

Jainarain Sah Vs Emperor

None

Court: Patna High Court

Date of Decision: July 27, 1943

Citation: AIR 1944 Patna 16

Hon'ble Judges: Varma, J; Shearer, J

Bench: Full Bench

Judgement

Varma, J.

The petitioner Jainarain Sah has been convicted under Rule 88(a), Defence of India Rules, and was originally sentenced to five years" rigorous imprisonment which was modified on appeal to three years" rigorous imprisonment. The facts of the case have been summarised

by the learned Magistrate and I reproduce the summary of the facts from the judgment of the trial Court. On the evening of 20th August 1942, at

about 7 P. M. the accused called out to the people in Gola Bazar, Muzafiarpur, intimating them that the time was up to listen to the news from

Japan on the radio. Some ten or twelve men collected. The radio was running in a room upstairs. The accused told the people the radio news: ""Do

char roz me Japan yahan a jaega, Sarhar yahan aur nehi lar sahega.

2. The accused then took the men collected upstairs where the radio was on. This matter was brought to the notice of the District Magistrate, and

after some inquiry the petitioner was arrested. The charge was framed on 14th September 1942, to which the accused pleaded guilty, and on the

same date gave an undertaking not to repeat the offence again. Upon this the learned Magistrate sentenced him to five years" rigorous

imprisonment. The sentence that we have to deal with now is the sentence of three years" rigorous imprisonment passed by the appellate Court.

On the face of it, the sentence is unnecessarily severe Courts, while awarding sentence, should be cautious in making the sentence proportionate to

the nature of the offence committed and should not award sentence which may seem to be of a vindictive nature. An unnecessarily severe n

sentence is apt to defeat the object for which it is passed.

3. In this case looking at the facts which I have quoted, I am of opinion that the sentence is unduly severe. The sections prescribing sentences give

the limit to which a sentence can be passed, but that does not mean that the maximum sentence should be awarded in each case. The extent of

sentence has to be judged upon the circumstances of each case. In the present case, I understand that the petitioner has been in jail ever since he

was arrested. I think the ends will be served if the sentence is reduced to the period already undergone by the petitioner, and I direct accordingly. I

understand from Mr. Jaleshwar Prasad that there was some talk of an appeal before the Sessions Judge by the petitioner. There is no definite

information on the subject. In view of the order passed now, Mr. Jaleshwar Prasad says that the appeal even if filed will not be pressed.

Shearer J

4. I am in complete agreement with the observations that have just fallen from my learned brother. The petitioner has been convicted in respect of a

casual remark purporting to repeat some quite ridiculous and fantastic claim made in a Japanese broadcast. What he said consisted of less than

twenty words and was said in the presence of less than a dozen persons. Not one of these persons seems to have made any comment on it at the

time, or to have attached any significance to it at all. Certainly the individual who was indirectly responsible for the prosecution of the petitioner did

not do so. What appeared to him to be reprehensible was not the remark which the petitioner made, but his conduct in listening to a Japanese

broadcast and in inviting others to listen to it along with him. The sentence, which the Courts below have seen fit to impose, might, perhaps, have

been justified if the petitioner had made a set speech to an excitable audience calculated and intended to interfere with the war effort.

5. Having regard, however, to what the petitioner actually did, the sentence was utterly disproportionate and was, in my judgment, not unlikely to

do harm by creating the impression that there must be something in the claim made by the Japanese if the authorities thought it necessary to punish

the mere casual repetition of it so severely.