

JUDGEMENT OF MR G.D. KHOSLA'S

Session Judge Gurdaspur, India, 6 June 1935

SYED ATTAULLAH SHAH BOKHARI APPEAL CASE

Mr. G.D. Khosla, Session Judge Gurdaspur delivered his memorable judgment in Syed Attaullah Shah Bokhari's case on 12 June, 1935. Bukhari's Defence Council comprised Maulana Mazhar Ali Azhar, Maulana Abdul Karim of Mubahala, Lala Peshawari Mal, Khan Sharif Hussain and Maulana Rehmat Ullah Mahajir. He was convicted under Section 153 A IPC and sentenced to six months rigorous imprisonment by the lower court in respect of a speech he made in Ahrar Conference on 21st October, 1934 at Qadian.

History of Qadianism:

Before examining the charge against the appellant it is necessary to state some facts which have a bearing on the points at issue. About 50 years one Ghulam Ahmad of Qadian announced to the world that he was the Promised Prophet of God Simultaneously with this declaration he assumed the role of the High Priest of Islam and laid the foundations of a new sect, the members of which although they claimed to be Mohammadans professed certain beliefs and doctrines at complete variance with the generally accepted tenets of the Mohammadans religion. The distinguishing feature of this sect which is variously known as Qadiani, Mirzai or Ahmadi was implicit belief of its members in the prophethood of the founder who was called Mirza. The movement thus started soon took shape and began to grow at a gentle but unmistakably certain pace and began to count among its followers a few thousands believers. There was naturally some opposition and the majority of Mohammadans resented the arrogation of religious supremacy by the Ahmadi founder. Non believers in the new fangled religion vehemently replied the accusation of kafar which was bestowed on them by the Mirza. The Qadianis, however, remained heedless to these foreign criticisms and, secure in the local safety of their home town, flourished as well as they could in the circumstances.

Qadiani Arrogance and Terrorism:

This comparative security of their position gave birth to pride amounting almost to arrogance on the part of the Qadianis. In order to enforce their argument and further their cause they called into play weapons which would ordinarily be termed highly undesirable. They not only intimidated the person who refused to come within their fold with boycott and excommunication and occasionally threats of something worse, but they frequently fortified the process of proselytising by actually carrying out these threats. A volunteer corps was established in Qadiani with the object probably of giving sanction to their decrees. They even assumed judicial functions and dealt with cases civil and criminal. In civil cases decrees were passed and enforced. In criminal cases punishment was awarded and executed. People were actually turned out of Qadian. This was not all. The Qadianis were actually accused of being responsible for destruction of house property, arson and, it is said, even murder.

Proof of Allegations:

Lest it should appear that the above is merely product of the Ahrar imagination, it is necessary to give a few concrete instances which have been brought on the record of this case.

Cases of Exile from Qadian:

At least two individuals were turned out of Qadian, their town, because they did not fall with the views of the Mirza. They are Habibur Rehman (D.W. 28) and Ismail. There is on record a letter (Exhibit D.Z. 33) written by the present Mirza himself ordering that Habibur Rehman (D.W. 28) was not allowed to come in Qadian. The letter was admitted by Bashir ud Din Mahmud Ahmad (D.W.37). It is also admitted by (D.W.20) that Ismail was excommunicated and not allowed to enter Qadian. A number of other witnesses have told tales of oppression and tyranny. Bhagat Sing (D.W.49) stated that he was assaulted by the Mirzai. One Shah Gharib was beaten by the Qadianis and when he tried to start a case nobody came forward to give evidence on his behalf. Files of case decided by the Qadiani judges were produced and are on record. The Mirza has admitted that judicial functions are performed in Qadian and that he is the final Court of appeal in such matters. Decrees of Court are enforced and there is one instance of decree for the sale of a house having been executed. Privately stamped paper is manufactured. Sold and used for petitions to the Mirza. The existence of volunteer corps in Qadian is deposed to by (D.W. 37)

Maulana Abdul Karim of Mobahila's tale of woe and Murder of Muhammad Hussain Shahid:

Then we have the most serious case of Abdul Karim whose story is a veritable tale of woe. This man embraced the Ahmadiya religion and went to Qadian. There however, he became a prey to religious doubt and renounced the Ahmadiya faith. Then his persecution started. He began to edit a paper call "Mubahila" which aimed at criticising the cult of Ahmadiya community. The Mirza, in a speech reported in (Exhibit D.Z. 39) prophecised and compassed the death of the publishers of the "Mubahila". The speech made reference to the people who were ready to kill for the sake of their religion. A murderous attack was made on Abdul Karim soon after this but he escaped. One Mohammad Hussain who identified himself with the cause of Abdul Karim and stood surety for him in a criminal case against Abdul Karim was in fact attacked and murdered. The murderer was tried and sentenced to death.

