1977 *Present :* **Pathirana, J., and Tittawella, J.**

MRS. DOROTHY SILVA, Accused Appellant and INSPECTOR OF POLICE, CITY VICE SQUAD, PETTAH Complainant Respondent.

S. C. 12/76—M. C.—Maligakande—19422

Brothels Ordinance 1889—Meaning of the term "Brothel"

S. 2(a) of the Brothels Ordinance No. 5 of 1889 reads as follows :—

"Any person who,

(a) Keeps or maintains or acts or assists in the management of a brothel shall be guilty of an offence.

The accused-appellant was charged and found guilty of having on 24th January 1975 at 'Sal Mal', Savoy Buildings No. 2, Galle Road, Wellawatte, kept or managed a brothel. It was argued on her behalf that it is imperative that acts of indecency or sexual intercourse should be committed or opportunities for such acts should be available in the premises itself to which persons of both sexes resort to for the purpose of prostitution in order to make such premises a 'brothel' within the meaning of the Brothels Ordinance.

Held, (i) That a construction should be given to the word "brothel" in the Brothels Ordinance consonant with the mischief sought to be suppressed by the Brothels Ordinance. A construction should be given which will suppress the mischief and advance the remedy. The mischief sought to be suppressed by the Brothels Ordinance is prostitution. In order to bring about an effective result the Courts must give a meaning to the word "brothel" which would carry out the object of the Brothels Ordinance. If the mischief sought to be suppressed by the Ordinance is the suppression of prostitution, it makes no difference that if instead of the acts of indecency or sexual intercourse taking place in the very premises itself in which the women are offered for prostitution, arrangements are made in the premises to supply women living in the premises or elsewhere to be made available to men to be taken elsewhere for the purpose of committing acts of indecency or sexual intercourse. If any premises are used to promote such activities such premises have all the attributes of a brothel for the purpose of the Brothels Ordinance.

(ii) That a "brothel" for the purpose of the Brothels Ordinance is certainly what the word is understood in common parlance, namely a place where persons of both sexes resort to for the purpose of prostitution in the place itself. It also means a place where arrangements are made whereby women living at the premises or elsewhere are supplied for the purpose of prostitution, that is to commit acts of indecency or sexual intercourse either at the premises itself or elsewhere.

(iii) The "live" element need not be present in the premises to render a place a "brothel" within the meaning of the Ordinance. If a resourceful brothel keeper thinks that he can circumvent the Ordinance without keeping women in the premises by the subtler device of displaying the photographs of them in the premises and soliciting men to make their selections from the photographs and adopting some method by which the woman answering to the description of the photograph is supplied from a place outside the premises to be taken to a place outside the premises for the purpose of prostitution, a person resorting to this subterfuge is also guilty of "managing a brothel" within the meaning of the Ordinance.

Appeal against conviction.

A. H. C. de Silva with *Anil de Silva* for the accused-appellant.

Priyantha Perera, Senior State Counsel, with *P. Ramanathan,* State Counsel, for the Attorney-General.

January 1, 1977. PATHIRANA, J.—

The accused-appellant, Dorothy de Silva, was charged with having on 24th January, 1975 at premises called "Sal Mal", No. 2, Savoy Building, Galle Road, Wellawatte, kept or managed a brothel and thereby committed an offence under Section 2 (*a*) and punishable under Section 2 (1) of the Brothels Ordinance. She was found guilty and sentenced to pay a fine of Rs. 300.

The interesting point raised in this appeal is whether it is imperative that acts of indecency or sexual intercourse should be comm tted or opportunities for such acts should be available in the premises itself to which persons of both sexes resort to for the purpose of prostitution, in order to make such premises a 'brothel' within the meaning of the Brothels Ordinance.

The case for the prosecution which was accepted by the learned Magistrate was that Gerard Perera who acted as the decoy in this case on the day in question selected a girl called Mala Jayawardene out of four or five girls offered to him at the premises in quest on by the accused for prostitution for which he paid the accused Rs. 75. No sexual act or any form of intimacy took place at the premises, but the girl was sent to a hotel called Europa House, a short d stance away, where by previous arrangement the decoy met her and took her into a room of the hotel where preparations were made for the sexual act when they were detected by the Pol.ce.

