

CRIMINAL REVISION.

Before Mr. Justice Mosely.

THE KING v. U DATTHANA.*

1940

Aug. 23.

Sedition—Violent, inflammatory and contemptuous expressions towards Head of Government and his government.—Overt attempt at rebellion by speech—Deterrent and severe sentence necessary—Direct incitement to revolt, a grave offence—Aggravation of offence in war time.

Where the accused in making a seditious speech has used violent, inflammatory and contemptuous expressions towards the Head of the Government and towards the Government established by law in Burma and has made an overt attempt by his speech to persuade the people to rise in active and open rebellion against Government, a severe and deterrent sentence should be imposed.

Direct incitement to revolt against Government is an offence of enormity at any time, but even more so in time of war.

Lay Maung v. The King, [1939] Ran. 239, distinguished and explained.

Chan Htoon Aung for the Crown.

Accused in person.

MOSELY, J.—The respondent U Datthana, a Buddhist monk aged 44, was sentenced by the 2nd Additional Magistrate, Myingyan (a Special Power Magistrate), to two concurrent terms of six months' rigorous imprisonment on two charges under section 124A of the Penal Code, for making speeches on two successive days, the 19th and 20th February 1940, at Natogyi and Taungtha, in which he attempted to bring into hatred or contempt or excite disaffection towards the Government established by law in Burma.

Application has now been made by Government for enhancement of these sentences on the ground that, considering the grave character of the offence committed, they are entirely inadequate.

I have heard the learned Government Advocate for the Crown and also the respondent. The respondent

* Criminal Revision No. 374B of 1940 from the order of the Second Additional Special Power Magistrate of Myingyan in Cr. Regular Trial No. 50 of 1940.

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only contends that the sentences were a sufficient punishment.

The first speech at Natogyi was delivered to an audience of about 200 people. Some members of the Thakin party spoke after the respondent. The respondent began by saying that it had not been arranged that he should speak. He said that he had been delivering speeches on politics at various places since January 20th. He would not speak on religious topics.

[His Lordship gave extracts from the speech.]

There is no doubt, as the learned Magistrate found, that the whole speech was correctly taken down by the short-hand reporter, as is testified by him and by the persons to whom it was read and who certified its correctness.

This speech was from start to finish a violent and dangerous incitement to the Burmese people to rise in rebellion against the Government established. It was also calculated to bring the Government into hatred and contempt. An educated man who distorts and misrepresents the facts and who tries to incite an audience, many of whom are drawn from an ignorant, excitable and easily gullible class, is far more guilty in my opinion than his miserable dupes on whom heavy sentences of imprisonment are inflicted if they are led by such inflammatory speeches playing on their passions and prejudices to rise in actual revolt.

In the second speech the respondent again prefaced his remarks by declining to speak on religious matters.

[His Lordship gave extracts from this speech.]

This speech also was duly proved by the short-hand writer and the witnesses who attested it.

As the Magistrate remarked, no speeches could conceivably be more seditious than these. It is

incorrect, I think, to say, as the Magistrate said, that the key-note of the second speech was "I want to stay inside the jail with the convicts and rise in rebellion. The reference to the speaker's experiences in jail was merely an attempt to excite the sympathy of his audience. The key-note of the speech was the oppression of the people by the Government, the contemptible character of that Government, and the need for the people to rise in rebellion against it.

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Although the Magistrate considered these speeches to be of an extreme character and dangerously seditious, he yet imposed the entirely inadequate sentence of a total of six months' rigorous imprisonment. The Magistrate failed to consider not merely the nature of the speeches themselves but the highly critical times which existed when the speeches were delivered. Direct incitement to revolt against Government is an offence of enormity at any time, but even more so when a nation is engaged in war against its external enemies.

As a reason for such extraordinarily light sentences the Magistrate quoted *Lay Maung v. The King* (1). A sentence of four months' rigorous imprisonment only was imposed under section 124A on appeal to this Court. That was a totally different case and the Magistrate has entirely misconstrued what was laid down there if he thought that it had any application whatever to a case such as the present one. *Lay Maung's* case was one of 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 laws promulgated for amelioration of their conditions of work. That was the main object of that speech, but there was also the object of making the speaker's listeners feel discontented with their lot, a discontent which the speaker attributed to the unfair

(1) [1939] Ran. 239.

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operations of the prevailing laws and to the alien character of the Government, which was favourable to capitalists and prejudicial to labourers. The speaker's comments in *Lay Maung's* case expressed in part merely disapprobation of the measures or administrative action of Government with a view to obtain their alteration by lawful means. At the same time the speaker transgressed by adding to these comments what amounted to an attempt, though in that case not a dangerous one, to excite hatred, contempt or disaffection towards Government.

It would appear that in that case violent, inflammatory and contemptuous expressions were not used against the Head of the Government and his principal ministers of Government such as were used in the present case. Much less in that case was there any overt attempt whatever to persuade the people to rise in active and open rebellion against Government.

Circumstances alter cases, and it may be that at the present juncture one might well feel inclined to impose a severer sentence in a case similar to that of *Lay Maung* for the infinitely milder type of offence committed by him there. But for the offences committed in the present case there can be no doubt that severe and deterrent sentences are necessary.

In revision it will be ordered that the sentence on the first charge under section 124A be enhanced to one of two years and six months' rigorous imprisonment. In view of this I do not think it necessary to pass a very severe sentence on the second charge, though the speech was equally virulent and violent. The sentence on the second charge will be enhanced to one of nine months' rigorous imprisonment, the sentences to run consecutively—a total of three years and three months' rigorous imprisonment in all, the prisoner to be recommended to be placed in the B class in which he is now.