Murderer honoured:

The death sentence was in fact carried out and after his execution the dead body was brought to Qadian and buried in great style in what is called the Bahishti Maqbara (The heavenly graveyard). The murder was extolled and the act of the murder was praised in "Alfazl", the organ of the Ahmadiya community. It was given out that the murderer was not guilty and that he had escaped the calumny of death by expiring before the event. God in his notice had thought fit to take away his life before he underwent the ignominy of hanging.

Mirza Mahmud's deliberate miss-statement and his evil intention:

The Mirza when examined in Court with respect to this incident told a different tale and stated that the murderer of Mohammad Hussain was given a decent burial as he had repented of his offence and was purged of his sin. Exhibit D.Z. 40., however, contradicts this and the intentions and attitude of the Mirza are plain from the expression of his views as set out in D.Z.40.

High Court defamed:

Incidentally the contents of this document amount to contempt of the Lahore High Court.

Murder of Muhammad Amin:

We have another incident relating to the death of Muhammad Amin. This Muhammad Amin was also an Ahmadi and was a missionary of this sect. He was sent to Bukhara to preach the religion of the Mirza but was for some reasons discharged. He met his death by a hatchet blow given by one Ch. Fateh Mohammad (D.W.2). The lower Court has disposed of this matter in a summary way but it needs closer examination. Mohammad Amin, although he was an Ahmadi, he had incurred the displeasure of the Mirza and was, therefore, not a persona grata. Whatever the circumstances which attended his death it is undeniable that Mohammad Amin died a violent death and was killed by a hatchet blow. A report of the occurrence was made to the police but no action whatever was taken. It is idle to argue that the murderer was acting on self defense for this is matter which can only be determined by the trial Court. Ch. Fateh Mohammad has curiously enough admitted in Court on solemn affirmation that he killed Mohammad Amin. The police, however, could not take any action in the matter and it is suggested that so great is the power of the Mirza that no witnesses dared come forward and state the truth.

The Mubahila building burnt:

We have also the case of Abdul Karim's house. After Abdul Karim was turned out of Qadian and his house was burnt down. An attempt was made to demolish it in a quasi legal manner by obtaining order from the Small Town Committee of Qadian.

Anarchy in Qadian:

These regrettable incidents point to a state of lawlessness accompanied by arson and murder in Qadian. Add to this the circumstances that the Mirza of Qadian spoke of the millions of Mohammadans who did not believe in his supremacy in the most abusive language. His writings furnish a curious commentary on the manners and methods of the pious high priest who not only claims to be a prophet but professes to the chosen one of God, the Masihul-sani (the second Masiha).

Government paralysed:

The authorities appear to have been affected by an extraordinary degree of paralysis and the Mirza in matters secular as well as religious was never questioned. Complaints were on different occasion made to the local officials but no redress was forthcoming. There are on record one or two such complaints but it is needless to refer to their contents and it is sufficient for the purposes of this case to state that definite allegations of tyranny prevailing in Qadian were made and no notice appears to have been taken of them.

Tabligh Conference convened to infuse spirit among Muslims:

It was to counteract these activities and disseminate a spirit of critical awakening in the Mohammadans that the Ahrar Tabligh Conference was convened.

Opposition of Conference from Qadiani:

This step was naturally resented by the Qadianis and they made a bold attempt to stop the Conference from being held altogether. The Ahrar Conference had acquired the land of one Isher Singh for the purpose of their meeting. The Qadianis took possession of the land and built a well on it. This deprived the Ahrars of the only piece of land in Qadian. They were, therefore, forced to convene their meeting at a spot about a mile from Qadian. The building of the wall shows the bitterness of the feelings that obtained between the parties at the time and the arrogance of the Ahmadi who felt that they were immune from the lawful consequences of their high handedness.

