

ALLAHABAD HIGH COURT

Queen-Empress

Vs

Amba Prasad

(John Edge, C.J. Blair, Burkitt , J.)

14.12.1897

JUDGMENT

John Edge, C.J.

1. Amba Prasad was committed by the Magistrate of Moradabad to the Court of Session of Moradabad for trial on a charge that on or about the 14th of July 1897, he did attempt to excite feelings of disaffection to the Government established by law in British India by publishing in a newspaper called the J ami-ul-ulam, of which he was proprietor, editor and publisher, an article entitled "Azadi band hone se kabal namuna" and had thereby committed an offence punishable under Section 124A of the Indian Penal Code and within the cognizance of the Court of Session. In his examination before the Magistrate of Moradabad under Section 364 * of the Code of Criminal Procedure, 1882, Amba Prasad stated that he had published the issues of the J ami-ul-ulam, dated respectively 21st March 1897, 7th April 1897, 21st April 1897, 7th May 1897, 14th July 1897, 21st July 1897 and 28th July 1897. The article on the publication of which the charge was founded was contained in the issue of the newspaper of the 14th of July 1897.

2. In the Court of Session of Moradabad, Amba Prasad stated that his father's name was Gobind Prasad, a Kayesth, and that he, Amba Prasad, lived in Moradabad, and was 35-36 years of age. Upon the charge being read to him Amba Prasad pleaded guilty. Upon being asked:--"Do you wish to give any reasons as to why you should not be punished for this offence?"--Amba Prasad replied:--" I can give no reason. Through inexperience I have committed this fault, for which I am very ashamed, and I wish to throw myself unconditionally upon the mercy of the Government. This is all I wish to say." The Court of Session accordingly found Amba Prasad guilty of the offence of which he had pleaded guilty, and under Section 124A of the Indian Penal Code sentenced him therefor to eighteen months' rigorous imprisonment. From that sentence Amba Prasad has appealed to this Court. In the petition of appeal the grounds of appeal are stated as follows:

1. That the prisoner appellant having pleaded guilty, having tendered an unqualified apology for

the offence with which he was charged, and having thrown himself entirely upon the mercy of the Court, the sentence of 18 months' rigorous imprisonment passed upon him by the learned Sessions Judge is too severe.

2. That the judgment of the lower Court nowhere discloses the fact that the article upon which the prisoner appellant has been convicted was of such a serious character as to make its writer liable to a very heavy punishment.

3. That the lower Court, in holding that a term of 18 months' rigorous imprisonment was in the case of the appellant a mild sentence upon the authority of the case of *Queen-Empress v. Tilak*, has failed to take into account the differentiating circumstances which make the appellant's offence very much less serious and therefore deserving of a much lighter sentence.

4. That there is nothing on record which, after the appellant's plea and apology, would make him liable to anything more than a nominal punishment.

5. That upon the foregoing grounds the prisoner appellant prays for mitigation of the sentence passed upon him by the lower Court.

3. In order to determine whether or not this appeal should be allowed, and, if allowed, to what extent, it is necessary to consider Section 124A of the Indian Penal Code and to arrive at a conclusion as to the degree of culpability in *Amba Prasad* to be fairly and reasonably inferred from his acts. The section is as follows:

124A. Whoever by words, either spoken or intended to be read, or by signs, or by visible representation or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine. Explanation.--Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.

4. That section has been under judicial consideration by Sir Comer Petheram in the *Queen-Empress v. Jogendra Chunder Bose* by Mr. Justice Strachey on the trial of Bal Gangadhar Tilak in the Bombay High Court, by a Full Bench of the Bombay High Court, consisting of Sir Charles Farran, C.J., Mr. Justice Candy and Mr. Justice Strachey, on the application of Bal Gongadhar Tilak for leave to appeal to Her Majesty in Council by a Board of the Judicial Committee of Her Majesty's Privy Council, consisting of the Lord Chancellor, Lord Hobhouse, Lord Davey and Sir

Richard Couch, on the application of Bal Gangadhar Tilak for special leave to appeal to Her Majesty in Council; and by Sir Charles Farnham, C.J., Mr. Justice PARSONS and Mr. Justice Ranade in the appeal of Ram Chandra Narayan and Kishnaji Dhondu from the order of conviction and sentence of the Sessions Judge of Satara in their case.

