



Date of application for the copy.

Date fixed for notifying the requisite number of stamps and folios.

Date of delivery of the requisite stamps and folios.

Date on which the copy was ready for delivery.

HEADING OF JUDGMENT OF APPELLATE COURT.

COURT OF SESSION APPELLATE JURISDICTION .

The 19.

Criminal Appeal no 148 of 1943.

Appeal from the order of Khen Bahadur N. Huda S. D. Magistrate of Samastipur, dated 7th October 1942.

Gopi kant Jha accused----Appellant.
versus.

King Emperor -----Respondent.

Fleader for ~~Emperor~~ -----appellant ; - B. Chatterbhuj N. Chaudhry

Fleader for Respondent ; - B. Barode Charan Advocate P. P.

J u d g m e n t

The appellant in this case Gopikant Jha is the late Head Master of the Rosera H. E. School. He has been sentenced under section 56(4) of the Defence of India Rules to R. I. for two years and to pay a fine of Rs 250/- in default to undergo R. I. for 6 months. The case against him in brief is that on 13th, 14th and 15th of August 1942 he convened Congress meetings at the Rosera School at the Rosera School in violation of the order of the District Magistrate under Rule 56(1) of the Defence of India Rules which was duly promulgated in that area, and that he also took an active part in Congress processions and activities at Rosera. It appears unnecessary to enter into the merits of the case as there is a legal defect in the trial, in as much as the general order of the District Magistrate constituting Courts of Special Magistrate for the trial of particular offences was not issued until 4. 10. 42, whereas the learned Magistrate in this case

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applicant.6492
9/8/43

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case took up the hearing on 28. 9. 42 and tried the case as a Special Magistrate and passed his orders in that capacity. The conviction and sentence are therefore liable to be set aside. The only question however is as to whether the case should be remanded for retrial. The accused has already suffered R. I. for about 9 months, and in my opinion this sentence is in any case sufficient to meet the ends of justice, especially in consideration of the previous good character held by him.

The appeal is therefore allowed and the conviction and sentence of the lower Court are set aside.

Sd/- J. I Blackburn.
Sessions Judge
4. 8. 1943

Dictated and corrected by me.

Sd/- J. I Blackburn.
Sessions Judge.
4. 8. 1943.

Typed by
R. P. Verma
Typist

Compared by
C. Clerk 9/8/43.

9.8.43

In

The court of the Sessions Judge,
Darbhanga.

Criminal Appeal no. of 1943.

Gopikant Jha son of B. Grihinandan Jha resident of
village Kurson P. S. Bahera District Darbhanga.

(Accused). Appellant in jail.

Versus.

King Emperor Respondent.

The aforesaid appellant being aggrieved and dissatisfied with the order of conviction and sentence passed by Khan Bahadur N. Hoda, Sub Divisional Officer, Samastipur by his judgment dated 7-10-42 convicting this appellant under section 56(4) of D.I. Rules and sentencing him to undergo R.I. for 2 years and to pay a fine of Rs. 250/- in default to undergo further R.I. for 6 months begs to prefer this memo of appeal on the following amongst other

Grounds :-

(a). For that the judgment of the learned lower court is based on surmises and conjectures.

(b). For that the judgment passed by the learned lower court is against the weight of evidence and actual facts on the record.

(c). For that the learned lower court has misappreciated the evidence and has taken a distorted view of the whole thing.

(d). For that the learned lower court should have allowed an opportunity to this appellant to cross examine the Prosecution witnesses and his failure to do so violates the whole trial.

9 11 (e). For that when the lawyer of this appellant was not ready to cross examine all at once, the learned Magistrate should have given some time to the lawyers for cross examination and the endorsement ~~is~~ declined "is against state of things.

(f). For that the learned lower court should have allowed this appellant's lawyer to cross-examine the P.Ws. under section 257 Cr.P.C. and its failure to do so is not ~~only~~ irregular but - illegal.

(g). For that the learned lower court has misconstrued the whole case.

9 (h). For that the learned lower court has failed to take into account the letters written by this appellant to the S.D.O. Semastipur in capacity of President of School a copy of which was forwarded to S.I. of Police Rosera and his endorsement thereon.

(i). For that the learned lower court has committed grave error in inducting matters which appertain to his personal knowledge.

(k). For that the learned lower court has misapplied itself in dealing with the defence evidence and the reasons assigned by it are neither sound nor cogent.

(l). For that the learned court below should have accepted the defence version and should have acquitted this appellant.

(m). For that the learned lower court should not have placed any reliance on the P.Ws. who ~~were~~ were all interested and inter connected.

(n). For that the judgment is otherwise bad in law.

(o). For that the charges framed is defective and illegal.

(p). For that the sentence is too severe.

on the grounds set forth above and also on others that may be urged at the time of hearing it is most respectfully prayed that your honour would be graciously pleased to

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to admit the appeal, call for the records of the case and after hearing the parties acquit this appellant and it is also prayed that this appellant be released on bail and realisation of fine be stayed pending disposal of this appeal and for this the appellant shall ever pray

T/by

S.K. Jha.