The premises "Sal Mal", No. 2, Galle Road, Wellawatte, in its outward appearance answered the description of a dress boutique with three sewing machines and about six seamstresses. On a petition received by S. I. Ratnayake regarding certain activities at "Sal Mal" he detailed P.C. David to watch the place. P.C. David reported to S.I. Ratnayake that on 19.1.75 he saw a male person speaking to the accused, giving her some money and leaving the premises. A little while later a woman left the premises, got into a taxi which was driven to a place called Europa House a short distance away. On the same day he observed another male person going to "Sal Mal" and speak to the accused. This person left the place, crossed the road and went across to the Piccadily hotel. On this informat on, Sub-Inspector Ratnayake decided to "raid" the place and Gerard Perera was used as a decoy for this purpose. The raid took place on 24.1.75.

The learned Magistrate accepted the evidence of the decoy Gerard Perera that on instructions from Sub-Inspector Ratnayake he went on 24.1.75 at 11.30 a.m. to "Sal Mal" and asked the accused "who is there today?", when the accused showed him 4 or 5 girls out of which he selected the girl Mala Jayawardene for whom he paid Rs. 75 to the accused. He was told to go to "Europa House" and that the girl would be sent there. According to him he went to "Europa House" and after a while the girl Mala came there in a taxi for which he paid Rs. 10. He booked room No. 11 on the 3rd floor of this hotel. The two of them undressed themselves and were seated on the bed when the Police knocked at the door. When he opened the door he saw Sub-Inspector Ratnayake. The girl had a towel wrapped around her body at that time. The learned Magistrate has taken the precaution to approach the evidence of the decoy with the usual caution in view of his past record.

Despite strong criticisms urged against the findings of the learned Magistrate by Mr. A. H. C. de Silva, who appeared for the accused-appellant, I am satisfied that no convincing reasons had been urged by him for me to differ from the find ngs of the learned Magistrate. The evidence of Gerard Perera is corroborated by the evidence of two marked fifty rupee notes found in the drawer of the accused out of the three marked 50 rupee notes which were earlier given by Sub-Inspector Ratnayake to Gerard Perera. The Police found six girls in the premises on the day in question. In one of the hand bags of the girl Padma was found nude photographs. In the premises were also found contraceptive sheaths used by males. According to Sub-Inspector Ratnayake there were no indications at all that the place was in fact used as a dress boutique or where garments were sold. The evidence of Gerard Perera is also corroborated by P.C. David who saw the transaction between Gerard Perera and the accused through the transparent glass shutter. The detection by Sub-Inspector Ratnayake of the girl Mala and Gerard Perera in a room at "Europa House", the girl wearing only a towel around her also corroborates the evidence of Gerard Perera. The accused neither gave evidence nor called any witnesses. On this evidence despite the fact that no form of sexual intimacy or intercourse took place at "Sal Mal", the learned Magistrate in a well-reasoned judgment held that on the proved facts of this case the accused had "managed a brothel" within the meaning of the Brothels Ordinance.

Mr. A. H. C. de Silva, for the accused-appellant strenuously contended that for a premises to be a brothel within the meaning of the Brothels Ordinance some act of indecency or sexual

intercourse should be committed or opportunities for such acts should be provided in the premises itself and in the absence of such evidence the charge in the present case must necessarily fail. The point raised in this case has not been the subject of any decision by this Court. The reported cases deal with cases where at the time of detection men and women had been seen in suggestive and indecent positions at the premises in question or where opportunities were provided for such acts. *Morris v. Cornelis*—(1914 3 Balasingham's Notes of Cases 48; *Silva v. Suppu*—(1919) 21 N.L.R. 119; *Toussaint v. Cecelia*—(1935) 37 N. L. R. 30; *Rosalin Nona vs. Perera*—(1946) 47 N. L. R. 523; *Podinona vs. Haniffa*—56 N. L. R. 165.