Maulana Attaullah Shah's profound magnetism and eloquent oration:

The meeting was, however, held and to this meeting appellant, who is an individual possessing considerable magnetic power and oratorical powers of no mean order was called upon to preside. He delivered at this meeting what must have been a somewhat impassioned oration. The speech lasted for several hours and it is stated held the audience spell bound. In this speech the appellant gave expressions to his views somewhat frankly and did not conceal his dislike and indeed hatred of the Mirza and his followers. The speech was reported in the papers and very soon objection was taken to it. The matter was placed before the local Government who sanctioned the present prosecution.

Objectionable portions of speech:

In the charge sheet framed against the appellant, seven passages out of his speech have been specifically mentioned as being objectionable and actionable. These passages are as follows:

1. The throne of Pharaoh is being overthrown. God willing, this throne will not remain.
2. He is the son of Prophet, I am Prophet's daughter's son, let him come, you all keep sitting quiet, he may discuss with me in Urdu, Punjabi, Arabic, Persian and all other matters, this whole dispute is settled today. Let him come out of Pardah and lift the veil, he may wrestle and see the feats of Muala Ali, he may come in any colour, he in car and I barefooted, he dressed in silk and I in Gandhi Ji's khalri Khadar Sharif: according to the advice of his father he eats Muzaffar, roasted meat, yaqutian and Plomer's tonic wine day and night and I eat barley bread according to the Sunnat of my maternal grandfather.
3. How can they oppose us these tailless dogs of Britian, he flatters and cleans the toe of Britain's shoes. I don't speak with pride but swear by God that if I am left alone, you should see Bashir's exploits and mine. What can I do? The word Tabligh has put us in a difficulty. This is not a political conference but if reins were loosened, oh Mirzais! I tell you even now you should be on guard. Your power is not as much as the forth of urine.
4. He who fails in the 5th primary becomes a prophet. There is an instance in India that he who fails becomes a prophet.
5. Oh sheep of Massiah! No one has yet appeared to settle with you. It is the Majlis-e-Ahrar with whom you have to deal now. It shall smash you into pieces.
6. Oh Mirzais! See the picture of your prophethood. Oh bad one, if you became prophet you should have at least upheld your dignity.
7. If you had claimed prophethood, You should not have become dogs of the British.

The appellant pleaded in the lower Court that his speech had not been correctly reported. He completely denied having said paragraph No.5 and although he admitted that the sum and substance of the remaining six paragraphs was stated by him in his speech he challenged the verbal accuracy of these paragraphs. The finding of the lower Court is that Paragraph No.5 has been incorrectly reported and that the appellant cannot be convicted in respect of it. The conviction of the appellant is based on the matter contained in the remaining six paragraphs. The appellant's counsel at the time of arguments conceded at once that paragraphs 1 to 4 and 6 to 7 had in fact been uttered by the appellant and that he did not now question the correctness of the reporter's notes. The only question from my decision, therefore, is whether

these six paragraphs are actionable under section 153 A. Indian Penal Code, and whether by uttering them the appellant has committed an offence.

I have already set out the circumstances which led to the convening of the Ahrar Tabligh Conference. A large number of documents including the writings of the Mirza have been produced in the evidence by the defense and an attempt has been made to show that the speech of the appellant was nothing more than a just and proper criticism of the enormities and tyrannies perpetrated by the Mirza and his followers. His sole object, it is alleged, in delivering this speech was to bring light to the minds of the sleeping Mohammadans and to expose the malpractices of the Ahmadiya. His speech made reference to the tyrannies perpetrated by the Mirza and called for redress of the wrongs suffered by the people who were true Mohammadans and who refused to accept the self constituted supremacy of the Mirza.

Why speech was delivered?

I have been taken through the whole of the speech by the learned counsel for the appellant and also by the learned Public Prosecutor, and considering the speech in the light of the state of affairs obtaining at Qadian I may say at once that the appellant had two distinct objects in view. He intended to criticise the Mirza and his followers and also to rouse his hearers to take action against the Ahmadi and thus redress their wrongs. It has been suggested that the speech was a gesture of peace, but even a cursory perusal of it will convince any reasonable being that it tendered the gauntlet rather than the olive branch. However, much the appellant may have attempted to keep within the bounds of reason, the exuberance of his verbosity often carried him away and he said things which could have no other effect but to rouse hatred of the Ahmadis in the minds of his hearers. With the cleverness of an accomplished orator the appellant emulated the methods of Mark Antony and repeated that he had no quarrels with the Ahmadis. These profession of peace alternated with abuse and wit of a very low order which could only induce the audience to hate the Ahmadis.