D/-19.6.43.

King Emperor

Vs.

Gopikant Jha.

Under Rule 56(4) of the Defence of India Rules.

Judgment.

The accused stands charged with having contravened the order of the District Magistrate under rule 56(1) of the Defence of India Rules by holding meeting and by taking part in processions and thereby committed an offence punishable under rule 56(4) of the Defence of India Rules. The accused pleads not guilty to the charge.

The prosecution story is that the accused who was the Head Master of Rosera H.E.School convened congress meetings in his school on 13th, 14th and 15th of August 1942 in contravention of the District Magistrate's order under rule 56(1) of the Defence of India Rules. He also took active part in congress processions in Rosera and used and shouted "Enquileb Zindabad" "Sarkari Raj Nakh Ho" "Hindustan Azad" etc. The order of the District Magistrate prohibiting all processions and meetings under rule 56(1) of the Defence of India Rules was duly promulgated in Rosera previously. The accused version is that he has been all along peaceful citizen and has been discharging the duties of Head Master to the entire satisfaction of immediate authorities and that he could not assign any reason as to why he has been prosecuted. In support of this version, the accused has examined Babu Harbans Narain Sinha a Zeminder of Thathia P.S. Rosera and Vice President of Rosera H.E.School. Babu Harbans Narain Sinha says "To my knowledge the accused did not take part in any meeting or procession in the school premises." The school was closed on 17-8-42 for indefinite period under the advice of the Local members of the Managing committee." This is the statement in his evidence in-chief. In cross examination, he says "My house is about two miles from Rosera. I always remained at my house during the movement. I did not even come to Rosera". From his statement this witness does not appear to be quite competent to say

St. Major's Rule
Sign the order
in 1/10 so it is
not possible.

Vice-President Local
Committee
Thathia P.S.
Rosera

(2)

say whether the accused took part in meetings or processions in Rosera or not, since he never went to Rosera during the movement.

I happen to be the President and Secretary of the School and I am sure that I was not consulted even regarding the closing of School for any period (definite or indefinite) in consequence of the student's movement.

Obviously the evidence of Babu Harbans Narain Sinha is not of much avail to the accused. In support of his denial to have taken part in meetings and processions, D.W.2 is the teacher of Rosera H.E. School. This teacher is one breath stated that there was no meeting in the School compound and in another he had to change and says that one day there was a meeting in School compound. I am not prepared to put reliance on his statement.

Adverting to the prosecution case I find that there is the evidence of the Sub-Inspector of Police Rosera P.S. and a Havildar of the same P.S. which clearly goes to show beyond all reasonable doubts that the accused convened congress meetings in School on ~~13th~~ 13th, 14th and 15th of August, 1942 and also took active part in congress processions in Rosera Town shouting slogans like "Angrezi Raj Nas Ho, Hindustan Azad" Etc. and thus it is clear that he contravened the order of the District Magistrate passed under rule 56(1) of the Defence of India Rules prohibiting all meetings and processions which was duly promulgated in Rosera Town. I therefore convict him and sentence him to undergo R.I. for two years and to pay fine of Rs250/- in default to undergo R.I. for six months under rule 56(4) of the Defence of India Rules.

Sd-M.Hoda

Samastipur

Special Magistrate, Samastipur.

The 7th Oct. 1942.

He was kept
all information
to him and kept it

He is only a paper
teacher

He does not
even know
the meeting

THREE ANNAS

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for indefinite period under the orders
of the local members of Managing
Committee. The school was opened on
19/8/42.

Self N. Hada.
5/11/42

Xref: → My house is about two
miles from Rosera. I always remained
at my house during the movement.
I did not even come to
Rosera. Processions used to be taken
out in Rosera. My nephew is
a student of that school. He
accused was arrested near about Janamastmi
on 17.9.42. I saw the President
and Secretary of the school. I
did not send any letter to
the President about the arrest.

Self N. Hada.
5/11/42

To court: → As far as
I remember I told the President
and Secretary about the arrest of
teacher.

Self N. Hada.
5/11/42



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Read over in presence accused and	by and hearing admitted	the to be	witness of	himself the correct.
<p>sd/ H. yunus D.C. 5/11/42.</p>				

sd/ Harbans N. Sarda.
5/11/42.

Ceasedly
Ran Dal.
25/11/42

Examined by
C. Clerk.