5. If there be any difficulty as to the true meaning of Section 124A of the Indian Penal Code it is caused by the Explanation which forms part of that section. In the *Queen-Empress v. Jogendra Chunder Bose I.L.R. 19 Cal. 35(Supra)*, it was contended by the counsel for the accused persons that "disaffection" and "disapprobation" were synonymous words and had one and the same meaning. On that contention it was observed by Sir Comer Petheram, and in our opinion correctly, having regard to the question before him:--" If that reasoning were sound, it would be impossible for any person to be convicted under the section, as every class of writing would be within the explanation." Sir Comer Petheram thus defined "disaffection" and "disapprobation" as those words are used in Section 124A:--" Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him. The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr. Jackson cannot be sustained. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people and that they were used with the intention to create such feeling."

6. The charge which was before the jury in *Queen-Empress v. Jogendra Chunder Bose* was that the accused had attempted to excite feelings of disaffection to the Government established by law in British India, and was not that they had in fact excited feelings of disaffection to the Government established by law in British India; and it is in relation to that charge which was before the jury that Sir Comer Petheram's direction to the jury must be read. Later on in his direction to the jury Sir Comer Petheram, in referring to the articles in respect of the publication of which the charges under Section 124 A arose, said:--"Were those articles intended to excite feelings of enmity against the Government or on the other hand, were they merely expressing, though in strong language, disapprobation of certain Government measures? You will bear in mind that the question you have to decide has reference to the intention, and, in fact, the crime consists of the intention, for a man might lawfully do the act without the intention. The evidence of the intent can only be gathered from the articles. The ultimate object of the writer may be one thing, but if, in attaining that object, he uses, as the means, the exciting of disaffection against the Government, then he would be guilty under Section 124A. If you think that these people, with

the object of procuring the repeal of the Age of Consent Act, or of increasing the sale of their paper, disseminated these articles, intending to excite feelings of enmity, you will be bound to find a verdict of guilty."

7. Mr. Justice Strachey in his direction to the Jury in *Queen-Empress v. Bal Gangadhar Tilak*, in explaining Section 124A in reference to the charges in that case before the jury, said: "I agree with Sir Comer Petheram in the *Bangobasi* case, that disaffection means simply the absence of affection." If that sentence had stood alone and was not explained by what followed, it would no doubt have constituted a misdirection. "Disaffection" necessarily implies an absence of affection, but a mere absence of affection is not "disaffection" within the meaning of Section 124A. Mr. Justice Strachey in that part of his direction which immediately follows the sentence which we have quoted made it perfectly plain what in his opinion "disaffection," within the meaning of Section 124A, is. He said: It means hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite: he must not make or try to make others feel enmity of any kind towards the Government. You will observe that the amount or intensity of the disaffection is absolutely immaterial, except perhaps in dealing with the question of punishment: if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. It is true that there is before you a charge against each prisoner that he has actually excited feelings of disaffection to the Government. If you are satisfied that he has done so, you will of course find him guilty. But if you should hold that that charge is not made out and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with attempting to excite such feelings. You will observe that the section places absolutely on the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them; so that if you find that either of the prisoners has tried to excite such feelings in others, you must convict him, even if there is nothing to show that he succeeded. Again it is important that you should fully realize another point. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within Section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion, or outbreak or forcible resistance to the authority of the Government, still, if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my

opinion that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action, such as rebellion or forcible resistance, the test of guilt.

