

1942

*Present: Wijeyewardene J.*

LUVINERIS, Appellant, and VANDRIESEN, Respondent.

799—M. C. Panadure, 19,523.

*Defence (Miscellaneous) Regulations: Regulation 20A—Publishing a statement likely to cause alarm and despondency—Essentials of offence—Proof.*

Where a person is charged under regulation 20A of the Defence (Miscellaneous) Regulations with having published a statement, relating to matters connected with the war, which is likely to cause alarm or despondency,—

*Held*, that it was not necessary for the prosecution to prove that certain witnesses thought that the statement would have that effect or that certain persons were in fact alarmed or made despondent.

It is for the Court to examine the statement and decide whether the statement would have that effect.

**A** PPEAL from a conviction by the Magistrate of Panadure.

G. P. J. Kurukulasuriya, for accused, appellant.

R. R. Crosette-Thambiah, C.C., for Crown, respondent.

*Cur adv. vult.*

November 6, 1942. WIJEYWARDENE J.—

The accused appellant was convicted on a charge of having committed an offence under Regulation 20A of the Defence (Miscellaneous) Regulations and sentenced to one month's rigorous imprisonment.

The counsel for the accused-appellant argued against the conviction on the following grounds:—

- (i.) that there was no evidence that the words alleged to have been uttered were likely to cause alarm or despondency;
- (ii.) that there was no evidence that anybody was in fact alarmed or made despondent by these words;
- (iii.) that the accused's conduct was not malicious.

I do not think there is any substance in these objections. All that the prosecution has to prove, when a person is charged with an offence under this Regulation, is—

- (i) that the accused published a statement;
- (ii) that the statement related to matters connected with the war; and
- (iii) that the statement was likely to cause alarm or despondency.

This Regulation does not require the prosecution to prove that the accused acted with a particular intent or knowledge. The accused must be convicted on the proof of the facts stated above, unless the accused proves—

- (a) that he had reasonable cause to believe that the statement was true, and
- (b) that the publication was not malicious and ought fairly to be excused.

In this case the accused went near the house of one Weerasekere and made the statement referred to in the charge in the hearing of Weerasekera and the members of his family. That would be publication within the meaning of the Regulation. The statement was in relation to matters connected with the war as in the course of that statement the accused used words in Sinhalese meaning: "Your English and your English Government will be ruined when the Japanese come". That statement which was made a few weeks after the raid in April was likely to cause alarm or despondency as found by the learned Magistrate. The Regulation does not require any proof by evidence that certain witnesses thought that the statement would have that effect or that certain persons were in fact alarmed or made despondent. It is for the Court to examine the statement and decide whether the statement is likely to have that effect.

Even assuming that the defendant's conduct was not malicious, that fact alone would not exculpate the accused as he has to prove further the other matters set out by me under the headings (a) and (b) earlier in my judgment.

After careful consideration I have decided not to alter the sentence and impose a fine in lieu of the sentence of imprisonment. Such an alteration of the sentence may tend to create a wrong impression that offences committed in breach of Regulations of this nature are regarded as trivial offences.

I uphold the conviction and sentence and dismiss the appeal.

*Affirmed.*

