

1912.
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 RADHA
 KANTA
 CHAKRA-
 VARTI
 v.
 RAMANANDA
 SHAHA.
 ———
 CHATTERJEE
 J.

the mortgagor in collusion with the lessor and the second mortgagee incurred a forfeiture of the mortgaged leasehold and took a fresh lease from the landlord, but was not allowed to set up this lease in answer to the suit of the mortgagee. The case of *Debendra Nath Sen v. Mirza Abdul Samed Seraji* (1) may also be referred to as supporting this conclusion.

In the result, therefore, I agree with Mr. Justice Chitty and hold that the appellant, the defendant No. 6, is estopped from raising the plea of non-transferability.

O. M.

Appeal dismissed.

(1) (1909) 10 C. L. J. 150.

APPELLATE CRIMINAL.

Before Mr. Justice Caspersz and Mr. Justice Shurfuddin.

SURENDRA NARAYAN ADHICARY

v.

EMPEROR.*

1911
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 May 10.

Sedition—Publication, proof of—Necessity of proving, posting, or printing and publishing under the directions of the accused, when it is shown that the handwriting is his, and that the seditious matter was actually printed and published—Seditious manuscript transmitted by post but intercepted before it reached addressee—Attempt to commit sedition—Penal Code (Act XLV of 1860) s. 124A.

It is not necessary, in order to establish the fact of publication of seditious matter transmitted through the post office, on a charge under s. 124A of the Penal Code, to prove the actual posting, nor that it was printed and published under the directions of the accused. If the seditious writing is shown to be in the handwriting of the accused, and it is further proved that the contents were in fact printed and published, there is sufficient evidence of publication by him.

Regina v. Lovett (1) followed.

* Criminal Appeal No. 277 of 1911, against the order and sentence passed by Umesh Chandra Sen, Deputy Magistrate of Malda, dated Dec. 5, 1910.

(1) (1839) 9 C. & P. 462.

The sending through the post of a packet containing a manuscript copy of a seditious publication with a covering letter requesting the addressee to circulate it among others, when the same was intercepted by another person and never reached the addressee, constitutes an attempt within the purview of s. 124A of the Penal Code.

THE appellant was tried before Babu Umesh Chandra Sen, Deputy Magistrate of Malda, on a charge under s. 124A of the Penal Code, and convicted and sentenced thereunder, on the 15th December 1910, to two years' rigorous imprisonment. The prosecution story was that Surendra made manuscript copies of certain seditious printed articles and posted them, on the 13th August 1910, at the Panchanpur Post-office, addressed to Durjodhan Das, a student in the Malda Zilla School, with a covering letter requesting the addressee and others to circulate the same amongst others. The packet was intercepted by the Headmaster and never reached the addressee. The fact of its having been posted by the appellant himself at the post-office was established by the Post-master and the *khas-mahal* tahsildar. The handwriting of the manuscript was proved by direct evidence, by a comparison of the disputed writing with the admitted or proved writing of the appellant, and by circumstantial evidence. The printed originals of the manuscript copies were discovered in a locked bag belonging to him, the key of which he produced himself: while the paper of the incriminating copies corresponded exactly in texture, water-mark, and general appearance with the folded papers found in his possession.

Mr. B. C. Chatterjee and *Babu Debendra Nath Bhattacharjee*, for the appellant.

Mr. Sultan Ahmed (Offg. Deputy Legal Remembrancer), for the Crown.

CASPERSZ AND SHARFUDDIN JJ. The appellant, Surendra Narayan Adhicary, has been convicted under

1911

SURENDRA
NARAYAN
ADHICARY
v.
EMPEROR.

1911
 SURENDRA
 NARAYAN
 ADHICARY
 v.
 EMPEROR.

section 124A of the Indian Penal Code, on a charge of sedition, in that he made manuscript copies of certain seditious writings and circulated them through the post to one Durjodhan Das, a student in the Malda Zilla School. It is conceded, and we have satisfied ourselves, that the writings are seditious. But it has been urged by learned counsel for the appellant, *first*, that the appellant did not post or publish the packet in question; *secondly*, that he did not write the incriminating matter; and, *thirdly*, that the sentence of two years' rigorous imprisonment is too severe, because the seditious writings were intercepted by the Head-master and were not read by the addressee.

