

1941

Present : Moseley S.P.J. and Keuneman J.

THE KING v. WICKREMASINGHE

4—D. C. (Crim.) Matara No. 8/32,782.

Disaffection—Endeavouring to cause disaffection and to influence public opinion in a manner prejudicial to public safety—Proof of acts leading to suspicion—No explanation by accused—Defence (Miscellaneous) Regulations 19 (1) (a) and 20 (1) (a).

Where the accused was charged with endeavouring to cause disaffection among His Majesty's subjects in Ceylon and to influence public opinion in a manner prejudicial to the public safety and to the maintenance of public order by causing to be printed and published certain articles in a Sinhalese newspaper and where the prosecution in establishing that the accused was in fact the publisher, the editor and manager of the newspaper proved certain facts which invested the accused with such a degree of suspicion as to demand an explanation from him,—

Held, that in the absence of an explanation the Court was entitled to form the opinion that the accused was directly responsible for the printing and publication of the articles.

Held, further, that the statement in an article to the effect that "the Government of Ceylon does not hesitate to do any wrong, whether it is to kill people in cold blood or to disseminate falsehoods in order to bring about race-hatred", amounts to an endeavour to cause disaffection among His Majesty's subjects in Ceylon.

Held also that the statement to the effect, "we remember the 1915 Martial Law They (the Government) want to repeat the 1915 incidents in a greater measure This Police power should be checked by the people" was prejudicial to the public safety and to the maintenance of public order.

A PPEAL from a conviction by the District Judge of Matara. The facts appear from the head-note.

H. V. Perera, K.C. (with him *L. A. Rajapakse* and *P. A. Senaratne*), for the appellant.—The Defence Regulations should be interpreted according to the purpose for which they were passed. The Defence Regulations have in contemplation the present state of war and bear relation to the conditions brought about by the war. "Disaffection among His Majesty's subjects" would mean general disaffection, *i.e.*, disaffection among all classes. The articles in question have to be read as a whole. The prosecution relied on each of them as a whole and not on a particular sentence or sentences. It cannot be said that the purpose of the articles was to cause disaffection among the people against the successful conduct of the war. The articles are nothing more than an attempt as socialist propaganda. The extravagance of the language used is excusable. Two of the articles ask the people to prepare to fight for economic freedom against a particular class, namely, the capitalist, while the third is an appeal for funds to carry on the paper. They cannot be penalized under the Defence Regulations.

The prosecution has failed to establish beyond all doubt that the accused was the writer or publisher of these articles. The declaration made under the Newspapers Ordinance (Cap. 138) shows that one Bennet

de Silva is the publisher, editor and manager of the newspaper. The accused, no doubt, gave financial assistance and at times contributed articles, but the evidence falls far short of that which is necessary to prove conclusively that the accused was responsible for the publication of the articles which are the subject-matter of the indictment. The insertion in the newspaper, that he was the "Editor" or "Managing Editor" might have been put in for the purpose of advertisement and without his authority. At the worst, it is a case of suspicion. A person cannot be convicted on suspicion. See *Woolmington v. The Director of Public Prosecutions*¹.

The two articles marked "D" and "E" were improperly let in in spite of objection taken. Intention is not an ingredient of the offences alleged in this case. In proving the commission of one offence the admission of evidence to prove the commission of other offences is illegal (*Tennekoon v. Dingiri Banda*²).

E. G. P. Jayatilleke, K.C., A.-G. (with him *T. S. Fernando, C.C.*), for the Crown, was called upon to address only on the effect of the articles on the public.—Regulation 19 (1) and section 120 of the Penal Code both penalize sedition. The latter is triable by the Supreme Court only. The purpose of Regulation 19 (1) is to enable a Magistrate to deal with the offence of sedition summarily with the sanction of the Attorney-General or to commit the accused to the District Court for trial. A publication like article "A" can be penalized as seditious. See, e.g., *Gopal Lal Sanyal et al. v. Emperor*³ and *Nageswar Prasad Sharma et al. v. Emperor*⁴. The meaning of the word "disaffection" is considered in *Queen Empress v. Jogendra Chunder Bose et al.*⁵

The convictions on counts 2, 3 and 4 are also justified by the terms of Regulation 20 (1) (a). Article "A" was an endeavour to stir up the people to resist the Police. Articles "B" and "C" were clearly attempts to prevent money from being contributed to war funds and to impede the efficient prosecution of the war.