Section 2 (a) of the Brothels Ordinance No. 5 of 1889 reads as follows:

"Any person who—

(*a*) Keeps or maintains or acts or assists in the management of a brothel shall be guilty of an offence."

The draftsman of this Section had in fact borrowed the words of the corresponding English section, namely, Section 13 of the Criminal Law Amendment Act, 1885, which reads as follows:

"Any person who—

(1) keeps or manages or acts or assists in the management of a brothel ..... shall on summary conviction in manner provided by the Summary Jurisdiction Acts be liable .....

The present English Law is contained in Section 33 of the Sexual Offences Act of 1956 which is also similarly worded:

"Section 33:—

It is an offence for a person to keep a brothel, or manage, or act, or assist in the management of a brothel ....."

In all three statutes the word "brothel" has not been defined. Prior to the Criminal Law Amendment of 1885 under the common law in England, a brothel would come under the description of "a common bawdy house". In Stephen's Digest of Criminal Law, 6th Edition, page 152, the definition of a "common bawdy house" is "a house or room or set of rooms in any house kept for purposes of prostitution". In *R. v. Holland. Lincolnshire Justices*—1882 (46) J.P. 312, (cited in *Winter v. Woolf*—(1930) A. E. R. at 625) a case decided before the Criminal Law Amendment Act of 1885, Grove J. referred to a "brothel" as follows:

"..... But what needs only to be proved is this, namely, that the premises were kept knowingly for the purpose of people having illicit sexual connection *there.*"

Lopes J. in the case stated :

> " What is the meaning of permitting the premises to be a brothel ? I think my brother Grove has given a very apt definition, namely, that is permitting people of opposite sexes to come *there* and have illicit sexual intercourse. That is a very complete and satisfactory definition of the whole matter. "

It is reasonable to assume that the draftsman of Section 13 of the Criminal Law Amendment Act of 1885 would have been aware of this decision which gives the restricted definition to the word " brothel " as a place where people resort to and have acts of indecency or sexual intercourse. But, nevertheless, the draftsmen of the English statutes chose advisedly not to define the word " brothel ". The leading case on the definition of the word " brothel " in English Law is *Singleton v. Ellison*—1895 (1) Q. B. 607. In this case a woman occupied a house frequented by day and night by a number of men for the purpose of committing fornication with her. No other women lived in that house or frequented it for the purpose of prostitution. Fornication and indecent acts would seem to have happened between some of the men and the respondent and there was evidence that the respondent received money from the men who frequented her house. While holding that the woman had not committed an offence of " keeping a brothel " within the meaning of Section 13 of the Criminal Law Amendment Act of 1885, Wills J. defined the word " brothel " as follows :

> " A brothel is the same thing as a " bawdy house "—a term which has a well-known meaning as used by lawyers and in Acts of Parliament. In its legal acceptation it applies to a place resorted to by persons of both sexes for the purpose of prostitution. It is certainly not applicable to the state of things described by the Magistrate in this case where one woman was received by a number of men. "

It is this definition which has guided subsequent English decisions and decisions of this Court. Stroud's Judicial Dictionary, 4th Edition, in dealing with the word " brothel " has this comment :

> " A brothel involves the idea of a place of resort. "

In *Morris V. Cornelis*—1914 (3) Balasingham's Notes of cases, page 48, de Sampayo J. observed :

> " The Ordinance itself does not define what a brothel is, but as the provisions of the Ordinance are borrowed from the Criminal Law Amendment Act of 1885, the meaning attributed to the word under the English Law may be applied

here. In *Singleton v. Ellison* (1895) 1 Q. B. 607 it was observed that the word " brothel " in its legal acceptation applied to a place resorted to by persons of both sexes for the purpose of prostitution. "

According to the facts in this case, two Europeans were found each lying with a Sinhalese woman in a separate room at the time of the detection. Facilities therefore for sexual intercourse were provided in the premises itself. This case, therefore, is not much helpful to decide the point that arises before us. In *Pieris v. Magrida Fernando* no act of indecency or fornication was spoken to by any of the witnesses as having occurred in the premises itself. The evidence was that a number of women occupied it and men of all sorts visited it both by day and night. Spirits appeared to be drunk at the premises and fights were said to have taken place there. Wither J. applied the definition of the word " brothel " in *Singleton v. Ellison* and held that there was no evidence that the premises was a " brothel ". This case too is not helpful to decide the point raised in the present case.

