed against the appellant are—

(1) that he on the 6th January 1938, at Twingone at a public meeting "by speaking the words shown in the list X annexed hereto attempted to bring into hatred or contempt or attempted to excite disaffection towards the Government established by law in British Burma, and thereby committed an offence punishable under section 124-A of the Penal Code," and

(2) that he on the same day and at the same time at Twingone at a public meeting "by speaking the words shown in the list Y annexed hereto attempted to promote feelings of enmity or hatred between different classes of His Majesty's subjects namely the oil field labourers on the one hand and capitalists (B.O.C.) on the other hand, and thereby committed an offence punishable under section 153-A of the Penal Code."

As will be seen from a perusal of the speech the appellant, in the course of it, took pains to change the mental attitude of his listeners or labourers by telling them that they were the benefactors of the companies and capitalists—not that the latter were their benefactors—because, unless the labourers did the work, the companies or capitalists would not be able to carry on their businesses and would have to leave the country. He exhorted the labourers to be united in the making of their demands for their rights and privileges from their employers and in striving to have the Labour Protection Law promulgated. In his attempt to change the mental attitude of the labourers he made various statements affecting not only the companies or capitalists concerned but also Government.

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[His Lordship set out 14 statements the purport of which appears later in the judgment.]

The speech has been read several times during the lengthy hearing of this appeal and with reference to the charge under section 124-A. I have been guided by the principles enunciated by Fitzgerald J. in *Reg.* v. *Alexander Martin Sullivan and another* (1) where his Lordship in his charge to the jury observed :

"I invite you to deal with the case, which is a grave and important case, in a fair, free, and liberal spirit. In dealing with the articles you should not pause upon an objectionable sentence here, or a strong word there. It is not mere strong language, such as 'desecrated court of justice,' or tall language, or turgid language that should influence you. You should, I repeat, deal with the articles in a free, fair, and liberal spirit. You should recollect that to public political articles great latitude is given . . . . you should not look merely to a strong word or a strong phrase, but to the whole article, . . . . Viewing the whole case in a free, bold, manly and generous spirit towards the defendant, if you come to the conclusion that the publications indicted either are not seditious libels, or were not published in the sense imputed to them, you are bound, . . . . to find a verdict for the defendant . . . . If, on the other hand, on the whole spirit and import of these articles you are obliged to come to the conclusion that they are seditious libels, and that their necessary consequences are to excite contempt of Her Majesty's Government, or to bring the administration of the law into contempt and impair its functions—if you come to that conclusion, either as to the articles or prints, or any of them, then it becomes your duty honestly and fearlessly to find a verdict of conviction."

It is to be observed that promoting class hatred is not included in the offence of sedition in India but the principles enunciated by Cave J. in *Reg.* v. *Burns and others* (2) also afford a sound guide upon the question of the intention which is one of the factors to be

(1) (1868) 11 Cox. 44. (2) (1886) 16 Cox. 355.

determined in considering the charge framed. His Lordship said :

"If you think that these defendants, . . . from the whole matter laid before you . . . had a seditious intention to incite the people to violence, to create public disturbances and disorder, then undoubtedly you ought to find them guilty. If from any sinister motive, as, for instance, notoriety, or for the purpose of personal gain, they desired to bring the people into conflict with the authorities, or to incite them tumultuously and disorderly to damage the property of any unoffending citizens, you ought undoubtedly to find them guilty. On the other hand, if you come to the conclusion that they were actuated by an honest desire to alleviate the misery of the unemployed—if they had a real *bona fide* desire to bring that misery before the public by constitutional and legal means, you should not be too swift to mark any hasty or ill-considered expression which they might utter in the excitement of the moment."

It seems to me impossible to read the speech in question without being impressed by the fact that, although it was a speech delivered for the purpose of getting the oil field labourers to unite in making a demand for their real or fancied rights and privileges from their employers, and also to have some law promulgated for the protection of the labourers and for the improvement of the conditions under which they work—because the laws in existence operate favourably towards capitalists and detrimentally towards them—there was also the object of making his listeners feel discontented and dissatisfied with their lot which the appellant attributed to the unfair operations of the prevailing laws and the alien character of the Government which is favourable to the capitalists and prejudicial to the labourers. After reading the speech many times the impression that is left in me is that the appellant was out to attack not only the Burmah Oil Company or the Indo-Burma Petroleum Company, for which the oil field labourers work, but also the laws and rules framed

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by Government which, according to him, are unjust to labourers and to those who are in sympathy with the labourers but partial to the capitalists or employers.

