

Present: Maartensz A.J.

1926.

CROOS, v. SHAFI.

629—P. C. Tangalla, 17,906.

Using obscene language—Public place—Evidence of annoyance—Penal Code, s. 287.

In a prosecution for uttering obscene words in a public place there should be evidence that the language used caused annoyance to some person.

A PPEAL from a conviction by the Police Magistrate of Tangalla. The facts appear from the judgment.

Soertsz (with *Rajakariar*), for accused, appellant.

October 20, 1926. MAARTENSZ A.J.—

The accused appeals from a conviction under Section 287 of the Penal Code for uttering certain obscene words in a public place, to wit, near the public road in front of the police station, to the annoyance of the public.

Two points were argued in support of the appeal:—

- (a) That the words were uttered at the police station, which is not a public place; and
- (b) That there is no evidence that anyone was in fact annoyed by the language used by the accused.

It is not clear from the plaint where the accused was when he uttered the obscene words. According to the evidence of the sergeant he was on the road running by the side of the police station which leads to the "upper resthouse." I take it this is a public road—the evidence might have been more explicit—and the accused was in a public place when he uttered the obscene words. If the contention in the Court below was that the accused was not in public place, the point would, I think, have been taken in the petition of appeal. The petition of appeal is restricted to the second point taken at the argument, and I am not prepared to interfere with the conviction of the accused on the ground that the accused was not in a public place.

The second point was taken at the trial as well, and the Magistrate held that there was no necessity for evidence that the words used in this case annoyed anyone. He observes that the words used were so objectionable that they would annoy any ordinary person who heard them; that he had no doubt the words used annoyed everyone present at the time they were uttered.

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I entirely agree with the Magistrate that the words used were very objectionable, and would in all probability have annoyed the person who heard them. But unfortunately none of the witnesses has said that he was in fact annoyed by the words. In view of the provisions of the section, which runs: "Whoever utters any obscene words to the annoyance of others," it is essential that there should be evidence of annoyance. As Gour puts it on page 1356 of Volume I. of his *Commentary on the Penal Law of India*, "there must be actual annoyance, and not merely the probability of it. There must be some person to say that the act done or the song sung had annoyed him." This statement is equally applicable to a charge of uttering obscene words.

Though I regret having to do so, the appeal must be allowed and the accused acquitted.

Set aside.

