

The Public Prosecutor Vs N. Venkatarama Naidu

None

Court: Madras High Court

Date of Decision: Feb. 18, 1943

Acts Referred:

Evidence Act, 1872 " Section 159

Citation: AIR 1943 Mad 542 : (1944) ILR (Mad) 113 : (1943) 56 LW 266 : (1943) 1 MLJ 342

Hon'ble Judges: Mockett, J

Bench: Division Bench

Judgement

Mockett, J.

The Provincial Government appeals against the acquittal of one Venkatarama Naidu for an offence under Clause 6 of the

Defence of India Rules. It is alleged that offences under sub-clauses (e),(f),(g) and (K) were committed. The accused made a speech on the 26th

April, 1942, at Pedda Kammappalle at a peasants' conference at which a thousand people or so were present, and it is said that the speech

involved bringing into hatred and contempt, or excited dissatisfaction towards His Majesty's Government, that it went to promote feeling of enmity

and hatred between the ryots and zamindars and proprietors who are subjects of His Majesty; that it caused fear and alarm to the public and that it

influenced the conduct of the public to the efficient prosecution of the present war. The speech in my view taken as a whole unquestionably went

far beyond the bounds of legitimate discussion and criticism. It begins by a description of the zamindars as devils and cheats and thieves, and it

threatens the police with the strength of the peasants pointing out that they could at any time have their turbans and badges removed and also be

dismissed. Throughout the meeting it called upon its listeners to destroy the Government. The speaker is a little inconsistent because, although at

the beginning of his speech he prefers the presence of the Japanese or Germans to that of the present regime, nevertheless at the end he says he

would fight Hitler or the Japanese and drive them away. But owing to this constant incitement to destroy the Government and the zamindars and

proprietors and establish another Government it is in my view as clear as can be that the offence charged was committed by the speech taken as a

whole.

2. Learned Counsel for the respondent has had great difficulty in arguing otherwise. But the Magistrate has acquitted the accused mainly on the

following ground, and has not been so much concerned with the nature of the speech. The evidence was that of a shorthand Sub-Inspector, an

expert in Telugu shorthand, who attended the meeting. He says that the accused made a speech about the war and political events. "" Ex. A is the

shorthand note I took down. I transcribed it into Telugu. Ex. B is the transcription. Ex. C is the translation of the speech. In hoisting the red flag he

made the speech. The effect this speech had on the audience was to incite them with revolutionary ideas."" The effect of the cross-examination was

to establish quite clearly that he was a competent shorthand writer and that he did make a careful note of the speech. The Magistrate has however

held that by reason of a decision of the Lahore High Court the speech was not satisfactorily proved. The decision in question is that of Blacker, J.,

reported in Pindi Das v. Emperor AIR 1938 Lah. 629. The learned Judge relied on an observation of Jailal, J., in the case reported in Jagannath v.

Emperor AIR 1932 Lah. 7 and it reads as follows:

A witness who professes to prove something spoken by another is expected to repeat in the witness box what the latter has actually stated. He can

of course refresh his memory by referring to any writing made, or any notes taken down by him at the time when the speech was made. He can

also use such writing or notes to corroborate his oral testimony. In some cases it is open to a witness merely to refer to a document and to say that

it contains a correct statement of what happened in his presence; but in that case he must depose that he is unable to state from memory what

happened as owing to lapse of time and other circumstances he has forgotten it and further that he correctly recorded in the document what he had

heard or witnessed. In such cases that document itself becomes primary evidence in the case.

In this case P. W. I the shorthand Sub-Inspector was deposing on the 20th May, 1942, as to what was said in a speech on the 26th April, nearly a

month before. I am not prepared to agree that under such circumstances the omission of a witness to state that he is unable from memory to recite

a speech which covered twenty minutes a month before is of importance. Quite obviously nobody could pretend to do such a thing. If he said he

could, nobody would believe him. No decisions of the Madras High Court have been cited. In my view it is a question of fact on the evidence in

each case as to whether the Court is satisfied that it has before it a correct statement of the speech. u/s 159 of the Indian Evidence Act notes" of

the speech can be used to refresh the memory of the shorthand writer witness. The shorthand writer can of course only say, "" I took down a

speech and the result is in my shorthand note book, and this is what he said."" Under section 160 it must be observed that a witness may also

testify to facts mentioned in any such document, that is to say, any document mentioned in Section 159 (which would include the shorthand notes

and its transcription) although he has no specific recollection of the exact facts, i.e., exact words if he is sure the facts (words) were correctly

recorded in the document. Applying that to the present case the effect of the evidence of the shorthand Sub-Inspector was that he attended the

meeting that he took down the speech (and he gave a resume of the speech) and he stated that what was before the Court was a correct

representation of the speech. I do not think there is so much room for technicality in a matter of this sort as the Magistrate supposes. In another

decision of the Lahore High Court reported in *Om Prakash v. Emperor* (1930) 127 I.C. 209 Tapp, J., held that notes of a speech taken by a

police officer at the time can be admitted in evidence and it was not necessary that the officer should be made to testify orally after referring to

those notes. I would prefer that the police officer should describe his attendance, the making of the relevant speech and give a description of its

nature so as to identify his presence there and his attention to what was going on. After that I think it is quite enough if he says, "" I wrote down that

speech and this is what I took down."" After that it seems to me that the prosecution will be in a position to say that they have to the best of their

ability proved the words said to have been uttered. It is possible by cross-examination and contrary evidence to show that the shorthand note is

inaccurate. From the prosecution point of view, I do not see what more they can do. It is unnecessary to follow the Magistrate through his minute

criticisms. The Magistrate was so occupied with a consideration of extremes of technicality with regard to the proof of this speech that he seems to

have lost sight of what I will describe as the commonsense view of the matter and never really applied his mind to the proper test, viz., had it been

proved that the observations of the accused were correctly contained in the exhibit professing to be the translation of his speech. It might

(especially in this case) be emphasised that commonsense and law are not strangers to each other. That test applied, there can only be one answer,

because the evidence seems to be all one way.

3. That being so, having held that the speech was proved and that on the face of it, it is obviously an offence against the relevant provisions of the

Defence of India Rules, I have no alternative except to allow the appeal of the Crown and convict the accused of the offence charged. With regard

to sentence, the accused is a detainee. He has put in an apologetic statement and has expressed a desire to withdraw his speech if it is thought to

be inflammatory. It is unnecessary to do more than pass a sentence in vindication of the law. Had he persisted in the view that this was a proper

speech, it might have been necessary to pass a very severe punishment. But in the view of his present status as a detainee and in view of his

apology I think it is unnecessary to do more than to pass a sentence of two months" simple imprisonment which period must necessarily coincide

with his detention.