(1920) 12 BOM CK 0015

Bombay High Court

Case No: None

Kali Nath Roy		APPELLANT
	Vs	
The King-Emperor		RESPONDENT

Date of Decision: Dec. 9, 1920

Acts Referred:

- Penal Code, 1860 (IPC) - Section 124A

Citation: (1921) 23 BOMLR 709

Hon'ble Judges: Viscount Cave, J; Phillimore, J; John Edge, J; Dunedin, J; Ameer Ali, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Viscount Cave, J.

The appellant was convicted on the 28th May, 1919, by a Court of Commissioners sitting at Lahore under Ordinance I of 1919, and having the powers of a summary court-martial, of an offence u/s 124 A of the Indian Penal Code, i.e., of haying by written words excited or attemped to excite disaffection towards His Majesty or the Government established by law in British India, and was sentenced to two years'' rigorous imprisonment�afterwards reduced to three months'' simple imprisonment�and to a fine of Rs. 1,000. Special leave to appeal was granted by His Majesty in Council on the 18th August, 1919.

2. The facts are shortly as follows:�In March and April, 1919. there was unrest in the Punjab. Serious disturbances occurred at Delhi on the 30th March, when some persons were killed; and these disturbances were followed by disorder and violence at Amritsar and Lahore and elsewhere in the Punjab. The disturbances at Lahore occurred on the 6th, 10th, 11th and 12th April, the evidence showing that on the 11th April, Lahore city was "practically closed to the police." The appellant Boy was the editor of the " Tribune", a daily newspaper published at Lahore, and on the 6th, 8fch, 9th, 10th and 11th April, he published in that newspaper paragraphs and

articles comment on the deaths at Delhi (the persons killed there being repeatedly Core, described as "martyrs") and charging the Government with grave misconduct in connection with the disturbances. It was stated in the issue of the 10th April that the "atmosphere was highly surcharged" and the "public mind in a state of unusual excitement."

3. On the 6th May the appellant was charged, in consequence of these paragraphs and articles, with the offence above described, and also with an offence under Rule 25 of the Defence of India Rules; and on the 28th May judgment was delivered convicting him of the offence u/s 124A of the Indian Penal Code and pronouncing sentence as above. The charge under Rule 25 was not proceeded with.

4. The appellant in his case gave two reasons against his eonviction, viz., (1) that his trial by the summary procedure of martial law was bad in law and wholly unconstitutional; and (2) that on a reasonable construction of the articles complained of the appellant was not guilty of the offence of sedition as defined by Section 124A of the Indian Penal Code.

5. The facts and ordinances bearing on the first point raised by the appellant, viz., want of jurisdiction in the tribunal by which he was tried, were substantially the same as in the case of Bugga v. The King-Emperor (1920) L.R. 47 IndAp 138; Bom L.R. 609 decided by the Board in February last, the only distinction being that the order of the Lieutenant-Governor directing a trial before the Commissioners did not (as in that case) name the accused who we to be so tried, but applied to "all persons charged with offen 68 connected with the recent disturbances." Their Lordships have no do not that the offence with which the appellant was changed was connected with the disturbances referred to in the Order. and accordingly that this case is not distinguishable from the case cited. This contention, therefore, fails.

6. With reference to the second point raised on'' behalf of the appellant, viz., that on a reasonable construction of the articles complained of, the appellant was not guilty of the offence with which he was charged, their Lordships have carefully considered the judgment delivered by the President of the Commission, with a view to ascertaining whether the Commission properly construed the section and gave proper weight to its terms and to the explanations annexed to it. The judgment was a very careful one and their Lordships do not find that the section was in any way misconstrued or misunderstood. This being so, there remains only the question whether the principles of the law ~~ were properly applied in detail to the language of the various articles; and this question, as was pointed out in Besant v. Advocate-General of Madras(1919) I.A. 176; is one which partakes so much of the nature of a question of fact that it would be difficult for the Board to interfere on this ground with the conclusion arrived at by a Court in India. The decision of such a Court must necessarily depend, not only on the construction of the written matter complained of, but also on the local conditions obtaining at the time of publication and a just appreciation of the effect which the publication under those conditions of

the articles in question would be calculated to produce; and the Board could not revise the conclusions of the local tribunal on facts of this nature without putting themselves into a position which they have repeatedly declined to assume, namely, that of a Court of Appeal in criminal proceedings. In (" these circumstances, their Lordships, while not thinking it necessary to express any opinion of their own as to the intention of the articles in question, are not prepared to advise His Majesty to interfere with the conclusions arrived at by the Commission.

7. It should be added that in the course of the argument their Lordships were informed by counsel for the Crown that since leave to appeal was given a free pardon had been granted to the appellant. If so, this of itself would be a sufficient reason as pointed out in Levien v. Reg (1867) L.R.I. 536 for not entertaining the appeal but as the pardon was disputed and direct evidence of its having been granted was not forthcoming, their Lordships did not stop the case on this ground.

8. For the above reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed.