



JUDICIARY OF
ENGLAND AND WALES

Derby Crown Court

R

-v-

Ihjaz Ali, Razwan Javed and Kabir Ahmed

Sentencing Remarks of HHJ Burgess

10 February 2012

Over 60 million people live in the United Kingdom. More than 51 million of us live in England. Our population is made up of people of all colours, creeds and cultures. For the vast majority of the time the vast majority of us get along together very well, and the greatest freedom that we all enjoy is to live in peace and without fear.

The law has evolved and adapted to protect that freedom. In particular, laws have been passed to prevent written material being distributed which is intended to stir up hatred. This has proved necessary because a small minority of our broad community sometimes seeks to stir up hatred against their fellow citizens merely because those fellow citizens are perceived to be different in some way.

In 1986 the Public Order Act made it an offence to distribute threatening, abusive or insulting written material with intent to stir up Racial Hatred. In 2006 the legislation was extended to prevent the stirring up of hatred on religious grounds.

Most recently the Criminal Justice and Immigration Act 2008 again extended the area of protection. It was clearly perceived by parliament that people of a particular sexual orientation needed protection from that minority who wished to stir up hatred against them.

This happens to be the first prosecution under that legislation.

Much has been said during the course of the trial about freedom of expression, and the freedom to preach strongly held beliefs; beliefs, which may have some foundation in scripture.

Freedom of speech is a cornerstone of democracy and a basic ingredient of any free society. Parliament clearly had this very much in mind when this legislation was passed, and it may be helpful if we remind ourselves of the specifics of the offences of which you have been convicted.

The charge was one of distributing written material which was threatening with intent to stir up hatred on the grounds of sexual orientation.

Parliament, clearly considering the issue of freedom of speech, added that discussion or criticism of sexual conduct or practices or the urging of people to refrain from or modify such behaviour shall not be taken of itself to be threatening or intended to stir up hatred. There was no intention to stifle debate, merely to protect.

The Jury had the benefit of listening to all of the evidence in this case. They knew what the constituents of the offence were, and they had well in mind that the offence would not be committed by mere adverse criticism of homosexuality. Their convictions can only have been on the basis that the document that all three of you were distributing was threatening, and that by distributing it you all intended to stir up hatred against homosexuals.

The leaflet depicted a mannequin swinging from a hangman's noose, under the caption of "Death Penalty?"

Next to that was the information that in 1533 Buggery was punished by hanging.

On the other side was text which said among other things that the only debate among classical authorities about how to punish homosexuality was the method of carrying out the execution: burning, flinging from some high place or stoning. It said that the death sentence was the only way that the immoral crime (*of homosexuality*) can be erased from corrupting society".

In the course of evidence we heard what effect, reading that leaflet had upon four homosexual men. All felt threatened.

The background to the distribution of these leaflets outside the mosque after Friday Prayers and through letter-boxes on residential streets is worth mentioning, because it gives some idea of the hostility felt by you defendants and the level of organisation.

The Derby Gay Pride march was to take place on 10th July 2010. You Ihjaz Ali took on the role of organising a campaign to counter this march, and on the day of the march, you, Kabir Ahmed and 12 others staged a small counter demonstration. No criminal charges arose as a result of that demonstration. I only mention it because the Gay Pride March was the focus of your activity, and because the very small number who attended your demonstration gives a good indication that the vast majority of the Muslim community did not want to be associated with what you were doing.

In the lead up to that day, what I am sure were hundreds of anti-gay leaflets were distributed. The first two were not the subject of charges, but they do provide the context of these offences. They may not have been “threatening”, but most people would regard them as offensive at the very least. “G.A.Y. God Abhors You” and “Turn or Burn”

You, Ihjaz Ali, organised the distribution of those leaflets, and you, Kabir Ahmed, also distributed them.

There were complaints to the Police about them. You, Ihjaz Ali were subsequently made aware of those complaints. That knowledge did not stop you continuing to distribute the leaflet that is the subject of the charge.

You, Kabir Ahmed and you Razwan Javed, both distributed the Death Penalty leaflet outside the Mosque at Friday prayers on 2nd July 2010. You Ihjaz Ali had provided them with the leaflets. You also provided the other two defendants with the leaflets that they distributed on 4th July.

It would be wrong for anyone to suggest that Ahmed and Razwan Javed were acting as little more than postmen. There was evidence on the papers to support the contention that you intended to stir up hatred. You, Razwan Javed had been making

internet searches on topics relevant to the content of the leaflets and you, Kabir Ahmed made a video which you posted on You-tube, containing the slogan: Gay today- Paedo tomorrow. You8 were also found to have quantities of the leaflets at your home when you were arrested.

It is right to say that you, Ihjaz Ali had contact with the Police, and discussed a number of matters with the Community Officer. This was largely to do with the Organisation of the protest, and it is significant that the Police were never consulted about the content of the 3 leaflets the Jury had to consider.

Given that this is the first prosecution of its type, there are no guidelines and no guideline cases. Accordingly, I have reminded myself of general principles as set down in sections 142 and 143 of the CJA 2003. I have borne in mind that one of the purposes of sentencing is the reduction of crime (including its reduction by deterrence).

I have borne in mind that, when considering the seriousness of these offences I have to consider not only the culpability of the offender, but also the harm that was caused, or was intended to be caused, or might foreseeably have been caused.

Here, I am obviously keen to dissuade anyone from distributing this sort of material in the future.

Looking at the harm done, I have considered the threat felt by the individuals that gave evidence at the trial, and the likelihood that others were similarly affected.

I have borne in mind that the residents of the streets who received this leaflet do not seem to have changed their attitude or behaviour towards their gay neighbours. Indeed it was heartening to hear one witness say that he experienced great support from his neighbours following the distribution of these leaflets.

That said, you have been convicted of intending to stir up hatred. It follows that your intention was to do great harm in a peaceful community.

It is also heartening that there have been no similar offences since your arrest. No-one seems to have been tempted to copy you.

However, it is hard to ascertain exactly how much harm you have caused by distributing this leaflet outside the Mosque.

I have considered a number of cases supplied to me by Miss Cheema. They are of general interest, but none of them is factually similar, and in a number of instances, the charges relating to volatile material are secondary offences, and the sentencing Judge has had to consider totality.

I have also borne in mind the case of *R v Sheppard and Whittle* (2010 2 Cr. App. R (S) 68) which relates to Racist material on the internet. Again it is not factually similar to this case, but the Court of Appeal did say that they regarded the need to deter others as being an important element of sentencing in cases of this kind.

In mitigation I bear in mind your good character. I have considered the personal references that speak highly of you, the contribution to society that you make and are capable of making. I have read expressions of remorse from each of you. They would have carried far more weight had you pleaded guilty and acknowledged your culpability, but it may be the case that you do now recognise the fact that what you did was wrong.

I am also conscious of the fact that these offences were committed in July 2010 and that none of you have offended since, or done anything to aggravate the situation. Nevertheless these offences have to be marked by a Prison sentence, for all the reasons I have already given.

In your case Ihjaz Ali, of all the people that were in the dock, you were clearly the main organiser. You distributed the leaflets to others who in turn delivered them. I have to deal with you for all four counts on the indictment.

The sentence in your case is 2 years on each count concurrently.

Razwan Javed and Kabir Ahmed, I cannot make a distinction between you. As I have already explained there is evidence that you were more involved than just acting as passive distributors.

The sentence in each of your cases is 15 months.

That means each of you will serve up to half your sentence inside prison. The balance will be served on licence. There may be requirements of that licence. Should you fail to comply with those requirements or should you commit another offence during the licence period, you are likely to be recalled to serve some or all of the balance of your sentence.