

1934 .

*Present : Akbar J.*ELIYATAMBY *v.* WIJEYLATH MENIKA30—*P. C. Negombo, 6,388*

*Brothel—Charge of keeping and managing a brothel—Single act of prostitution insufficient—Ordinance No. 5 of 1889, s. 1 (1).*

A single act of prostitution is insufficient to render a place a brothel.

There must be evidence that the premises were used as a place to which men resort for purposes of prostitution.

**A** PPEAL from a conviction by the Police Magistrate of Negombo.

*L. A. Rajapakse, for accused, appellant.*

March 13, 1934. AKBAR J.—

The accused in this case has been convicted by the learned Police Magistrate of keeping and managing a brothel and has been sentenced to undergo rigorous imprisonment for six months and also ordered to enter into a bond to be of good behaviour for a period of twelve months. This appears to be her first offence, if it is an offence.

It appears from the evidence that next door to the accused was the mistress of a Police Constable who also figures as one of the witnesses in the police plaint. This Police Constable's mistress appears to be on

angry terms with the accused (see the evidence of the girl Mary). On November 3, 1933, the Sub-Inspector of Police produced a man called Jokinu Fernando, who stated that the house which the accused's husband occupied was a place where he had had women before for sexual intercourse on payment and that he had done so on one or two previous occasions and that there were two other women also available; he further stated that he had seen other males also appearing at the house for the same purpose. Upon this a search warrant was issued and the Inspector made use of Jokinu Fernando as a decoy and gave him a marked Re. 1 note. The Police Inspector then raided the place in the company of some Sergeants and Police Constables. In spite of these Police Officers, if the Inspector is to be believed, he saw two women running away from behind the house whom, he said, he could not make out because it was rather dark. Why the other Police Officers did not give chase and arrest these women is not explained. It almost looks as if this part of the evidence was the necessary touch to make this house of the accused a brothel because the law requires as a rule more than one woman. When the Police Inspector entered the place he said he found Jokinu having intercourse with a woman called Mary and that Jokinu told him that the accused had taken Re. 1 note as payment, that he then searched Menika and found the Re. 1 note in her hand. I cannot understand why he searched Menika if the Re. 1 was in her hand and why the accused should have kept the Re. 1 clenched in her fist, whilst the Inspector was rushing into the room to detect Jokinu and Mary together. However that may be, the next step taken by the Inspector was extraordinary. He was so considerate enough to the accused because there was no one to look after the house that he left her behind and took this girl Mary to the Police Station. There he recorded her statement. This is most extraordinary conduct on the part of a Police Officer. The search warrant was issued for the purpose of raiding this place which was said to have been run as a brothel by the accused's husband. The information given by the Inspector and his informant Jokinu which led to the issue of the search warrant was that it was this accused's husband who was running this brothel. The husband was away from the house at the time, so it was necessary to make the wife the person who was responsible for running the brothel. In any case the Inspector left the woman to look after the house and took the girl away to the Police Station. What the exact statement this girl Mary made to the police at the Police Station I do not know, but she now comes forward and makes a long rambling statement in which she said that she was visited by several persons in the accused's house, that is, the woman Menika's, and that she was taken to various houses by the accused. Jokinu also had forgotten his story about the woman's husband being the real brothel-keeper and implicates the accused as the person who was running this brothel. On both previous occasions when he went to this house it was to this woman Menika he gave the money and who supplied the woman, but to the Magistrate before he got the warrant it was to Menika's husband he gave the money and who supplied the woman.

So it looks as if the absence of the accused's husband was rather disconcerting and embarrassing to the police. Whatever it may be, the Inspector

states that he warned the accused Menika to attend Court. This was on the night of November 3. On the next day, November 4, he filed a plaint and the accused was not present in Court.

All that the Inspector's evidence proves is that there was only one solitary act of sexual intercourse detected in the house. It has been held by the Chief Justice in case S. C. No. 886<sup>1</sup> M. C. Colombo, No. 10,563 (S. C. M. 31.1.33) and also by Mr. Justice Koch in S. C. 288<sup>1</sup> M. C. Colombo, No. 13,698 that one solitary instance is not sufficient to render this woman's house a brothel. As Mr. Justice de Sampayo pointed out in the case of *Silva v. Suppu*<sup>1</sup>, there must be evidence to prove that the premises were used as a place to which men resort for purposes of prostitution with women who were to be found in the house. It will be seen in that case that the prosecution proved that some men and eight women were found in the house when the Police raided. In the case of *Wickramasuriya v. Mary Nona*<sup>2</sup>, Mr. Justice de Sampayo adopted the definition by Mr. Justice Schneider. In that case there was evidence that a gentleman called Mr. Dant, who was engaged in vigilance work, was accosted by a young man and taken to the accused's house; the accused introduced him to a young woman and charged a fee of Rs. 10. There were altogether about eight young women in the house. The large number of women in the house was a material point in the case. Here, there is only the shadow of two women who ran away as seen by the Inspector and who might have come there for innocent purposes.

The only difficulty I had in this case was the evidence given by this woman Mary who testified to her previous acts of prostitution with the connivance of the accused, but on her own confession she appears to be, besides this solitary act of prostitution, to be a prostitute herself because she admitted she had been in another brothel before this. As regards Jokinu Fernando's previous experience with the accused too one must accept it with very great caution because he admitted that his own mother had been convicted for running a brothel.

In my opinion, before an accused person can be convicted under section 1 (1) of Ordinance No. 5 of 1889, there must be evidence, as pointed out by the Judges who decided the cases I have named above, that the premises were used as a brothel, that is to say, evidence to prove that men came there for the purposes of prostitution with women or with one woman in the premises. There must be more than one act proved from the evidence which can be accepted without any doubt. I have, as a matter of fact, a doubt as to whether the Re. 1 was found in the possession of the accused. Even admitting that it was so, her possession can be accounted for not necessarily in the way that the Magistrate has done, but by accepting an explanation that possibly she was given that Re. 1 by Mary to be kept for her. As regards the other acts of intercourse in the premises besides the one detected by the Inspector, the learned Police Magistrate seems to have accepted the whole evidence of the girl when she made every kind of allegation one could conceive of against the accused. He even accepted Jokinu's statement and he ends up his judgment as follows: "The prosecution story is in my opinion extremely clear and extremely well connected". That may be so but he has not tested it to

<sup>1</sup> 21 N. L. R. 119.

<sup>2</sup> 24 N. L. R. 27.

see if it can be believed. A story may be clear and well connected and yet it may be absolutely false. Then the learned Magistrate made this serious mistake, which has been pointed out to me by Mr. Rajapakse. He says as follows : "The defence is obviously false, because the accused denies being there at all on the occasion of the Police raid . . . . Accused's only witness states that the accused was there and was searched by the Sub-Inspector. I accordingly convict the accused".

I do not know from where the Magistrate got the idea that the accused denied she was there at all. I have read her evidence three times and not in a single place has she stated she was not there. What she stated was that her husband was out. It is true that she stated that the Sub-Inspector did not take the Re. 1 note from her hand ; that does not mean that she was not present there. Therefore, the learned Magistrate misdirected himself as regards the effect of the defence of the accused. I do not think the conviction is correct in law for the reasons I have stated, and I set aside the conviction and acquit the accused.

*Set aside.*