THREE ANNAS

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I am of reading of deposition of witnesses no. 2
 for the defence aged about
 taken on solemn affirmation on the
 day of 19 My name
 is Jatan Kumar Chaudhri. I am
 son of Gobardhan Chaudhri. My age
 is years. I am by
 caste Brahman. My home is at
 Hansa Palkram. Police station Bahera Dist.
 Barhanga. I reside at present in
 Hansa Rosera. Police station do. Dist.
 do where I am Teacher Rosera
 School.
 My house is close to
 Rosera H. E. School. Headmaster's house
 is in school compound. No meeting
 took place in school compound. Again
 says one day there was meeting
 in school compound. The Headmaster
 (accused) did not take part in
 any meeting. The Headmaster went home
 on 17/8/42. This is his making
 over charge report (Ext. B). Rajeswar Mandal

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a teacher wrote this letter (Ex. c)
to the accused. He joined the
school on 31/8/42.

saf N. Hada.
5/x/42.

xxd: → Five teachers of Rosera
school are being prosecuted under sentence
of India Rules for taking part
in the civil disobedience movement.
The students commenced striking on
11/8/1942 and their activities enhanced day
by day. I do not know if
the accused informed Rosera police.

saf N. Hada.
5/x/42

To Court: → The student locked
the room of the school. I
do not know if the student went
to Headmaster's lodging. I do not
know if any meeting was held
in M. E. school building. Maidan
and building of my school will
be visible from Rosera station platform.

saf N. Hada.
5/x/42

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THREE ANNAS

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Read over	by	the	witness	in
presence and	hearing	of	the	accused
and admitted	to	be	correct.	

sd/ H. yurus.
P.C. 25/11/42

sd/ Jatasankar Chaudhry
25/11/42

sd/ P. S. Chaudhry
25/11/42

Examined by
sd/ P. S. Chaudhry
25/11/42

तीन आना

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THREE ANNAS

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THREE ANNAS

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applicant.

Form Of Heading Of Deposition.

Deposition of witness no.1 for the prosecution aged
about....taken on solemn affirmation on the day of ---

My name is Najmul Hoda. I am son of M. Shamsul Jolil.
My age is 36 years. I am by caste Muslim. My home is at mauza
Milki Mahila police station Arrah Town. 18/11/ District
Shahabad. I reside at present in 4/42/ mauza nosera. police
station nosera District Barhanga. Where I am officer in charge
P.S..

I know the accused who was Head Master Nosera High
English School. He convened Congress meetings in his school
on 13th and 14th and 15th of August 1942 in contravention
of the District Magistrate's order under rule 56 D.1. Rules
He also took active part in Congress procession in Roseera
He used to shout "Inqalab Zindabad, Angrezi Raj Nash ho,
Hindustan Azad etc. The order of the District Magistrate banning
procession or meetings under rule 56(1) D.1. Rules were
duly promulgated. This is my report for prosecution of the
accused (Ex 1). Identifies the accused..

Sd/ N.Hoda.

28-9- 42.

Cross examination declined...

Sd/ N.Hoda.

28-9- 42.

Seen.

Ex 1
Jus.
C.C.

OFFICE OF THE DISTRICT MAGISTRATE
DARBHANGA.

D.O. No. 7928

Laheriasarai,
The 28th June, 1937.

My dear Babu Gopikant Jha

5/2/37
30/6/37

It has been brought to my notice that you rendered valuable assistance in making the last coronation Celebrations of Their Majesties a success in your locality, and I have great pleasure in offering you my sincere thanks for this loyal assistance and co-operation rendered by you.

Yours sincerely,

Chh

Babu Gopikant Jha,

Headmaster, H.E. School, Roserah.

True copy of an extract from the inspection note from the
Inspector of Schools, Tirhut Division ~~dated~~ dated 16th. Aug, 1937.

"The Headmaster has been very keen in his work. He has been very regular in supervising the works of the teachers and helping them in their works. He has given effect to all the proposals and suggestion made by me from time to time for the good working of the School. He has got the scheme of works ready for all the classes and wall black-board of standard size prepared in all the class rooms. Boys have got separate ~~exerskexer~~ exercise books for different subjects and all writing works in School is done by them in ink. All the teachers maintain separate books for their note of lessons for different subjects and different classes. I did not find in any class a seat being occupied by more boys than for whom it was intended. All these reflect a great credit on the Headmaster who thinks seriously of the welfare of the School and real education of the boys."

True Copy.

Samastipore, 19-12-37.

This is to certify that I know Babu Gopikant Dha, Headmaster of the Rosera H.E. School. I am the president of the School and have taken keen interest in its welfare. I think I have hardly missed any of the School meetings, so I am in a position to be able to state confidently my opinion about Gopikant babu. He has always taken the keenest interest in the welfare of the School and has discharged his duty to the satisfaction of every one. He has managed in large degree to appease the factions which exist in the School committee by his tact and sound common sense, and I have ~~never~~ never heard any word of complaint against him. He is extremely intelligent and has very pleasant manners and address. I can confidently recommend him for any advancement and I wish him every success.

Sd. J. I. Blackburn. (JCS.)
S. D. O. Samastipore.

True Copy

I agree with the observations of Mr. Blackburn. I came in contact with bahu Gopikant gha while I was the president and secretary of the School.

Sd. M. Z. Khan. (X. Z. X)
(I. C. S.)

15-4-39.