Fair and just criticism of the speech no doubt contained passages which may be called as very just criticism of the doings of the Mirza. References were made to the beating given to Gharib Shah, to the high handedness of the Mirza to murders of Mohammad Hussain and Mohammad Amin and various other incidents which can be legitimately criticised by a true Mohammadan. The speech stressed the resentment which Mohammadans felt on the insult which the Ahmadis offered to the Prophet Mohammad.

Difference between Qadianism and Islam:

According to the Mohammadans, Mohammad is the last Prophet whereas the Ahmadis believe that through Mohammad others can receive divine revelation. When, however, he descends to rank abuse and begins to call the Ahmadis by names which must be resented by anyone he goes beyond the bounds of legitimate criticism and whether he did so in the heat of the moment or deliberately, he is liable under the law.

Effect of Speech:

The appellant who was addressing large assembly of primitive and illiterate villagers must have known that by a speech of this nature he would arouse their passions and would promote feelings of enmity towards the Ahmadis. It is in evidence that the speech had the intended effect on the audience. They were carried away by the oratory of the appellant and expressed their enthusiasm frequently. It is immaterial that the audience did not forthwith get up and show violence to their opponents. Although feelings between the

parties had been strained for some considerable time before a speech of this nature must have and did in fact increase hatred and enmity between them.

Of the seven passages contained in the charge consider that passage 3 and 7 are the most objectionable ones. These are the passages in which the appellant has called the Ahmadis tailless dogs of Britain. The other passages do not in my opinion amount to an offence under Section 153 A IPC. The first passage referring to the overthrow of the throne of Pharoah is almost innocuous. The second paragraph makes references to the dietary of the Mirza. It is interesting to note that this is a reference to a letter written by the first Mirza to one exhibits in the present case.

Plomer's Wine and Mirza:

The Mirza, it appears was in the habit of taking certain tonic, called Plomer's tonic wine and on one occasion ordered his correspondent to get it for him from Lahore. There is also some reference to Yaquti in one or two other letters. The present Mirza had admitted in his evidence that his father did on one occasion take Plomer's tonic wine and was what might be described a bon vivant. This passage, therefore, too is not in my opinion objectionable. The fourth passage makes reference to the fact that the first Mirza sat in an examination and failed. The sixth passage is in my opinion sycophant and not preserving the dignity of a prophet. Therefore, all the passages excepting passages No.3 and 7 are not in my opinion actionable. This does not mean that in the whole of the appellant's speech there are only two objectionable passages. The trend of the speech shows that it was the intention of the appellant not only to expose the misdeeds of the Ahmadis but also to rouse feelings of hatred against them. That the speech of the appellant did not bring about a breach of the peace and his hearers did not express their sentiments in violent or a tangible manner merely mitigates his offence and though I have no doubt that the appellant was justified in criticising the Ahmadis I must hold that he went beyond the bounds of just and reasonable criticism and in doing so rendered himself open to the consequences of law. It is easy to condone and even admire the action of the appellant but in circumstances of this nature where feelings are strained and passions run high a speech of this nature is, in popular parlance, the thin end of the wedge. Even if the offence of the appellant is considered to be only technical one, the authority of the law must be vindicated.

Final Judgment:

After considering the matter from all aspects and considering the effect which a speech of the nature would have on the audience which hear it, I am inclined to hold that the appellant is guilty of the offence punishable under Section 153, Indian Penal Code. I would accordingly uphold his conviction. As regards the sentence it is only necessary to take into account the conditions obtaining Qadian and the extreme resentment which the millions of Mohammadans of India experienced in being called unbelievers and swine by the Mirza and by their women being compared to bitches, and I inclined to consider that the offence of the appellant is only technical one. I would, therefore, reduce his sentence to simple imprisonment till rising of the Court.

Note: This court decision is extracted from the Urdu book "Tehreek-Ahmadiyyat" by Bashir Ahmad.