In *Silva v. Suppu*—21 N. L. R. 119 two men were found in two of the rooms in the company of two women who admitted that they had come there for the purpose of prostitution and that the accused received money from them. Schneider A.J. applying the definition of the word " brothel " in *Singleton v. Ellison* held that the place was a " brothel ". Schneider A.J., however, thought of giving a definition to the word " brothel " for the purposes of our law " *a meaning consistent with local ideas and conditions* ". He defined the word "brothel " as follows :

" Here we have no immoral women walking the streets picking up men and resorting to some house for the purpose of prostitution. I have always understood the commonly accepted meaning of " brothel " locally to be a house run by a man usually called a " brothel keeper ", to which men resorted for purposes of prostitution with women who were to be found in the house. I would hold that it is this meaning which our legislature meant the word " brothel " to have in local Ordinances, despite the fact that the language of our Ordinances appears to have been borrowed from the English Criminal Law Amendment Act, and the words in subsection (2) would appear to draw a distinction between a " brothel " and a place resorted to " for the purpose of habitual prostitution ".

In Wickramasuriya v. Mary Nona—24 N. L. R. 26, opportunities for sexual intercourse were provided in the premises itself. De Sampayo J., referred to the fact that there is no definition of the term " brothel " in the Ordinance and having referred to the

cases of *Singleton v. Ellison, Peiris v. Magrida Fernando* and *Morris v. Cornelis,* however, made the following comment on Schneider A. J's defintion in *Silva v. Suppu* :

> " But in a more recent case Schneider J. enunciated a view which makes the matter worthy of reconsideration, and which at all events appears to me to render the Ordinance more effective in its operation. For in *Silva v. Suppu* the learned Judge expresses the opinion that the Ordinance used the word " brothel " not in the strict English Law sense, but as commonly understood locally, that is to say, it is a place " to which men resorted for purposes of prostitution with women who were to be found in the house ." The particular language of *Singleton v. Ellison* (supra) which discusses the meaning of the word, appears to me to be due to the peculiar circumstances of that case, for there a woman who used to receive men into her rooms for the purposes of sexual intercourse with herself alone was held not liable to be convicted for " keeping a brothel ". The occupation of a house or room by a single prostitute may not constitute it a brothel, but I do not myself see that the exigency of language or of law requires that, in order to make a house of ill-fame a brothel, women should resort to it from outside and that it is not sufficient if prostitutes reside in the house and men visit them there for immoral purposes. "

The decisions in both *Silva v. Suppu* and *Wickramasuriya v. Mary Nona* have shown a tendency to depart from the definition of " brothel " as a place of resort in *Singleton v. Ellison,* " in order to render the Ordinance more effective in its operation ". The decision, however, in *Wickremasuriya v. Mary Nona* is not very helpful to decide the question arising in the present case.

In *Eliyathamby v Wijelath Menika* (1934) 36 N. L. R. 300 facilities for sexual intercourse were provided in the place itself. Although on the facts the accused was acquitted, Akbar J. made the following observations :

> " 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.*

This case also is not helpful to decide the case before us.

Soertsz J. in *Toussaint v. Cecilia* also endeavours to give the word "brothel" a wider meaning "consistent with local ideas and conditions" in order to render the Ordinance more effective in its operation by adopting the approach of de Sampayo J. in *Wickramasuriya v. Mary Nona* on this question. In this case too facilities for sexual intercourse were provided in the premises itself. Soertsz J. having referred to the definition of "brothel" in *Singleton v. Ellison* and the restricted definition by Stroud in the Judicial Dictionary as involving "the idea of a place of resort" goes on to say at page 308 :