Article "D" and "E" were admissible to prove intention under section 14 of the Evidence Ordinance (*Chidambaram Pillai et al. v. Emperor*⁶; *Emperor v. Phanendranath Mitter*⁷).

Cur. adv. vult.

May 27, 1941. MOSELEY S.P.J.—

This is an appeal against conviction on four charges of offences against the Defence (Miscellaneous) Regulations published in *Government Gazette* No. 8,533 dated October 20, 1939, read with the regulation published in *Government Gazette* No. 8,568 dated January 12, 1940. The first charge is that the appellant did "endeavour to cause disaffection among His Majesty's subjects in Ceylon by causing to be printed and published" a certain article marked "A" in an issue of the Sinhalese newspaper "Jana Saktiya" dated May 17, 1940, in contravention of Regulation 19 (1) (a) of the said regulations. The second charge, which is in respect of the printing and publishing of the same article, alleges that he thereby endeavoured to influence public opinion in Ceylon in a manner likely to

¹ (1935) A. C. 462.

² (1916) 3 C. W. R. 307.

³ (1927) A. I. R. Cal. 757.

⁴ (1925) A. I. R. Patna 99.

⁵ (1891) I. L. R. 19 Cal. 37.

⁶ (1908) I. L. R. 32 Mad. 3 at 14.

⁷ (1908) I. L. R. 35 Cal. 945.

be prejudicial to public safety, the defence of the Island, the maintenance of public order or the efficient prosecution of the war, in contravention of Regulation 20 (1) (a) of the said regulations. Charges 3 and 4 are in respect of offences similar to that contained in charge 2 but relate to articles published respectively in the issues of the said newspaper dated June 29 and July 6, 1940.

The appellant was convicted on all four charges. On the first charge he was sentenced to one year's simple imprisonment and on each of the other charges to a fine of Rs. 1,000 in default two months' simple imprisonment.

In order to satisfy the Court that the appellant caused the printing and publication of the offending articles the prosecution sought to show that he was in fact the publisher, editor and manager of the newspaper. It is common ground that, prior to the publication of its inaugural number, one T. Bennet de Silva made a declaration required by section 2 of Cap. 138 of the Legislative Enactments wherein he declared that he himself would be the printer, publisher, editor and proprietor of the newspaper. Moreover, as required by section 6 of the same Ordinance, at the end of each issue of the newspaper there appeared a notification that it was printed and published by T. Bennet de Silva together with the necessary additions. Further, the same person had signed and sent to the Office of the Registrar-General the copies required so to be signed and sent by section 7 of the Ordinance. These are matters which T. Bennet de Silva might have some difficulty in explaining away if at any time he sought to divest himself of responsibility with which he found himself saddled in any of the capacities which he had assumed by any of the above-mentioned acts. That, however, is a circumstance which seems hardly to touch the case. The prosecution placed before the Court a number of pieces of evidence which, it is contended, go to prove beyond reasonable doubt that, whatever T. Bennet de Silva held himself out to be, the actual proprietor, manager, editor and publisher was the appellant.

Prior to publication the appellant had written to the manager of the Sudarsena Press as follows:—"Please arrange for the publication of this paper. I will be responsible for the payment". I do not propose, however, to set out in detail all the acts upon which the prosecution relied to prove its case.

They were all considered by the learned Judge who, perhaps in certain instances, attached more weight to a particular circumstance than was its due. The efforts of the appellant to secure a supply of paper such as was used for the printing of the newspaper, his payment for the same by means of his own cheque, the finding on his premises of a pile of unused paper and of copies of the notice heralding the issue of the paper, the fact that this notice contained the appellant's name as the editor are all circumstances which seem to point to the intimate connection of the appellant with the newspaper. In the first issue of the paper appeared an article "Our Aims" which purported to be "By Dr. S. A. Wickremasinghe, Editor". In the second issue, under the heading of the paper appear the words "Editor: Dr. S. A. Wickremasinghe". In each of the subsequent issues the appellant is prominently described as "Managing Editor".

