1953 *Present :* **Swan J.**

PODINONA PERERA, Appellant, *and* HANIFFA (Inspector), Respondent

S. C. 860—M. C. Kegalle, 37,335

Brothels Ordinance—Charge of "Keeping or managing a brothel"—Quantum of evidence —Sentence.

If a person keeps in a place even one solitary prostitute to be supplied to all comers, that person may be convicted of "keeping or managing a brothel".

Where a Magistrate chooses to impose a sentence of imprisonment rather than a fine for a first offence under the Brothels Ordinance, he must give reasons for so doing, or at least the proceedings must show that he has exercised his discretion properly.

APPEAL from a judgment of the Magistrate's Court, Kegalle.

C. R. Gunaratne, for the accused appellant.

A. Mahendrarajah, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

January 30, 1953. SWAN J.—

The appellant was charged with having on 20. 3. 1952 kept or managed a brothel. She was convicted and sentenced to undergo a term of two months rigorous imprisonment. Mr. C. R. Gunaratne appearing for her contends that the evidence falls far short of establishing the charge of "keeping or managing a brothel". At the time of the raid there was only one woman in the house besides the accused. It is, he submits, an isolated case of prostitution.

The word *brothel* is not defined in the Ordinance. The definition given to it in *Singleton v. Ellison* [1] was adopted by Withers J. in *Pieris v. Magrida Fernando* [2] and followed by de Sampayo J. in *Morris v. Cornelis* [3] and *Wickremasuriya v. Mary Nona* [4]. In these cases a *brothel* is defined as a place to which men resorted for purposes of prostitution with women. In the last mentioned case de Sampayo J. held that the occupation of a house or room by a single prostitute did not constitute it a brothel. But that does not mean that if a person keeps a single prostitute in a place to be supplied to all comers that person cannot be said to keep or manage a brothel.

[1] *(1895) L. R. 1 Q. B. 607.*
[2] *(1895) 1 N. L. R. 212.*
[3] *3 Bal. Notes 48.*
[4] *(1922) 24 N. L. R. 26.*

In *Eliyatamby v. Wijelath Nona* [1] Akbar J. held that a single act of prostitution was insufficient to render a place a brothel. But in *Toussaint v. Cecilia* [2] Soertsz A.J. in a very interesting judgment went into the derivation of the word "*brothel*" and gave it the following definition :

> " A brothel is a house of ill-fame to which men resort for purposes of prostitution with women who are to be found in the place or with women who resort to or are introduced to the house. "

With this definition I am in complete agreement, but I do not think it excludes such a case as I have referred to above, namely, a case where a single prostitute is kept to be supplied to all comers.

Referring to the proposition that a solitary instance of prostitution is insufficient to render a house a brothel Soertsz A.J. remarked:—

> " Generally a solitary instance of prostitution in a house no more makes that house a brothel than one swallow can make a summer. "

And he referred to a passage in Stroud's Judicial Dictionary which says " the one proved instance may prove itself not a solitary but one of many instances ".

In the present case John Singho who was both informant and decoy says that when he went to the accused's house it was the accused who opened negotiations and asked him whether he wanted a " badua " and when he answered this cryptic question in the affirmative, demanded Rs. 5 for the " badua ", took him inside a room where later a woman was brought to him. There is also his evidence that about a year earlier he took a gentleman to the same house and procured a woman for him. This by itself constitutes no offence, but gives an indication of what went on in the house. In my opinion the learned Magistrate was justified on the material before him in holding that the charge was proved.

I see no reason to interfere with the conviction but as regards the sentence I am inclined to accept the submissions made by Counsel for the appellant. The Ordinance provides a penalty for a first offence of a fine not exceeding Rs. 500 " or *in the discretion of the Court* to simple or rigorous imprisonment for a term not exceeding six months or to both such fine and imprisonment ". In a matter like this where a Magistrate chooses to impose a sentence of imprisonment rather than a fine he must give reasons for so doing, or at least the proceedings must show that he has exercised his discretion properly. I see no reason why the accused should have been deprived of the option of a fine. Accordingly I delete the sentence of two months rigorous imprisonment and substitute therefor a fine of Rs. 200 in default two months rigorous imprisonment. Subject to this variation the appeal is dismissed.

Sentence altered.

[1] *(1934) 36 N. L. R. 300.*

[2] *(1935) 37 N. L. R. 308.*