UNITED KINGDOM: Is Holocaust denial a crime in England and Wales? No – but see R v Chabloz

By Frank Cranmer

Law and Religion (15.02.2019) – https://bit.ly/2T5OKFQ – Alison Chabloz is a self-confessed Holocaust denier. She was convicted in 2018 at Westminster Magistrates' Court of three offences contrary to section 127(1) of the Communications Act 2003, which provides that:

> "A person is guilty of an offence if he–
>
> (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
>
> (b) causes any such message or matter to be so sent."

Two of the offences related to a video of her singing two songs, (((Survivors))) and Nemo's Anti-Semitic Universe, to an audience in a central London hotel in September 2016. A video of her performance was subsequently uploaded to YouTube and, though she had not uploaded it herself, she embedded a hyperlink to the YouTube video in her blog. The third related to a video of her singing a song entitled I like the story as it is – SATIRE which she uploaded herself to YouTube in

September 2017. The argument on appeal was whether or not the three songs were “grossly offensive” [2].

On appeal, in R v Alison Chabloz [2019] Southwark Crown Court 13 February, the prosecution argued that the lyrics of each song were no more than a collection of anti-Semitic tropes or motifs, with a particular emphasis on Holocaust denial. Furthermore, two of the songs were in whole or part set to the tunes of well-known Hebrew songs – which, the prosecution alleged, was a deliberate attempt to make them even more insulting. In those circumstances, each song was “grossly offensive” [8]. Ms Chabloz accepted that all three songs were offensive but denied that any of them was “grossly offensive”, describing them as “silly songs”, “parody” and “satire”. She also asserted that the proceedings were an affront to her freedom of speech. On her own admission, she was an adherent of what she described as a revisionist view of history in relation to the Holocaust [9].

The Court (HHJ Hehir and Ms M Rego) said that, whether or not material was “grossly offensive” for the purposes of section 127(1) was an objective question of fact: DPP v Collins [2006] UKHL 40. In short, would reasonable persons find the material grossly offensive? [10]. There was also a mental element: “the appellant is not guilty unless we are also sure either that she intended it to be grossly offensive to Jews, or at the very least was aware that it might be perceived as being grossly offensive to them” [11]. On the matter of free speech, the right under Article 10 ECHR was not unqualified: preventing the use of a public electronic communications network for attacking the reputation and rights of others was legitimate objective [12] and the ECtHR was is clear that Article 17 ECHR removed from the protection of Article 10 “speech or other expression which is contrary to the

fundamental Convention values of tolerance, social peace and non-discrimination: see M'Bala M'Bala v France [No.25239/13] and Norwood v UK(2004) 40 EHRR SE 11" [13].

Though there was "no crime of Holocaust denial in this jurisdiction" [14],

> "no tribunal of fact is required to proceed on the basis of absurdity or fiction. The Holocaust … happened. World War II is surely the best documented and most extensively studied period of modern history, and the Holocaust is one of the best-documented aspects of that conflict, if not the best. A mass of evidence, of various kinds, attests to it. Moreover the Holocaust has been the subject of extensive judicial enquiry, from the Nuremberg Trials onwards, in a number of jurisdictions" [15].

The judgment at first instance of Gray J in David Irving's libel action against Penguin Books Ltd – quoted by the Court of Appeal in Irving v Penguin Books Ltd & Anor [2001] EWCA Civ 1197 at [33] – was particularly pertinent: Gray J had concluded that "no objective, fair-minded historian would have serious cause to doubt that there were gas chambers at Auschwitz and that they were operated on a substantial scale to kill hundreds of thousands of Jews" [16]. That conclusion, together with the enactment by the Westminster Parliament of the War Crimes Act 1997, was sufficient to allow the Court to take judicial notice of the fact that the Holocaust had indeed occurred [17 & 18].

As to the findings of fact, the Court held that all three

songs were “grossly offensive” [24, 25 & 26]. As to the issue of mens rea, the Court was sure that Ms Chabloz positively intended each of the songs to be grossly offensive to Jews [27]. Furthermore:

> “… although part of her intended audience on YouTube was persons sharing her own warped outlook, she embedded the hyperlink [Charges 1 and 2} and uploaded the video [Charge 3] in the hope that those who saw and heard the songs would include Jewish people who would be grossly offended by them” [27].

Appeal dismissed [28].

Cite this article as: Frank Cranmer, “Is Holocaust denial a crime in England and Wales? No – but see R v Chabloz” in Law & Religion UK, 15 February 2019, http://www.lawandreligionuk.com/2019/02/15/is-holocaust-denial-a-crime-in-england-and-wales-no-but-see-r-v-chabloz/

…….

faiths in 20 countries: http://hrwf.eu/forb/forb-and-blasphemy-prisoners-list/