

1930

Present : Akbar J.

LUCY HAMY v. RODRIGO.

778—*P. C. Colombo, 16,590.**Insult—Order to keep the peace—Irregular—Penal Code, s. 484.*

Where a person is convicted of insult under section 484 of the Penal Code, no order to keep the peace can be made against him under section 80 (1) of the Criminal Procedure Code.

APPÉAL from a conviction by the Police Magistrate of Colombo.

Aelian Pereira, for accused, appellant.

December 11, 1930. AKBAR J.—

This accused was charged on July 19, 1930, with having abused a woman, the complainant in this case, on July 17 in filthy language. She stated in evidence that she was so abused in the presence of Mr. Weinman, the Sub-Inspector of Police, and Sergeant Nair. She filed a list of witnesses on July 30, 1930, giving the names of these two Police Officers and also another witness, one Bartholomeusz. On September 8 an additional list of witnesses was filed giving the name of Norman Oorloff.

The learned Additional Police Magistrate (Mr. R. Y. Daniel) convicted the accused and sentenced him to pay a fine of Rs. 25 or in default one month's rigorous imprisonment, and he also bound him over to keep the peace for six months under section 80 (1) of the Criminal Procedure Code. It was held in the case of *Arlinhamy v. Jonis*¹ and in the case of *Silva v. Fernando*² that an order to enter into a bond to keep the peace made in a case where an accused is convicted under section 484 of the Penal Code was not justified in law.

Mr. Aelian Pereira has pressed on me that the whole conviction was bad even on the facts. I have read the evidence over carefully and it seems to me that the case

¹ 4 C. W. R. 118.

² 4 C. W. R. 260.

should be re-tried. I say so for two reasons. In the first place, it is clear from Mr. Oorloff's evidence that he was not referring to the alleged incidents on July 17, but to those of the previous night, namely, July 16. In the second place, Mr. Pereira has filed an affidavit, and in view of the conclusion to which I have come, namely, that there should be a re-trial of the case, I will say nothing further and set aside the conviction and sentence and send this case back for a re-trial before another Magistrate. The accused will be entitled to remove the annexures to his affidavit filed in the Supreme Court.

Case sent back.