Under Explanations 2 and 3 to section 124-A of the Penal Code, comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, and comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under that section. The limits to which a speaker or writer can go in making such comments are summarized by Strachey J. in *Queen-Empress* v. *Bal Gangadhar Tilak and Keshav Mahadev Bal* (1) as follows :

> " A man may criticize or comment upon any measure or act of the Government, whether legislative or executive, and freely express his opinion upon it. He may discuss the Income-Tax Act, the Epidemic Diseases Act, or any military expedition, or the suppression of plague or famine, or the administration of justice. He may express the strongest condemnation of such measures, and he may do so severely, and even unreasonably, perversely and unfairly. So long as he confines himself to that, he will be protected by the explanation. But if he goes beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers,—as for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people,—then he is guilty under the section, and the explanation will not save him."

Thus these Explanations have no application whatever unless the criticisms are concerning the measures Government or the administrative or other action of Government and that, too, without exciting or

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(1) (1898) 22 Bom. 112, 137.

attempting to excite hatred, contempt or disaffection. The object of the Explanations is to protect *bona fide* criticism of public measures and institutions with a view to their improvement, and to the remedying of grievances and abuses, and to distinguish this from attempts, whether open or disguised, to make the people hate their rulers.

What the appellant did by his speech was to criticize the measures of Government and its administrative or other action, but he overstepped his bounds by imputing base or improper motives to Government which he described as the foreign rule under which the position of the Burmans is reduced to that of slaves.

In this case it is unnecessary for me to determine whether the speech as a whole or the passages of the speech which are reproduced in list Y attached to the charge are such as were calculated to promote feelings of enmity or hatred between different classes of His Majesty's subjects because, in my opinion, the charge under section 153-A is misconceived and must, therefore, fail quite irrespective of the character of the speech or the passages set out in list Y.

In the charge the different classes of His Majesty's subjects were described as oil field labourers and capitalists (B.O.C.).

In the concluding portion of his judgment the learned Magistrate observed that the effect of the speech was to promote feelings of enmity or hatred between two classes of people—those who control the policy of the Burmah Oil Company and those who are clerks, coolies and workers of the Burmah Oil Company. I do not find any warrant for this classification in the evidence in the case. The speech was directed against the employers of oil field labour. These employers are the two Companies : the Burmah Oil Company and the Indo-Burma Petroleum Company.

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Bearing in mind the ordinary meaning of the word "class" or "classes" I find it impossible to designate a joint stock company as a "class of His Majesty's subjects" or to designate the shareholders of a company, as distinct from the employees or labourers of the company, and the latter, respectively, as "classes of His Majesty's subjects." Lord Lindley defines a company thus :

> "By a company is meant an association of many persons who contribute money or moneys worth to a common stock and employ it for a common purpose. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it or to whom it belongs are members."

By speaking of the Burmah Oil Company or the Indo-Burma Petroleum Company their respective shareholders are referred to and they are spoken of as capitalists.

In *Emperor* v. *Miss Maniben L. Kara* (1) it was held that "capitalists" was an expression too vague to denote a definite and ascertainable class so as to come within section 153-A of the Penal Code and it was pointed out that the word "classes" in that section included any definite and ascertainable class of His Majesty's subjects although the classes may not be divided on racial or religious grounds. In *Raj Pal* v. *The Crown* (2) it was pointed out that a class or section of His Majesty's subjects contemplated by section 41 of the Indian Press Act (I of 1910) connotes a well-defined group of His Majesty's subjects and it was held that police officials stationed at a certain town did not constitute a "class" or "section" of His Majesty's subjects within the meaning of the section. In section 153-A of the Penal Code the term "section"

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(1) (1932) I.L.R. 57 Bom. 253. (2) (1922) I.L.R. 3 Lah. 405.

does not appear but if a group of police officials stationed at a certain town does not constitute a "class of His Majesty's subjects", and if capitalists is an expression too vague to denote a "class of His Majesty's subjects" it is, in my opinion, impossible to conceive of shareholders of joint stock companies forming a "class of His Majesty's subjects" within the meaning of section 153-A of the Penal Code. Therefore, even if the speech be regarded as being calculated to create hatred or enmity against the Burmah Oil Company or the Indo-Burma Petroleum Company or the shareholders of these Companies, the making of the speech is not punishable under section 153-A of the Penal Code.

