

1935

*Present: Soertsz A.J.*TOUSSAINT *v.* CECILIA.593—*P. C. Gampola, 7,522.**Brothel—Meaning of term—House of ill-fame—Ordinance No. 5 of 1889, s. 1.*

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.

A PPEAL from a conviction by the Police Magistrate of Gampola.

C. E. S. Perera, for accused, appellant.

October 16, 1935. SOERTSZ A.J.—

The accused in this case was charged with having kept and managed a brothel in breach of section 1 of Ordinance No. 5 of 1889.

Several cases have been cited to me to support the proposition that “a solitary instance of prostitution is insufficient to render a house a brothel”. Quite apart from “authority”, it must indeed be so. Generally a solitary instance of prostitution in a house no more makes that house a brothel than one swallow makes a summer. But in certain cases, to use the words in Stroud’s Judicial Dictionary, “the one proved instance may itself prove it to be, not a solitary, but one of many instances”. That, in my opinion, is the case here.

The definition of “brothel” adopted in Stroud’s Judicial Dictionary is that proposed by Wills J. in *Singleton v. Ellison*¹ “a place where people of opposite sexes are allowed to resort for prostitution”. Stroud, enlarging on this, says “a brothel involves the idea of a place of resort” and says that brothels are places to which persons other than their occupiers go to for having sexual intercourse with one another. Stroud suggests that this definition excludes the case of a woman who is the occupier of a house, or of several women who are joint occupiers receiving men for the purpose of having sexual intercourse with them in that house. It would appear

¹(1895) 1 Q. B. 607.

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 worthless, 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. De Sampayo J. in *Morris v. Cornelis*¹ adopted that definition, but in the later case of *Wickremasuriya v. Mary Nona*² agreed with Schneider J.'s view in *Silva v. Suppu*³, and in doing so commented as follows on *Singleton v. Ellison* (*supra*):—"The particular language of *Singleton v. Ellison*, 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 purpose of sexual intercourse with herself alone was held not to be liable for 'keeping a brothel'. The occupation of a house or room by a single prostitute may not constitute 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 for immoral purposes". In *Silva v. Suppu* (*supra*) Schneider J. said, "If it were really necessary to define a brothel for the purpose of our 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 houses for the purpose of prostitution. I have always understood the commonly accepted meaning of a 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".

While respectfully agreeing with this definition I would add that it is not only a definition which is good 'locally' and 'consistent with local ideas and conditions' but really the correct definition of the English word, subject to two modifications. 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 purposes 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".

¹ 3 Bal. (N. C.) 48.

² 24 N. L. R. 26.

³ 21 N. L. R. 119.

Taking that to be the law, I think the facts in this case clearly bring the accused within the reach of the section under which she was charged. No actual intercourse did take place on this occasion as the police came on the scene. The two men concerned said if the police had not come, they would have had sexual intercourse. The evidence of these two witnesses shows that they have been to this house on previous occasions and have been supplied with women for sexual intercourse. Moreover, on this day the manner in which the men knocked at the door and were admitted and all that took place indoors clearly showed that the place was being kept and managed as a brothel. In the words in Stroud's Dictionary this instance by the way in which it occurred proves it to be not one solitary instance, but one of many.

In the circumstances, I think the conviction is right. I feel I ought to add that there was no occasion for the Magistrate to throw bouquets to the men concerned for their coming forward to give evidence in this 'public-spirited and praiseworthy manner', &c. They had been surprised by the police and were making a virtue of necessity. As regards the sentence, I think it will be sufficient if the accused is sentenced to six months' rigorous imprisonment and to enter into a bond in a sum of Rs. 750 with one surety to be of good behaviour after the period of imprisonment for a period of twelve months and in default of her doing so to undergo rigorous imprisonment for a further period of three months.

With this variation the appeal is dismissed.

Affirmed.