> "It would appear that there is no etymological justification for restricting the meaning of the word brothel in this manner. The Oxford Dictionary points out that "brothel" originally was applied only to persons and meant "a worth less, abandoned fellow", "an abandoned woman, a prostitute" and that the correct old word for a house of ill-fame was "bordel". It goes on to say that the personal sense of the word became obsolete and it now remains as a substitute for the original word "bordel". This dictionary defines "brothel" in the modern sense as "a house of ill-fame, a bawdy house". A "bawdy house" is defined as a house of prostitution" and "prostitution" as "the offering by a woman of her body to indiscriminate intercourse with men for hire.
>
> In this view of the matter, it is not clear why Wills J's definition of brothel in *Singleton v. Ellison* (Supra) as "a brothel, or bawdy house is a place where people of opposite sexes are allowed to resort for prostitution" has been understood by the editors of Stroud's Judicial Dictionary in the sense I have referred to, that is to say, as "involving the idea of a place of resort" and excluding the acts of prostitution on the part of women who are occupiers or joint occupiers of the house in question".

Soertsz J. then proceeded to introduce two modifications to the definition of the word "brothel" suggested by Schneider A. J. in *Silva v. Suppu.*

> "Instead of saying "run by a man usually called a "brothel keeper", I should say "run by a person usually called a brothel keeper, and instead of saying "for the purpose of prostitution with women who were to be found in the house", I should say "for the purpose of having sexual intercourse with women who were to be found in the house or with women who resort to or are introduced into the house."

Here again, the facts of the case are different from the facts in the present case as such this decision is not helpful in deciding the case before us.

If in the words of Soertsz J. in *Toussaint v. Cecilia,* a Brothel is a place used for the purpose of having sexual intercourse with women who were to be found in the house or with women who resort to or are introduced into the house, what difference does it make if these same women are introduced to men at the house to be taken out for prostitution elsewhere ? In both cases the purpose for which the place is used is the same, namely, to supply women to men for prostitution. The aim of the Brothels Ordinance is to suppress prostitution.

Mr. Priyantha Perera, Senior State Counsel, submitted that a construction should be given to the word " brothel " in the Brothels Ordinance consonant with the mischief sought to be suppressed by the Brothels Ordinance. A construction should be given which will suppress the mischief and advance the remedy. His submission was that the mischief sought to be suppressed by the Brothels Ordinance was prostitution. In order to bring about an effective result the Courts must give a meaning to the word " brothel " which would carry out the object of the Brothels Ordinance. If a narrow construction is given to the word " brothel " as suggested by the Counsel for the accused-appellant it would virtually give a licence to running houses of ill-fame by using the subtler method of keeping a number of women in the premises and allowing them to be taken out for prostitution elsewhere.

Prostitution has earned the reputation of being the world's oldest profession. Over the ages in spite of the laws enacted to suppress prostitution, man's ingenuity (not to mention women's) has devised newer, subtler and more sophisticated methods to evade and circumvent these laws. One normally associates a brothel as a place where persons of both sexes have resort to commit acts of indecency or sexual intercourse in the premises itself. This is the notion of a brothel in the popular mind. If the mischief sought to be suppressed by the Ordinance is the suppression of prostitution what difference does it make if instead of the acts of indecency or sexual intercourse taking place in the very premises itself in which the women are offered for prostitution, arrangements are made in the premises to supply women living in the premises or elsewhere to be made available to men to be taken elsewhere for the purpose of committing acts of indecency or sexual intercourse ? If any premises are used to promote such activities, in my view, such premises have all the attributes of a brothel for the purpose of the Brothels Ordinance.

Maxwell on Interpretation of Statutes, 12th Edition, page 40 quotes the following passage from Heydon's case in regard to legislation which seeks to suppress the mischief and advance the remedy.

> "The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the maker of the Act, pro bono publico."