We have examined the evidence, and in our opinion the facts are beyond all reasonable doubt. The Post-master proves that the packet was posted at his office, and he saw the appellant, with whom he was acquainted, at his post-office on a market day, the 13th August 1910 (the date of posting the packet), being such a day. The *khas-mahal* tahsildar gives similar evidence, and we believe these witnesses. Moreover, it is not necessary to prove the actual fact of posting in a case as this. In *Reg. v. Lovett* (1), which was a case of seditious libel, it was ruled that if the manuscript of a libel be proved to be in the handwriting of the defendant, and it be also proved to have been printed and published, this is evidence to go to the Jury that it was published by the defendant, although there be no evidence given to shew that the printing and publication was by the direction of the defendant. The Jury found Lovett guilty.

The substantial question in this case is whether the appellant wrote the manuscript papers. As to this, there is direct evidence and the evidence of comparison of the handwriting with the admitted or

(1) (1839) 9 C. & P. 462.

proved handwriting of the appellant. There are also certain circumstances connecting the appellant with contents of the packet sent to Durjodhan Das.

The appellant was a private tutor, and three of his pupils have deposed to having seen him write. They say that the manuscript papers are in his handwriting, and that they saw him write them. The relation of tutor and pupil is an intimate one; the appellant and these boys were constantly together, and the appellant had no reason to apprehend that his pupils were watching his proceedings, which he conducted unsuspectingly. In the circumstances we think that the three witnesses are witnesses of truth. They are also amply corroborated. In no sense were the boys accomplices of the appellant in the commission of the offence of sedition. It has been urged that the statements made by the boys to the Police Inspector were not produced in Court. But we accept the explanation that no statements were recorded; the Inspector made notes for his report, and the provisions of section 161 of the Code of Criminal Procedure were not followed.

Then, there is the evidence of comparison of handwritings. Mr. Hardless, Junior, the expert witness, has deposed to the identity. He no doubt has received a training on the subject. But he has not much experience, his age being only 22, and he does not know Bengali to any great extent. We have preferred to make the comparison for ourselves, and, so far as we can see, the writing in the seditious papers is that of the appellant. We may add that the deposition of the expert witness is very illegible, and that his cross-examination was stopped by the Magistrate, for reasons which we do not appreciate. With regard to the papers with which the comparison has been made, there is no denial that they were written by the

1911

SURENDRA
NARAYAN
ADHICARY
v.
EMPEROR.

1911
 SURENDRA
 NARAYAN
 ADHICARY
 v.
 EMPEROR.

appellant; a comparison may, therefore, be legitimately made with these papers.

Lastly, the circumstantial evidence that the appellant wrote the seditious papers is exceedingly strong. The printed originals of the manuscript copies sent to Durjodhan Das were found in the locked bag of the appellant, and he produced the key of that bag. The paper of the copies, in texture, water-mark, and general appearance, corresponds exactly with the folded papers found in the possession of the appellant. The judgment of the Magistrate deals fully with the various details of the case for the Crown, and we need not consider it further.

On the question of sentence, we observe that the appellant is a young man, and that his offence amounted to an attempt only. Section 124A, however, includes an attempt in the definition of the offence of sedition. Attempt does not imply success. The intention of the appellant is plain from the fact that his covering letter was addressed to Durjodhan and others, and from the direction to his addressees to circulate the seditious papers to others. The copies having been posted and sent on by the appellant, their further progress was independent of the volition or action of the appellant.

The corruption of the minds of the young, whether by means of obscene matter or seditious writing, is a most serious offence. The appellant has never expressed any contrition. In these views, we are unable to find any principle on which the severity of the sentence passed can be diminished. The appellant was working on a system; his offence was not a solitary lapse from the dictates of law and loyalty.

Affirming the conviction and sentence, we dismiss this appeal.

E. H. M.

Appeal dismissed.