

1936

*Present : Abrahams C.J.*PERERA *v.* AGALAWATTE *et al.*467-8—*P. C. Kalutara, 17,022.**Obscene book—Advertisement of drugs and aphrodisiac—Tendency to corrupt—  
Penal Code, s. 285.**Where an Ayurvedic physician published a book advertising drugs as  
a remedy for the diseased as well as an aphrodisiac for the sound,—**Held, that the tendency of the book was to corrupt the minds of those  
into whose hands the book may fall.***A** PPEAL from a conviction by the Police Magistrate of Kalutara.*L. A. Rajapakse (with him P. Senaratne), for accused, appellants.**M. M. I. Kariapper, Acting C.C., for Crown, respondent.**Cur. adv. vult.*

October 6, 1936. ABRAHAMS C.J.—

The first appellant was convicted under section 285 of the Penal Code for printing a number of copies of a book containing obscene passages. The second appellant was convicted for aiding and abetting the first appellant in the commission of the above offence, and also with possession of a number of copies of the same book which amounts to an offence punishable under section 286 of the Penal Code. They were each fined Rs. 50 or in default one month's rigorous imprisonment.

They appeal on the ground that there was a misjoinder of charges, and also on the ground that the passages in the book, which are the

subject-matter of the charge, are not actually obscene. The first point, that of misjoinder, was not seriously pressed, and I have no hesitation in saying that there is no substance in it. The second point, however, raises a question of considerable difficulty as this sort of case frequently does.

The book in question, was written by the second appellant who is an Ayurvedic physician, and who is the owner and probably the purveyor of various kinds of drugs which he claims in his book to possess remedial qualities for a very extensive number of complaints. Whether the book contains obscene passages or not, I am of the opinion that it was written merely to puff the drugs and for no other purpose. In a prosecution of this kind, however, the intention of the accused is not actually relevant, the question being, is the book likely to get into the hands of people who may be corrupted by it?

There has been considerable argument as to the meaning of the passages in the book which form the subject-matter of the charge. It was contended by Counsel for the appellants that the passages merely prescribe a remedy for those persons who are impotent or suffer from a lack of sexual energy. It was contended on the other hand by Counsel for the Crown that the appeal is wider than that and suggests the lascivious, and incites people to immorality by putting into their minds lascivious ideas.

A number of cases have been cited on both sides, but, of course, in the consideration of charges such as these, each case depends on its own facts. The test to be applied in considering what is an obscene publication, is that which is contained in the judgment of Cockburn L.C.J. in *Reg. v. Hicklin*<sup>1</sup>, "The test of obscenity is this, whether the tendency of the matter charged . . . is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall".

It is argued for the appellants that the appeal of the book is to the diseased only, and that the book is hardly likely to fall into the hands of anybody else, and if it does, could not be said to be any more harmful than a number of medical treatises relating to sexual deficiencies which can be purchased by all and sundry without any difficulty. The book apparently is only obtainable on application to the writer or the publisher who, I am informed, advertised the existence of the work in the Ceylon Press. The reader of the book is exhorted, after reading it, to pass it on to a friend. Therefore, I do not think it can be doubted that the book is quite likely to be passed on to people who are perfectly sound, and who do not require medicine to restore or to improve their sexual powers.

Then as to the material itself, I am of the opinion that there are parts of the passages which are objected to in P 9 and P 10, which go beyond recommending remedies to the diseased and undoubtedly do suggest to the sound artificial stimuli for the increase of sexual energy and the enhancement of sexual satisfaction. In other words, there is not only prescribed a remedy for the diseased but an aphrodisiac for the sound, and that, in my opinion, has a tendency to deprave, and corrupt those

whose minds are open to such influence. The distinction between a remedy and an aphrodisiac was, if I may respectfully say so, admirably put in the case of *Emperior v. Thakar Datt and another*<sup>1</sup>, where Johnstone C.J. said, "We would like to see a distinction drawn between (i.) descriptions of diseases with remedies and treatment therefor, and (ii.) description of defective sexual enjoyment, with advice for heightening and prolonging such enjoyment in the case of normal persons. Disease is a thing to be combated; and descriptions of it with cures suggested printed in a paper intended to reach sufferers and doctors and not likely to come into the hands of others, are not criminal; but advice of the kind mentioned in (ii.) above is on a different footing and should be kept out of public prints, as it amounts to an incentive to sensuality".

If the writer of the book wished to continue to reach sufferers only, he can express himself in a way which will not appeal to the persons who do not require his remedies.

I therefore have no reason to interfere with the Magistrate's finding, and I dismiss both appeals. -

*Affirmed.*

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<sup>1</sup> (1917) A. I. R. Lah. 288.