

Isaac Theophilus Akkunna Wallace-Johnson *Appellant*

v.

The King... .. *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 11TH DECEMBER, 1939

Present at the Hearing :

THE LORD CHANCELLOR
(Viscount Caldecote)
LORD THANKERTON
LORD ALNESS
LORD ROMER
SIR GEORGE RANKIN

[*Delivered by* THE LORD CHANCELLOR]

This is an appeal by special leave from a judgment of the West African Court of Appeal (Gold Coast Session) dismissing an appeal by the appellant against his conviction on the 13th October, 1936, by the Supreme Court of the Gold Coast at the Assizes held at Victoriaborg, Accra. The appellant was tried upon an information containing two counts charging him with offences against section 330 of the Criminal Code of the Gold Coast Colony (Chapter 29). The first count charged the appellant with unlawfully publishing a seditious writing of and concerning the Government of the Gold Coast contrary to section 330 (2) (b) of the Criminal Code. The second count charged him with unlawfully having in his possession documents containing seditious writing of and concerning the Government of the Gold Coast contrary to section 330 (2) (e). The trial took place before the Chief Justice of the Gold Coast Colony sitting with three assessors on the 7th, 8th, 9th, 10th, 12th and 13th October, 1936. The appellant was convicted by the Chief Justice on both counts, and was sentenced to pay a fine of £50 on the first count and, in default of payment within 14 days, to be imprisoned for three months. No punishment was inflicted on the second count.

The appellant appealed to the West African Court of Appeal against his conviction. The appeal was heard on the 17th and 18th November and the 1st December, 1936, and was then dismissed.

The appellant petitioned His Majesty in Council for special leave to appeal, and this was granted on the 28th July, 1938.

The writing which was the subject matter of the charges was part of an article signed "Effective" and published in a newspaper circulating in the Gold Coast Colony. The material words as set out in the information, together with allegations as to the meaning attributable to certain words and phrases, were as follows:—

"Personally, I believe the European has a God in whom he believes and whom he is representing in his Churches all over Africa. He believes in the god whose name is spelt Deceit. He believes in the god whose law is 'Ye strong, you must weaken the weak. Ye "civilised" Europeans, you must "civilise" the "barbarous" Africans with machine guns. Ye "Christian" Europeans, you must "Christianise" the "pagan" Africans with bombs, poison gases, etc.'

"In the Colonies the Europeans believe in the god that commands 'Ye administrators' (meaning to include therein the Government of the Gold Coast) 'make Sedition Bill' (meaning to include therein the Criminal Code Amendment Ordinance No. 21 of 1934 of the Gold Coast) 'to keep the African gagged. Make Forced Labour Bill' (meaning to include therein the Labour Ordinance of the Gold Coast) 'to work the Africans as slaves. Make Deportation Ordinance' (meaning to include therein the Kofi Sechere Detention and Removal Ordinance No. 1 of 1936) 'to send the Africans to exile whenever they dare to question your authority'.

" 'Make an Ordinance to grab his money so that he cannot stand economically. Make Levy Bill' (meaning to include therein the Native Administration Ordinance No. 25 of 1936 of the Gold Coast Colony) 'to force him to pay taxes for the importation of unemployed Europeans to serve as Stool Treasurers. Send detectives to stay around the house of any African who is nationally conscious and who is agitating for national independence and if possible to round him up in a "criminal frame-up"' (meaning thereby a criminal charge in which the evidence is fabricated) 'so that he could be kept behind the bars' (meaning thereby prison)."

Section 330 of the Criminal Code (now section 326 of the Criminal Code 1936 Revision) is as follows:—

Sub-section (2):

"Any person who

(b) prints or publishes by any such act as is specified in Title 18 any seditious words or writing or

(e) being found in possession of any newspaper book or document or any part thereof or extract therefrom containing seditious words or writing does not prove to the satisfaction of the Court that at the time he was found in such possession he did not know the nature of its contents

shall be liable—

(i) for a first offence under paragraphs (a), (b), (c) and (d) to imprisonment for two years or to a fine not exceeding one hundred pounds. . . .

(ii) for a first offence under paragraphs (e) and (f) to imprisonment for one year or to a fine not exceeding fifty pounds. . . .

Sub-section (8):

“ ‘ A seditious intention ’ is an intention—

(1) to bring into hatred or contempt or to excite disaffection against the person of His Majesty, His heirs or successors or the Government of the Gold Coast as by law established; or

(2) to bring about a change in the sovereignty of the Gold Coast; or

(3) to excite His Majesty's subjects or inhabitants of the Gold Coast to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the Gold Coast as by law established; or

(4) to bring into hatred or contempt or to excite disaffection against the administration of justice in the Gold Coast; or

(5) to raise discontent or disaffection amongst His Majesty's subjects or inhabitants of the Gold Coast; or

(6) to promote feelings of ill-will and hostility between different classes of the population of the Gold Coast:

It is not a seditious intention—

(a) to show that His Majesty has been misled or mistaken in any of his measures; or

(b) to point out errors or defects in the government or constitution of the Gold Coast as by law established or in legislation or in the administration of justice with a view to the reformation of such errors or defects; or

(c) to persuade His Majesty's subjects or inhabitants of the Gold Coast to attempt to procure by lawful means the alteration of any matter in the Gold Coast as by law established other than that referred to in paragraph (2) of this sub-section; or

(d) to point out with a view to their removal, any matters, which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Gold Coast.

