

A

BABU RAO PATEL

v.

STATE OF DELHI

February 21, 1978

B

[R. S. SARKARIA AND O. CHINNAPPA REDDY, JJ.]

Penal Code, Section 153A(1), Scope of—Whether political thesis or historical truth so presented be said to promote feelings of enmity, hatred or ill-will between different religious groups or communities so as to attract the provisions of Section 153A of the Code.

C

Dismissing the appeals, by special leave the Court,

HELD : Section 153A(1) is not confined to the promotion of feelings of enmity etc. on grounds of religion only, but takes in promotion of such feelings on other grounds as well such as race, place of birth, residence, language, caste or community. [1083G]

D

In the instance case : Both the articles do promote feelings of enmity, hatred and ill-will between the Hindu and Muslim communities. [1086C]

E

(i) The first article "A tale of two Communalisms" is not even thinly veiled as a political thesis; it is an undisguised attempt to promote feelings of enmity, hatred and ill-will between the Hindu and the Muslim communities. It is designed to fan the sparks of ill-will and hatred on ground of community. The reference to the alleged Muslim tradition of rape, loot, violence and murder and the alleged terror struck into the hearts of Hindu minority in a neighbouring country by periodical killings, in the context of his thesis that communalism is the instrument of a militant minority can lead to no other inference. [1084E-F]

F

(ii) The second article 'Lingering disgrace of history' goes further and is calculated to rouse feelings of enmity, hatred and ill-will between Muslims and Hindus. It was wrong to present the Moghuls as the ancestors of today's Muslims and to willify the Muslims as the proud descendants of the "foul" Moghuls. [1084G, 1086A, B, C]

Feelings of enmity, hatred or ill-will between different religious groups or communities cannot be promoted in the guise of political thesis of historical truth. [1086C]

G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 237-238 of 1974.

Appeal by special leave from the Judgment and Order dated 14-8-1973 of the Delhi High Court in CrI. Revision Nos. 146 and 153 of 1971.

H

A. K. Sen, Gobind Das, A. N. Karkhanis, Sridharan and Mrs. S. Bhandare for the Appellant.

H. S. Marwah and M. N. Shroff for the Respondent.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. Can political thesis or historical truth be so presented as to promote feelings of enmity, hatred or ill-will between different religious groups or communities, is the question which we are called upon to answer in these two criminal appeals. The appellant in the two criminal appeals is the editor, publisher and printer of a monthly magazine going by the name 'Mother India'. He wrote two articles under the captions "A tale of two communalisms" and "Lingering disgrace of history". On complaints filed by the Superintendent of Police, Delhi, under section 153-A of the Indian Penal Code, he was convicted in respect of each of these articles in separate cases and sentenced in each case to suffer simple imprisonment for a period of four months and to pay a fine of Rs. 1000/- by the Additional Chief Judicial Magistrate, Delhi. On appeal the learned Sessions Judge, Delhi, confirmed the conviction in both the cases but reduced the sentence of fine to Rs. 500/- in each case. This was confirmed by the High Court. The appellant has preferred these appeals by Special Leave of this Court.

Shri A. K. Sen, learned counsel for the appellant submitted that if the articles were read as a whole it would be patent that the article "A tale of two communalisms" was no more than a political thesis and the second article "Lingering disgrace of history" was no more than a protest based on historical truths against the naming of roads in Delhi after Moghul emperors. He contended that neither article contained any attack on any religion and, therefore, there was no question of promoting and attempting to promote feelings of enmity, hatred or ill-will between different religious groups on grounds or religion. The convictions under section 153-A were, therefore, wrong, he submitted.

Section 153-A(1) (a) provides, "whoever by words, either spoken or written, or by signs or by visible representations or otherwise, promotes, or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred, or ill-will between different religious, racial language or regional groups or castes or communities shall be punished with imprisonment which may extend to three years, or with fine, or with both". It is seen that s. 153A(1). (a) is not confined to the promotion of feelings of enmity etc. on grounds of religion only as argued by Shri Sen but takes in promotion of such feelings on other grounds as well such as race, place of birth, residence, language, caste or community. In the present case we have to consider the question whether the two articles promote on grounds of religion or community, feelings of enmity, hatred or ill-will between different religious groups or communities.