According to my reading of the appellant's speech, the only conclusion that I can come to is that the appellant intended, by certain passages of his speech, to excite disaffection towards the Government. But whether the conviction is valid or not depends not only upon whether the speech amounted to an act calculated to excite disaffection towards the Government, but also upon the question whether, upon the charge as framed, his conviction under section 124-A can be sustained.

It will be found that in list Y, which is referred to in the charge, certain passages of the speech were set out and the appellant was charged with having attempted to excite disaffection towards the Government by speaking the words shown in that list. The list does not cover all the passages that I have detailed above but the first extract which is set out, read by itself, may not amount to anything more than pointing out the consequences of certain restrictive laws, whereas the second extract says that the Government gets displeased when those in sympathy with the labourers and cultivators tell the latter their rights.

The third extract also deals with the evil effects of the restrictive measures imposed by Government which make life not worth living in this country. The fourth extract points out the fact that Thakins have to go to jail on account of these restrictive laws when they make speeches for the benefit of the labourers and cultivators. The fifth extract stresses the hard-hearted attitude of the employers towards the labourers; urges the labourers to be united in their demands for their rights and privileges; emphasizes the fact that the laws do not afford protection to the labourers to secure their just demands; that the forces of law and order and the administration of justice were not favourable to the making of such demands and that the country belonging to the Burmese people is being unlawfully dominated over and that against this no redress is available. The sixth extract alleges that on the side of the Government and capitalists are arrayed all the forces of the Crown for the maintenance of law and order but on the side of those who preach for the benefit of the labourers and cultivators there are none. The seventh extract states that the restrictive laws and regulations have been framed for the good of the Government and the Burmah Oil Company.

There are passages which do not appear in list X which it would have been more appropriate to have inserted in this list: passages in which references are made to the alien form of Government, the foreign rule and the like. In the literal translation of the Burmese expression the term "foreigners" appears but in its real purport it means the foreign rule.

It has been contended that these passages which are inserted in list X are not by themselves capable of producing in the minds of the audience a feeling of hatred or disaffection towards Government. If I accede to this contention I shall have to uphold the contention

that on account of the defect in the framing of the charge the conviction must be set aside, but I find myself unable to accede to this contention. Even if the passages which are more obnoxious for the purpose of the charge under section 124-A have to be overlooked in the attempt to ascertain the intention of the speaker in uttering the words contained in the passages which are reproduced in list X, I think they are in themselves calculated to create disaffection in the minds of the listeners towards Government. To tell a crowd of people, such as the labourers, that those who are in sympathy with them are unjustly prevented from telling them their rights and are punished for doing so ; that Government and the laws that are framed are partial to the interests of the employers and detrimental to those of the labourers who are, therefore, unable to get redress ; that the Burmese people are being dominated over, meaning that the Burmese people are under the domination of a foreign rule, cannot, in my opinion, but produce such a feeling of discontent in the minds of the labourers with their lot as would give rise to a feeling of disaffection towards the authority that has brought about their sad lot and the sad lot in which the Burmese people are placed. The domination that is referred to cannot be understood by the listeners to mean any other domination than that of the foreign Government. Therefore, although the charge does not refer specifically to the passages which are more directly obnoxious, I find sufficient material in the passages referred to to constitute an attempt on the part of the appellant to create disaffection towards the Government.

For these reasons I hold that the conviction and sentence passed on the appellant under section 153-A of the Penal Code must be set aside and the appellant must be acquitted of that charge, but I uphold the conviction under section 124-A of the Penal Code.

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The sentence passed by the trial Court against the appellant for this offence is nine months' rigorous imprisonment. Upon the question of sentence it has been brought to my notice that the prosecution was launched after some lengthy delay. Five and a half months elapsed between the date of the speech and the date of the filing of the complaint. This may be due to many executive reasons but what I am concerned with is the degree of the gravity of the offence. The degree of the inflammatory character of the speech is, I may say, not as high as in most cases of sedition. There can be no doubt that the predominating object was to exhort the labourers to be more spirited in their attitude towards their employers, to shake off their slavish mentality, to assert their rights and privileges and their position in the industry in which they were employed. Another circumstance which weighs with me in the assessment of the punishment in this case is that the appellant was about two and a half months in custody during the pendency of the trial. Considering all these circumstances, in my opinion, the sentence awarded by the trial Court is excessive and I consider that a sentence of four months' rigorous imprisonment will meet the ends of justice. Therefore, while confirming the conviction under section 124-A of the Penal Code, I reduce the sentence to rigorous imprisonment for four months.