8. In directing the jury as to the meaning and effect of the Explanation in Section 124A, Mr. Justice Strachey said: Observe first that, as I have already said, while the first clause shows affirmatively what the offence made punishable by the section is, the explanation states negatively what it is not. It says that something 'is not disaffection' and 'is not an offence within this clause.' Therefore its object is to protect from the condemnation pronounced by the first clause certain acts which it distinguishes from the disloyal attempts which the first clause deals with. The next and most important point for you to bear in mind is that the thing protected by the explanation is 'the making of comments on the measures of the Government with a certain intention.' This shows that the explanation has a strictly defined and limited scope. Observe that it has no application whatever unless you come to the conclusion that the writings in question can fairly and reasonably be construed as 'the making of comments on the measures of the Government.' It does not apply to any sort of writing except that. It does not apply to any writing which consists not merely of comments upon Government measures, but of attacks upon the Government itself. It would apply to any criticisms of legislative enactments, such as the Epidemic Diseases Act, or any particular tax, or of administrative measures, such as the steps taken by the Government for the suppression of plague or famine. But if you come to the conclusion that these writings are an attack, not merely upon such measures as these, but upon the Government itself, its existence, its essential characteristics, its motives or its feelings towards the people, then you must put aside the explanation altogether and apply the first clause of the section. In the next place, supposing that you are satisfied that these writings can fairly and reasonably be construed as 'comments on the measures of the Government' and not as attacks upon the Government itself, still you cannot apply the explanation unless you believe that such comments were made with the intention of exciting only 'such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority.' This, you will see, draws a distinction between attempting to excite feelings of 'disaffection' to the Government, and intending to excite only a certain species of 'disapprobation' of Government measures; and protects the latter only. What is the meaning of 'disapprobation' of Government measures as contrasted with 'disaffection' to the Government? I agree with Sir Comer Petheram that while disaffection means the absence of affection, or enmity, disapprobation means simply disapproval; and that it is quite possible to like or be loyal to anyone, whether an individual or a Government, and at the same time to disapprove strongly of his or its measures. This distinction is the essence of the section. It shows clearly what a public speaker or writer may do, and what he may not do. A man may criticise or comment upon any measure or act of the Government, whether legislative or executive, and freely express his opinion upon it. He may discuss the Income-Tax Act, the Epidemic Diseases

Act, or any military expedition, or the suppression of plague or famine, or the administration of justice. He may express the strongest condemnation of such measures and he may do so severely, and even Unreasonably, perversely and unfairly. So long as he confines himself to that, he will be protected by the explanation. But if he goes beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers,-- as, for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people--then he is guilty under the section, and the explanation will not save him. The object of the explanation is to protect honest journalism and bond fide criticism of public measures and institutions with a view to their improvement, and to the remedying of grievances and abuses, and to distinguish this from attempts, whether open or disguised, to make the people hate their rulers. So long as a journalist observes this distinction he has nothing to fear. It seems to me that this view of the law secures all the liberty which any reasonable man can desire, and that to allow more would be culpable weakness, and fatal to the interest not only of the Government but of the people. But now there are other words in the explanation which we have still to consider. To come within the protection of the explanation, a writing must not only be the making of comments on Government measures with the intention of exciting only disapprobation of them as distinguished from disaffection to the Government, but the disapprobation must be 'compatible' with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority. What that means is that even exciting disapprobation of Government measures may be carried too far. For instance, if a man published comments upon Government measures which were not merely severe, unreasonable or unfair, but so violent and bitter, or accompanied by such appeals to political or religious fanaticism, or addressed to ignorant people at a time of great public excitement, that persons reading those comments would carry their feelings of hostility beyond the Government measures to their author, the Government, and would become indisposed to obey and support the Government, and if it could fairly be gathered from the writing as a whole that the writer or publisher intended these results to follow, then he would be guilty under the section and would not be protected by the explanation. Observe the nature of this 'disposition' which makes the whole difference between a 'disapprobation' of measures which amounts to 'disaffection' to the Government, and a disapprobation which does not. It is not merely 'a disposition to render obedience to the lawful authority of the Government.' It is a disposition both to render obedience and also to support the lawful authority of the Government against unlawful attempts to subvert or resist it. And it is a disposition to support that lawful authority against unlawful attempts not only to 'resist' it--that is, to oppose it, but also to 'subvert' it--that is, to weaken and undermine it by any unlawful means whatever. And lastly, it is a disposition to support the Government against all such unlawful attempts whenever occasion may arise, not only against any particular unlawful attempt, proceeding or impending at the time of the publication.