Provided that none of the acts or things mentioned in provisos (a), (b), (c) and (d) shall be deemed to be lawful if they are done in such a manner as to effect or be likely to effect any of the purposes (1) to (6) which are declared in this section to be a seditious intention.

‘ Seditious words ’ are words expressive of a seditious intention.

‘ Seditious writing ’ includes anything intended to be read and any sign or visible representation which is expressive of a seditious intention.”

At the trial a plea of not guilty was entered. The appellant admitted the writing and publication of the article. His defence was that the article was not seditious and that it was not calculated to bring the Government of the Gold Coast Colony into hatred and contempt. A great deal of evidence was called as to the application of the article to the affairs of the Colony. Notwithstanding the statements of witnesses for the defence that they did not read the article as having reference to the Gold Coast Colony, it was not really in dispute that the appellant had the Government of the Colony in view when he wrote the article and that it referred to legislation and events generally in the Colony. There was no evidence of any outbreak of violence or of any manifestation of hostility to the Government of the Colony as a result of the article.

The case presented by Counsel for the appellant for their Lordships' consideration was that the prosecution could not succeed unless the words complained of were themselves of such a nature as to be likely to incite to violence, and unless there was positive extrinsic evidence of seditious intention. The foundation for these submissions was sought in the summing up by Cave J. in *R. v. Burns* (16 Cox C.C. 355) quoted at length in Russell on Crime (9th edition) pp. 89-96. Reference was also made to a number of cases on the law of sedition in English and Scottish Courts, which, it was said, supported the statement of the law by Cave J. Their Lordships throw no doubt upon the authority of these decisions, and if this was a case arising in this country, they would feel it their duty to examine the decisions in order to test the submissions on behalf of the appellant. The present case, however, arose in the Gold Coast Colony and the law applicable is contained in the Criminal Code of the Colony. It was contended that the intention of the Code was to reproduce the law of sedition as expounded in the cases to which their Lordships' attention was called. Undoubtedly, the language of the section, under which the appellant was charged, lends some colour to this suggestion. There is a close correspondence at some points between the terms of the section in the Code and the statement of the English law of sedition by Stephen J. in the Digest of Criminal Law (7th edition), articles 123-126, quoted with approval by Cave J. in his summing up in *R. v. Burns*. The fact remains, however, that it is in the Criminal Code of the Gold Coast Colony and not in English or Scottish cases that the law of sedition for the Colony is to be found. The Code was no doubt designed to suit the circumstances of the people of the Colony. The elaborate structure of section 330 suggests that it was intended to contain as far as possible a full and complete statement of the law of sedition in the Colony. It must therefore be construed in its application to the facts of this case free from any glosses or interpolations derived from any expositions however authoritative of the law of England or of Scotland.

In these circumstances, their Lordships turn to the Code, and they find nothing in the section under consideration to support the appellant's contentions. "Seditious words," in the terms of sub-section (8), "are words expressive of a seditious intention." By an earlier definition in the same sub-section, "'A seditious intention' is an intention to bring into hatred or contempt . . . the Government of the Gold Coast as by law established."

Their Lordships find these words clear and unambiguous. Questions will necessarily arise in every case as in this case as to the facts to which it is sought to apply these definitions. Fine distinctions may have to be drawn between facts which justify the conclusion that the intention of the person charged was to "bring into hatred or contempt . . . the Government of the Gold Coast," and facts which are consistent only with the view that the intention

was no more than, in the words of a later part of subsection (8), "to point out errors or defects in the Government of the Gold Coast." It is quite another thing to add words which are not in the Code and are not necessary to give a plain meaning to the section. Nowhere in the section is there anything to support the view that incitement to violence is a necessary ingredient of the crime of sedition. Violence may well be, and no doubt often is, the result of wild and ill-considered words, but the Code does not require proof from the words themselves of any intention to produce such a result, and their Lordships are unable to import words into section 330 which would be necessary to support the appellant's argument.

The submission that there must be some extrinsic evidence of intention, outside the words themselves, before seditious intention can exist must also fail and for the same reason. If the words are seditious by reason of their expression of a seditious intention as defined in the section the seditious intention appears without any extrinsic evidence. The Legislature of the Colony might have defined "seditious words" by reference to an intention proved by evidence of other words or overt acts. It is sufficient to say they have not done so.

For the reasons indicated ~~in a Judgment prepared by me~~ this appeal should be dismissed and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council

ISAAC THEOPHILUS AKKUNNA
WALLACE-JOHNSON

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