A The first of the articles "A tale of two communalisms" does begin as a sort of political thesis. According to the author, "communalism is an instrument of political minorities". His thesis is that militant minorities thrive on communalism. If he wanted to develop his thesis on those lines no-one could object. But, he referred to Muslims generally as "a basically violent race" and went on to say "communalism is, therefore, an instrument of a minority with a racial tradition of rape, loot, violence and murder as is found in India with a Muslim population of 12.7%. In Pakistan the Hindu minority is 6.6% but because its racial tradition is different it does not indulge in communal riots.... Three essentials are necessary for violent communalism. The community must be a minority, the minority must be sizable and the minority must have a tradition of murder and violence We find these three essentials in the Muslim community of India". He then stated in the article that in Pakistan and particularly in East Bengal peace loving and terror struck Hindu minority was being eliminated by periodical killing and conversions on a mass scale. "Young Hindu males were compelled to undergo vasectomy operations, young and pretty Hindu girls became the victims of Islamic beds of lust". It is then said "It is not in the nature and religion of the Hindu of India to be intolerant and blood-thirsty like the followers of Islam". According to him the only answer to the problem of communalism was to declare India a Hindu State. In our opinion there cannot be the slightest doubt that the article is not even thinly veiled as a political thesis; it is an undisguised attempt to promote feelings of enmity, hatred and ill-will between the Hindu and the Muslim communities. It is designed to fan the sparks of ill-will and hatred on ground of community. The reference to the alleged Muslim tradition of rape, loot, violence and murder and the alleged terror struck into the hearts of Hindu minority in a neighbouring country by periodical killings, in the context of his thesis that communalism is the instrument of a militant minority can lead to no other inference.

G The second article 'Lingering disgrace of history' is said to be a protest against the naming of Delhi roads after the Moghul emperors who according to the author were lustful perverts, rapists and murderers. According to the learned counsel the attack was directed against the Moghul rulers and not against the Muslims of India. It was also said that all the statements in the article about the lusts and perversions of the Moghul rulers were plain historical truths. On a full reading of the article it reveals much more than a protest against naming Delhi roads after Moghul rapists and perverts. At one place it is said "From Mohammed Ibn Qasim, who landed in India in June

712 A.D. with 6000 Muslim cut-throats, to Mohomed Ali Jinnah, who cut this ancient cradle of a peace-loving human race into three bleeding bits in August, 1947, we have had 1235 years of bloodstained history in which our life has been constantly punctuated by endless raids, rapes, loot, arson and slaughter. In all these years Hindus have given millions of men, women and children as hostages to Islam to buy some peace and preserve their own religion. They are still doing so. God alone knows how long this process of paying and appeasing Muslims will go on but it cannot go on for long if the family planning designs of the present secular government succeed. Because then pretty soon there would be no Hindu left to pay.

"It is difficult to predict the future of the ancient Hindu race. It has no future at all in Pakistan where a subtle and systematic genocide of the 10 million Hindus there has now been undertaken at State level by enforcing vasectomy operations on Hindu males and tubectomies on Hindu females, and by raping women and converting young children to Islam.

"But as long as the Hindu race lasts and survives in India its only cradle and grave in the whole world, it will be worthwhile setting before its children the ideals of its numerous Hindu heroes and nation builders rather than reminding them constantly of these Moghul brutes and tyrants who burnt Hindu homes, ravished Hindu mothers and sisters, slaughtered Hindu men and harassed and kidnapped and converted Hindu children".

After referring to various perversities and tyrannies of the Moghul rulers ending with Aurangzeb, he said : "To have a street named after this Mughal bastard in New Delhi, the capital of India, is not only a disgrace to the Hindus but a crying insult to the brave community of Sikhs. Had the Muslims been insulted thus, they would not only have burnt every house on the road named after the tyrant but also set fire to the whole damned city. The Muslims know how to guard their traditions". He expressed the opinion that some of the ancient relics that reminded Hindus of their shame and disgrace made Muslims proud of the foul deeds of their ancestors. He made an appeal that a beginning should be made to wipe out 'our thousand year old shame' by changing the "Muslim names of roads" which 'remind us of the inhuman atrocities committed on our men, women and children'. If the Moghuls raped, looted, killed and sinned, the author's view appears to be that they did so as "Muslim sadists". The author goes so far as to say that today's Muslims are proud of the foul deeds of "their ancestors", the Moghuls being considered by the author as the progenitors

- A** of the present day Indian Muslims. There is no question that the article is calculated to rouse feelings of enmity, hatred and ill-will between Muslims and Hindus.

- B** Whether communalism is the weapon of an aggressive and militant minority as suggested by the accused or the "shield of a nervous and fearful minority", the problem of communalism is not solved by castigating the members of the minority community as intolerant and blood thirsty and a community with a tradition of rape, loot, violence and murder. Whether the Moghuls were rapists and murderers or not and whether the Delhi roads should be named after them or not it was wrong to present the Moghuls as the ancestors of today's Muslims and to villify the Muslims as the proud descendants of the "foul" Moghuls.
- C** We are convinced that both the articles do promote feelings of enmity, hatred and ill-will between the Hindu and Muslim communities on grounds of community and this cannot be done in the guise of political thesis or historical truth. The appeals are dismissed.

V.D.K.

Appeals dismissed.