In support of his submission that a law like the Brothels Ordinance should be construed with a view to bringing about an effective result, Mr. Priyantha Perera, cited the case of *Smith v. Hughes*—(1960) 1 W. L. R. 830. In this case two common prostitutes standing on a balcony or behind windows in their house, severally solicited men passing in the street by tapping on the balcony rail or window pane, attracting their attention and by inviting them into the house. Each of them was charged being a common prostitute she did solicit in a street for the purpose of prostitution contrary to Section 1(1) of the Street Offences Act of 1959 which made it an offence for a common prostitute "to solicit in a street for the purpose of prostitution". It was contended on behalf of the accused that the balcony and the windows were not "in a street" within the meaning of Section 1(1) of the Street Offences Act and therefore soliciting was not "in the street". Lord Parker, C.J. rejected this contention at page 832:—

> "The sole question here is whether in those circumstances each defendant was soliciting in a street or public place. The words of Section 1(1) of the Act of 1959 are in this form: 'It shall be' an offence for a common prostitute to loiter or solicit in a street 'or public place for the purpose of prostitution'. Observe that it does not say there specifically that the person who is doing the soliciting must be in the street. Equally, it does not say that it is enough if the person who receives the solicitation or to whom it is addressed is in the street. For my part, I approach the matter by considering what is the mischief aimed at by this Act. Everybody knows that this was an Act intended to clean up the streets, to enable people to walk along the streets without being molested or solicited by common prostitutes. Viewed in that way, it can matter little whether the prostitute is soliciting while in the street or is standing in a doorway or on a balcony, or at a window, or whether the window is shut or open or half open; in each case her solicitation is projected to and addressed to somebody walking

in the street. For my part, I am content to base my decision on that ground and that ground alone. I think the magistrate came to a correct conclusion in each case, and that these appeals should be dismissed."

A wider construction was given to the word "in the street" in order to suppress the mischief aimed at by the Act, viz., prostitutes soliciting in streets for the purpose of prostitution.

Mr. A. H. C. de Silva for the Appellant submitted that if the interpretation that was sought to be placed by learned State Counsel on the word "brothel" was accepted it could lead to startling consequences capable of making any place including a place of worship a brothel. As an extreme example he gave the case of a person who frequents a place of worship in the company of attractive women and in the place of worship he makes arrangements for the women to be taken out by men for prostitution elsewhere. His contention was that by no stretch of imagination could such a place of worship come within the meaning of a "brothel" under the Brothels Ordinance. My answer to this hypothetical example given by Mr. de Silva is that if the facts are proved as stated by him, then the person who makes the arrangements in the place of worship whereby women are offered for prostitution to men to be taken elsewhere for that purpose, the person concerned is "managing a brothel" in the place of worship within the meaning of the Brothels Ordinance.

While a "brothel" for the purposes of the Brothels Ordinance is certainly what the word is understood in common parlance, namely, a place where persons of both sexes resort to for the purpose of prostitution in the place itself, in my view, it also means a place where arrangements are made whereby women living at the premises or elsewhere are supplied for the purpose of prostitution, that is to commit acts of indecency or sexual intercourse either at the premises itself or elsewhere. If the definition is restricted to what is understood in common parlance only it would give the green light to houses of ill-fame to mushroom and proliferate like hawkers' sheds using the method adopted in the present case where girls are openly offered at one place for prostitution for sexual intercourse or acts of indecency to be committed elsewhere. Such a construction of the word "brothel" would fail to achieve the manifest purpose of the legislation and reduce the legislation to futility. The wider construction I have put on the word would bring about the effective result aimed at by the legislation, namely the suppression of prostitution, by suppressing "subtle inventions and evasions for the continuance of the mischief" by adding "force and life to the cure and the remedy according to the true intent" of the Brothels Ordinance. This construction, to borrow the words of Schneider A. J., keeps abreast "with local

ideas and conditions " and " renders the Ordinance more effective in its operation " to meet newer and subtler methods calculated to circumvent the Ordinance.

I might even add that the " live " element need not be even present in the premises to render a place a ' brothel ' within the meaning of the Ordinance. For example, if a resourceful brothel-keeper thinks he can circumvent the Ordinance without keeping women in the premises by the subtler device of displaying the photographs of them in the premises and soliciting men to make their selections from the photographs and adopting some method by which the woman answering to the description of the photograph is supplied from a place outside the premises to be taken to a place outside the premises for the purposes of prostitution, in my view, a person resorting to this subterfuge is also guilty of " managing a brothel " within the meaning of the Brothels Ordinance.