It is contended by Counsel for the appellant that these circumstances and numerous others, to which I have not deemed it necessary to refer, do nothing more than point the finger of suspicion at the appellant, and that the convictions are therefore unsustainable. The appellant has made no attempt to explain away these suspicious circumstances, nor indeed was he bound to do so. "Nevertheless" as was observed by Lord Ellenborough (*Rex v. Lord Cochrane and others*'), "if he refuse to do so, where a strong prima facie case has been made out, and when it is in his own power to offer evidence, if such exist, in explanation of such suspicious appearances, which would show them to be fallacious and explicable consistently with his innocence, it is a reasonable and justifiable conclusion that he refrains from doing so only from the conviction that the evidence so suppressed or not adduced would operate adversely to his interest".

So here, it seems to me, the facts proved invest the appellant with such a degree of suspicion as to demand from him an explanation of the suspicious circumstances. No such explanation has been tendered and I think that, even allowing for the interests in which he has attached an exaggerated value to the evidence, the learned District Judge was right in forming the opinion that the appellant was directly responsible for the printing and publication of the articles which are the subject of the respective charges.

Does the article "A" represent an endeavour to cause disaffection among His Majesty's subjects in Ceylon? The learned District Judge in arriving at an affirmative answer to this question considered various decisions of the Indian Courts which were brought to his notice notably (*Queen Empress v. Jogendra Chunder Bose*²) in which case the charge was one of "attempting to excite disaffection" under section 124A of the Indian Penal Code. In that section "disaffection" is defined as including disloyalty and all feelings of enmity. I do not know that a consideration of this, or of any of the other authorities cited in the District Court, is necessary or likely to be profitable. In the Imperial Dictionary "disaffection", in the sense of the disaffection of people to their prince or Government, is defined as disloyalty, and this definition would appear to be consistent with the consensus of opinion expressed in the Indian cases.

In my view, to select one instance, the statement in article "A" that "the Government in Ceylon does not hesitate to do any wrong, whether it is to kill the people in cold blood or to disseminate falsehoods in order to bring about race-hatred" is the expression of an endeavour to cause disaffection among His Majesty's subjects.

Has the appellant through the medium of articles "A", "B" and "C" endeavoured to influence public opinion in Ceylon in a manner likely to be prejudicial to public safety, the defence of the island, the maintenance of public order, in the efficient prosecution of the war?

In article "A" appear the words "We remember the 1915 Martial law They (the Government) want to repeat the 1915 incidents in a greater measure This Police power should be checked by the people". These words were held, and I think rightly, by the District Judge to be prejudicial to public safety and to the maintenance of public order.

¹ (1814) *Shorthand Report by Gurney*

² *Indian Decisions 19 Cal. 47*

In articles "B" and "C" there is a direct appeal to the people to fight to prevent pecuniary aid being sent to Britain for the prosecution of the war.

Each of the four charges, has, in my view been brought home to the appellant beyond any reasonable doubt.

Counsel for the appellant in the course of his argument raised an objection which had been taken in the District Court to the admission in evidence of two articles "D" and "E" which were not the subject of charges, but were produced by the prosecution in order to prove the intention of the appellant. It was contended that, if that was the purpose of the prosecution, it must be shown that the appellant was the writer of the articles. It seems to me that this contention fails since the Court was satisfied that the appellant was responsible for the various issues of the newspaper. Our attention, however, was drawn to the fact that a similar procedure was followed in *Queen Empress v. Jogendra Chunder Bose (supra)* with the approval of the presiding Judge, and it seems to me that the articles were properly admitted in this case. However, apart from the question of admissibility, in my opinion no further evidence of intention was necessary than that furnished by each of the offending articles.

I would therefore dismiss the appeal. The convictions and sentences are affirmed.

KEUNEMAN J.—I agree.

Affirmed.