9. In refusing the application of Bal Gangadhar Tilak to the Bombay High Court for leave to

appeal to Her Majesty in Council Sir Charles Farran C.J., in delivering the judgment of the Full Bench, said: The other ground upon which Mr. Russell has asked us to certify that it is a fit case to send to the Privy Council is that there has been misdirection, and he based his argument on one major and two minor grounds. The major ground is that the section cannot be said to have been contravened unless there is a direct incitement to stir up disorder or rebellion. That appears to us to be going much beyond the words of the section, and we need say no more upon that ground. The first of the minor points is that Mr. Justice. Strachey, in summing up his case to the jury, stated that disaffection meant the absence of affection; but, although if that phrase has stood alone, it might have misled the jury, yet, taken in connection with the context, we think that it is impossible that the jury can have been misled by it. That expression is used in connection with the law as laid down by Sir Comer Petheram in Calcutta in the Bangobasi case. There Sir Comer Petheram, instead of using the words 'absence of affection,' said 'contrary to affection' and if the words 'contrary to affection' had been used instead of 'absence of affection' in this case, there can be no doubt that the summing up would have been absolutely correct. Taken in connection with the context it is clear that by absence of affection the Judge did not mean the negation of affection, but some active sentiment on the other side. Upon that point we cannot certify that this is a fit case for appeal. In this connection, it must be remembered that it has not been alleged that there was a miscarriage of justice. The last point is in reference to the definition of the word 'Government.' It is a very minor point; but, striking out the words (which were not in the original charge) Mr. Russell has alluded to, we cannot see that there has been any misdirection as to the meaning of the word 'Government.' We, therefore, think the application must be refused.

10. On the application of Bal Gangadhar Tilak to the Judicial Committee of Her Majesty's Privy Council for special leave to appeal to the Queen in Council Mr. Justice Strachey's direction to the jury was elaborately criticised by an eminent counsel of the English Bar. In delivering the judgment of the Judicial Committee the Lord Chancellor is reported to have said:--" Their Lordships are of opinion, taking the view of the whole of the summing up, which is of very great length, that there is nothing in that which, in their Lordships' opinion, calls upon them to indicate any dissent from or necessity to correct what is therein contained. Looking at the summing up as a whole, and looking at each part of what was said by the light of what else was said, speaking generally of the argument which has been presented to their Lordships, they are of opinion that no case has been made out, consistently with the rules by which their advice to Her Majesty has been guided hitherto in giving leave to appeal in criminal cases, and therefore they will humbly advise Her Majesty that this is not a case in which leave should be granted." (14 The Times Law Reports, p. 50.)

11. So far as we can form an opinion from the imperfect report before us of the judgments of the Bombay High Court in the Satara case, we infer that Sir Charles Farran, C.J., held the same opinion as to the meaning and effect of Section 124A of the Indian Penal Code as was expressed by Mr. Justice Strachey in the case of Bal Gangadhar Tilak, and that an attempt to excite feelings of disaffection to the Government is equivalent to an attempt to produce political hatred of

Government as established by law, to excite political discontent and alienate the people from their allegiance. Sir Charles Farran apparently also held, and in our opinion rightly, that a man may be guilty of the offence of attempting to excite feelings of disaffection against the Government established by law in British India although in the particular article or speech he may insist upon the desirability or expediency of obeying and supporting Government. The reports which are before us of the judgments of Mr. Justice PARSONS and Mr. Justice Ranade in the Satara case are too imperfect to enable us to form an opinion as to their construction of Section 124A. If their construction of Section 124A differs materially from the construction placed upon that section by Mr. Justice Strachey, it necessarily follows that their construction would not be accepted as correct by the Judicial Committee of the Privy Council, which accepted Mr. Justice Strachey's direction to the jury in Bal Gangadhar Tilak's case as a sufficient and not a misleading direction.