For these reasons, I agree with the conclusion of the learned Magistrate that the prosecution has established that the accused-appellant on the evidence in this case was " managing a brothel " within the meaning of Section 2(*a*) of the Brothels Ordinance. The conviction and sentence are affirmed and the appeal is dismissed.

TITTAWELLA, J.—

I have read the judgment of Justice Pathirana. I am in agreement with his reasons and conclusions. My own views are given below.

The accused-appellant has been found guilty of having on 24.1.75 at " Sal Mal ", Savoy Building, No. 2, Galle Road, Wellawatta, kept or managed a brothel. She was convicted under Section 2 of the Brothels Ordinance and fined Rs. 300.

The Police had received information that a brothel was being run at these premises which was ostensibly a Dress Makers Shop. The place had been watched thereafter and it was observed that men were entering the place from time to time. Some young girls were then seen coming out of it and going in taxis towards nearby hotels followed by these men. The accused was also seen receiving money from the men prior to the girls leaving the premises.

On 24.1.75 a police decoy had gone to the premises with three marked fifty-rupee notes. He had inquired from the accused as to who was available that day. She showed him four or five young women who were inside. The decoy selected one and paid the accused-appellant Rs. 75. He was asked to go to a nearby

hotel called Europa House saying that the young woman would come there. He left the place thereafter in a taxi. At Europa House the decoy booked a room for the two of them. Having ordered a bottle of beer they entered the room, stripped themselves of their clothes, and were getting ready to have sexual intercourse. Police officers who were watching all this had then come up to the hotel room and tapped at the door. It was opened from within and the decoy and the woman were seen inside only with towels round them. The police then rushed up to the " dress boutique " of the accused and there were about eight young girls at that time. This was about 2.30 p.m. of the day. Two of the three marked fifty-rupee notes were found in the drawer of the accused. There was no indication whatsoever to show that the premises were being used as a dress makers shop.

These facts were given in evidence at the trial. The accused who was represented by Counsel did not call or give any evidence on her behalf. The facts were not seriously contested at the trial. It was however contended that as sexual intercourse did not take place at the Sal Mal building where the accused-appellant had her " dress makers shop " it could not be said that she was running a brothel there even though girls were present on the premises. The learned Magistrate in a careful judgment having analysed the facts very fully has accepted the evidence led for the prosecution. He has also rejected the legal submissions made on behalf of the accused-appellant and convicted her on the charge.

In appeal learned Counsel for the accused-appellant has drawn our attention to a number of contradictions, infirmities and improbabilities in the evidence. I have examined them all and am unable to say that the learned Magistrate was wrong in accepting the testimony of the witnesses for the prosecution. It must also be noted in this connection that the facts were not seriously contested at the trial and no cross-examination had been directed on any of the factual matters that have been raised in appeal. That the learned Magistrate had not dealt with all of them exhaustively in the manner suggested by the learned Counsel for the appellant cannot therefore be the subject of serious complaint. The accused-appellant cannot succeed on this ground.

The question of law raised however is a novel and an interesting one. The accused-appellant has been convicted of keeping or managing a brothel at " Sal Mal ", Savoy Building, Galle Road, Wellawatta. Admittedly no sexual intercourse takes place at these premises. The women were selected from here on pay-

ment of money and then taken to places determined by the appellant where sexual intercourse takes place. It was submitted that since no sexual intercourse takes place at "Sal Mal" it cannot be considered to be a brothel.

The Brothels Ordinance enacted in 1889 has as its long title "An Ordinance To Provide for the Suppression of Brothels." There is no definition in the enactment of the word "brothel". In the case of *Pieris v. Magrida Fernando,* 1 N. L. R. 212, Withers, J. said that the word brothel has a well known legal acceptance and defined it as follows:—

> It applies to a place to which persons of both sexes have recourse for the purpose of prostitution.

