

1930

*Present : Lyall Grant J.*DE BRUIN *v.* DHARMABANDU.425—*P. C. Panadure*, 1,479.*Obscene literature—Publication of book—Test of obscenity—Penal Code, s. 285.*

In a charge of publishing an obscene book, it is not necessary to show that the obscenity lies in any particular words used.

It is sufficient if the scenes depicted and the details in which the scenes of passion are represented are, in fact, obscene.

APPEAL from an acquittal by the Police Magistrate of Panadure.

J. E. M. Obeyesekere, C.C., for appellant.

F. de Zoysa, K.C. (with him D. E. Wijewardene), for accused, respondent.

August 25, 1930. LYALL GRANT J.—

This is an appeal from an acquittal, by the complainant, a Police Inspector, with the sanction of the Solicitor-General. The three accused were charged with having

¹ 23 *N. L. R.* 368.

printed for sale an obscene book, entitled "Rathi Sapatha". The first accused was the writer or editor of the book; the second accused was the owner of the press at which it was printed; and the third accused was the publisher of the book.

The book is written in Sinhalese and extracts have been made from it which have been interpreted into English by Mr. Punchihewa, the Sinhalese Press-Examiner in the Criminal Investigation Department. The book appears to be a collection of tales or stories, and different Sinhalese experts have in the course of the evidence given conflicting opinions on the question of its obscenity.

The original complainant, Mr. Kuruppu, the assistant editor of the "Catholic Messenger", Kandana, sent the book to the police complaining that he found some passages which were most revolting. He bought it at a book shop in Maradana.

Mr. Punchihewa was subjected to cross examination on the subject of various classical works but he would not admit that there were passages worse than or so bad as those he complained of in the accused's publication. He admitted, however, that Mr. W. F. Gunawardena, Mudaliyar, was one of the recognized scholars in Sinhalese. Mr. Gunawardena gave evidence for the defence, and in regard to the book in question he says: "It is a work of classical merit; it is a work of high art: it is very elegant in expression; most of the thoughts there are couched in elegant and exalted language; it is a book intended for cultured people; it cannot be understood by the ordinary masses". In regard to the translation, he said: "The translation does not bring out the spirit of the passages; rendering into English in this translation is not only wanting in the spirit, dignity, and loftiness of the language of the original, but in the translation undue prominence is given to facts which should have been handled with delicacy; the language used in the translation is very coarse compared with the neat and elegant language of the original. I am of opinion

that this book would not corrupt the morals of those people who are cultured enough to understand it; as regards the uneducated, it would have no effect on their morals as they could not understand the language", and later, "I do not consider this book as obscene".

On this state of the evidence, after the Magistrate had heard the arguments, he decided to call the Hon. Mr. D. B. Jayatilaka, Member of the Legislative Council, who was Chief Editor of the Sinhalese Dictionary, Manager of Buddhist Schools, President of the Young Men's Buddhist Association and a number of other Sabhas and Associations. Mr. Jayatilaka was asked to peruse the book and to give his opinion. He said in regard to the pages in question "There are no passages in these pages which could be definitely called obscene; the general tendency of this pamphlet is not wholesome from a moral point of view". He said "The book is written, not in the ordinary language of the ignorant people, it is written in literary style and hence may not be understood by ignorant people". But later on he said "It is not a work of any kind; it is a worthless book; it is not a work that could be commended". In cross-examination by the Inspector of Police he said "The point of the story is to emphasise the physical aspect of sexual instinct. The writer appears to be a practised writer and the language in itself is not obscene. I would not say that these pictures—those on the front and back pages of the pamphlet—are obscene, but I would not hang them in my house. A boy who has passed Sinhalese in the eighth standard will be able to understand this pamphlet. This pamphlet will not have a wholesome effect on such a boy". In answer to the Court he said "I will not allow this book to be used in my schools as it has no educational or moral value; it is not a wholesome book".

The Magistrate acquitted the accused on the following grounds. He says: "The

question in this case is whether the passages relied on by the prosecution are obscene. This cannot be decided from the translation itself. One should read the original and see if there is anything obscene, as, after all it is the original which is liable to get into the hands of the public". He then discusses the evidence and finds that Mr. Jayatilaka corroborates the evidence of Mudaliyar Gunawardena and that the sum total of his evidence is that there is nothing definitely obscene in the book, though it is not a wholesome book from a moral point of view.

The principles upon which the Courts proceed in deciding whether a publication is or is not obscene have been laid down in the case of *The Queen v. Benjamin Hicklin and another*¹. The principles laid down there have been followed both by our Courts and by the Courts in India in construing the appropriate section of the Penal Code. In that case Chief Justice Cockburn said: "I think the test of obscenity is this, whether the tendency of the matter charged as obscenity 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".

Mr. Gunawardena was of opinion that the book would not corrupt the morals of people who were cultured enough to understand it, and that, as regards the uneducated, it would not have any effect on their morals, as they could not understand the language. Mr. Jayatilaka, however, said that a boy who had passed the eighth standard in Sinhalese would be able to understand the pamphlet and that it would not have a wholesome effect on such a boy. In cross-examination he said "The effect that would be produced on the mind of a boy who has passed the eighth standard will depend on his moral training; if he had received a good moral training this book will not have any effect". As against this we have the evidence of the Press Examiner that the accused's publication is written in ordinary

language, meant for the lower classes. It is admitted that the book was published at 25 cents.

I have read the passages which have been translated. There can be no doubt that, taken by themselves at any rate, they are of an unwholesome nature. Mr. Gunawardena, in regard to this, said "The passages as translated are coarse and may even appear to be indecent, but the original passages in the book are not obscene".

The extracts translated from the work are, I think, sufficiently long and full to give an idea of its general character. I do not think it is necessary that anyone should understand the original in order to form an idea of the general character of the passages. It may be, as stated by Mr. Gunawardena, that the passages appear coarser when translated than they do in the original. There are, however, two translations produced and it is quite apparent that any obscenity lies, not in the particular words used, but in the scenes depicted and the detail in which scenes of passion are represented.

The question for the Court is whether the tendency of the matter charged is to deprive and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort falls.

The book was on general sale at a low price. The pictures on its covers are an indication of the nature of its contents. There is evidence that the latter can be understood by a wide class of readers. I have no doubt that the book is calculated to have a harmful effect on many of the persons into whose hands it may fall.

Although the Magistrate acquitted the accused it is obvious that he was not quite satisfied as to the book since he records an undertaking by the accused that no more copies will be printed. Such an undertaking seems unnecessary if the book is not obscene and it would have no binding effect.

¹ 3 Q. B. 360.

I am informed by Crown Counsel that the principal object of this appeal is not so much to punish the accused as to prevent the further distribution of the book.

I have come to the conclusion after giving due weight to the evidence, from an examination of the appearance of the book and of the passages translated, that the work is obscene and ought to be suppressed.

It was argued in appeal on behalf of the second accused that there was nothing to show that he knew of the printing of the book. He is, however, the owner of the press, and in the absence of evidence to the contrary, I think he must be presumed to have known of the printing.

On the whole I do not think a heavy sentence is called for. I sentence each accused to pay a fine of Rs. 10, or in default of payment to undergo one week's simple imprisonment, and I further direct that any copies of the book in the custody of the Court or in the possession or power of any of the accused be destroyed.

Set aside.