12. In our opinion anyone who, by any of the means referred to in Section 124A of the Indian Penal Code, excites or attempts to excite feelings of hatred, dislike, ill-will, enmity or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of "disaffection" as that term is used in Section 124A, no matter how guardedly he may attempt to conceal his real object. It is obvious that feelings of hatred, dislike, ill-will, enmity or hostility towards the Government must be inconsistent with and incompatible with a disposition to render obedience to the lawful authority of the Government and to support that lawful authority against unlawful attempts to subvert or resist it. The "disapprobation of the measures of the Government" may or may not in any particular case be the text upon which the speech is made or the article or letter is written, but if, upon a fair and impartial consideration of what was spoken or written, it is reasonably obvious that the intention of the speaker or writer was to excite feelings of disaffection to the Government established by law in British India, then a Court or a jury should find that the speaker or writer or publisher, as the case might be, had committed the offence of attempting to excite feelings of disaffection to the Government established by law in British India. To paraphrase is dangerous, but it appears to us that the "disaffection" of Section 124A is "disloyalty;"--that is the sense in which the word "disaffection" has been generally used and understood during the century. We are further of opinion that the ordinary meaning of disaffection in Section 124A, having regard to the evils at which Section 124A strikes, is not varied by the explanation contained in the section.

13. The intention of a speaker, writer or publisher may be inferred from the particular speech, article or letter, or it may be proved from that speech, article or letter considered in conjunction with what such speaker, writer or publisher has said, written or published on another or other occasions. Where it is ascertained that the intention of the speaker, writer or publisher was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written or published, could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or were false, and, except on the question of punishment, or in a case in which the speaker, writer or

publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did in fact excite such feelings of disaffection.

14. In the case before us Amba Prasad has pleaded guilty to an attempt by the publication of the article in question in the issue of his newspaper of the 14th of July 1897, to excite feelings of disaffection to the Government established by law in British India. He was well advised to plead guilty, as on an examination of that article the only possible defence open to him was that of insanity. His counsel before us could not suggest that there was the slightest justification or excuse for the gross and libellous charges against the Government contained in the article. Amba Prasad in publishing that article could have had but one object in view, and that was to excite amongst Her Majesty's Indian subjects, and particularly amongst Her Muhammadan subjects, feelings of disaffection, disloyalty to the Government established by law in British India. The particular article taken in conjunction with other articles published in his newspaper on dates upon which, according to his own statement in the Magistrate's Court, he published his newspaper, shows that his object was to excite not merely passive disaffection, which in itself is an offence within Section 124A of the Indian Penal Code, but active disloyalty and rebellion amongst his Muhammadan fellow-subjects. The criminal offence which Amba Prasad committed is an exceedingly grave one. That offence he committed regardless of the ruin, misery, and punishment which would have fallen on any of his fellow-countrymen who might have been so ignorant as to believe that the statements which he published were true, and who, acting on such belief, might have entered upon a course of active disloyalty to the Government. Amba Prasad is not a Muhammadan; he is a Kayesth. It may be assumed, from the fact that Amba Prasad was not for some considerable time to be found to meet this criminal charge, that, if his Muhammadan fellow-subjects had been induced by what he published to enter upon a course of active disloyalty, Amba Prasad would have been at a safe distance from the place of danger.

15. Amba Prasad alleges in his grounds of appeal that his plea of guilty and an apology, which he tendered after he had been committed for trial, entitled him to have only a nominal punishment inflicted upon him. His conviction was inevitable. An apology, particularly made after commitment, in such a case as this, need not be considered. Having regard to the gravity of the offence which Amba Prasad committed and to the misery, ruin and punishment which he might have brought upon ignorant people, the sentence which was passed upon him was entirely inadequate. We dismiss this appeal.

*[Section 864:--Whenever the accused is examined by any Magistrate, or by any Court

other than a High Court established by Royal Charter or the

Examination of accused Chief Court of the Punjab, the whole of such examination,
how recorded. including every question put to him and every answer given

by him, shall be recorded in full, in the language in which

he is examined, or, if that is not practicable, in the language of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers. When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused. In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability. Nothing in this section shall be deemed to apply to the examination of an accused person under Section 263]

Cases Referred.