In that case a number of women were in occupation of the premises and men of all sorts visited it both by day and night. Spirits were drunk there and fights were said to take place. However not a single act of indecency or fornication is spoken to by any of the witnesses as having occurred in the house which was said to be used as a brothel. The conviction had therefore to be set aside.

In *Silva v. Suppu* 21 N. L. R. 119 there was evidence to prove that the house in question was run by the accused so that women who were prostitutes had access to it for the purpose of prostitution and men visited it, paying the accused a consideration and were allowed access to the women for purposes of prostitution. Schneider J. said—

> This view of the facts satisfies the acceptation of the term "brothel" according to English Law. But if it were really necessary to define a brothel for the purposes of our own law, I should feel inclined to give that term a meaning *consistent with local ideas and conditions.* Here we have no immoral women walking the streets picking up men and resorting to some house for the purpose of prostitution. I have always understood the commonly accepted meaning of "brothel" locally to be a house run by a man usually called a "brothel-keeper" to which men resorted for purposes of prostitution with women who were to be found in the house.

In *Wickremasuriya v. Mary Nona,* 24 N.L.R. 26, De Sampayo, J. preferred the extended interpretation given by Schneider, J. in *Silva v. Suppu* to that given by Withers J. in *Pieris v. Magrida Fernando* for the reason that it "renders the Ordinance more effective in its operation".

In *Toussaint v. Cecilia,* 37 N. L. R. 309, Soertsz J. refers to the dictionary meaning of "brothel" as a "house of ill-fame, a

bawdy house ". A " bawdy house " is defined as a house of " prostitution ", and "prostitution " is the offering by a woman of her body to indiscriminate intercourse with men for hire. Soertsz, J. also preferred to accept the definition given to a brothel by Schneider J. in *Silva v. Suppa* as being good " locally " and consistent with " local ideas and conditions ".

A consideration of the above authorities indicates that there has been no attempt at a universal definition of a brothel. The definition given in each case has some direct relation to the facts and circumstances of that situation. One discerns a desire to suit the term to " local conditions " and to " local ideas and conditions ". As far as I have been able to ascertain there is no local case where the offering of women for sexual intercourse takes place at one point and the intercourse itself is at another point as for instance in a separate building. The reason for this new modus operandi is not far to seek. In recent times there have come into existence numerous hotels and resorts in the city and elsewhere. It is a comparatively simple arrangement to offer at one point women for sexual intercourse and determine that the intercourse itself would be at another point, decided by the person who transacted the earlier business of offering the women. This is precisely what has occurred in the instant case. The earlier activity of keeping or managing a brothel is being continued but of course in a more sophisticated manner. The question that presents itself to us is whether the provisions of the Brothels Ordinance of 1889 are too feeble to stand up to this new challenge. I do not think so.

Section 2 of the Brothels Ordinance penalises a person who keeps or manages a brothel. A brothel is a house of prostitution and prostitution is the offering of the body of a woman for indiscriminate sexual intercourse with men for hire. The uncontradicted evidence in the instant case shows that the appellant had a number of women at " Sal Mal " in the Savoy Building at Wellawatta for the purpose of hiring them to men for sexual intercourse. The selection is made and the money paid at that point. The clearest evidence is available both at the time of the transaction and later that the hiring was for the purpose of sexual intercourse. The appellant in my view has done no more or no less than keeping or maintaining a brothel. The antiquated modes and procedures have been abandoned to a more commercialised and sophisticated method in keeping with modern trends. I have therefore no difficulty in holding that the appellant comes well within the ambit of the section and that her appeal must therefore be dismissed.

Learned Counsel for the appellant however submitted that the proper approach to the question would be to ascertain whether the legislature at the time of the enactment of the Ordinance in 1890 intended to bring within its fold the facts of the present case. This clearly cannot be the true approach and I am unable to agree with this proposition. Broadly speaking the intention of the legislature in 1890 was the suppression of prostitution. The interpretation I have adopted is no more than an attempt, however feeble, towards the fulfilment of that objective.

Appeal dismissed.