

parties, and particularly the plaintiff, to further expense and inconvenience if it can be avoided. The plaintiff is now 63 years old, and it would be wrong to deprive her any longer of the compensation which is her due. I prefer in all the circumstances to assess the damages on the materials which are already before us. Considering that part of the evidence on this issue which the defendant Company has not disputed, I am satisfied that the trial Judge could not reasonably have awarded the plaintiff a sum of less than Rs. 2,500 as damages. This seems in all the circumstances of the case to be a fair award. I would accordingly set aside the judgment of the learned District Judge and enter decree in favour of the plaintiff against the defendant Company for the sum of Rs. 2,500. The plaintiff is also entitled to her costs of appeal and in the Court below.

CANEKERATNE J.—I agree.

Appeal allowed.

1949

Present: Basnayake J.

HANIFFA, Appellant, and PACKEER (S. I. Police), Respondent

S. C. 68—M. C. Batticaloa, 6,958

Penal Code—Insult—Provocative of breach of peace—No actual provocation—Offence—Section 484.

An offence under section 484 of the Penal Code is committed where the insult is provocative of a breach of the peace even where the person insulted is not actually provoked or where he shows restraint.

Frazer v. Sinnaiya (1910) 14 N. L. R. 3 followed.

APPPEAL from a judgment of the Magistrate's Court, Batticaloa.

G. E. Chitty, with Vernon Wijetunge, for accused appellant.

A. E. Keuneman, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

April 11, 1949. BASNAYAKE J.—

This appeal is from a conviction of the appellant on the following charge:—

“That you did within the jurisdiction of this Court at Badulla Road, Koddamunai, on November 21, 1948, intentionally insult J. Armstrong, Excise Inspector of Batticaloa, by using the following words to wit: ‘Onta Pendilai Thada Pundai Magane’ intending or knowing it to be likely that such provocation will cause him to break the public peace and thereby you have committed an offence punishable under section 484 of the Penal Code.”

Shortly the facts are as follows: On November 21, 1948, Excise Inspector Armstrong was driving his car along the Badulla Road with his mother and children as passengers. He was not in uniform at the time. Near the office of the Eastern Bus Company he heard someone

shout to him to halt his car. He pulled up, got down and went to the rear of the car and saw the appellant and one Marian. The appellant told him that he had knocked down Marian. The Excise Inspector then offered to take either of them, if injured, to the hospital. The appellant then became defiant and said: "You are an Inspector. I have been driving a car and I know how to drive." The accused thereafter getting more defiant abused him in Tamil using the words mentioned in the charge, which have been interpreted to mean "Give me your wife, son of a woman's private parts" and advanced menacingly towards Inspector Armstrong with raised arms.

It is submitted by learned counsel that the evidence does not disclose the offence alleged in the charge. Learned counsel relies on certain dicta expressed in the judgments of this Court cited by him¹. With great respect I find myself unable to give my unreserved assent to the expressions of opinion relied on by learned counsel. The reasons for my inability to accept the proposition of learned counsel will appear from what I say hereinafter.

I shall begin by quoting section 484 of the Penal Code which reads:

"Whoever intentionally insults and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

To establish an offence under this section it is necessary to prove

- (a) that the offender intentionally insulted a person,
- (b) that he thereby gave provocation to the person insulted,
- (c) that he intended that such provocation will cause the person insulted to break the public peace or commit any other offence, or
- (d) that he knew it to be likely that such provocation will cause the person insulted to break the public peace or commit any other offence.

Before proceeding further it will be well to examine the meaning of some of the expressions such as "insults", "gives provocation", "break the public peace" and "offence". "To insult" is to treat another with gross indignity, insolence or contempt, by word or act, or to offer an indignity or affront. "To give provocation" is to produce anger or resentment or vindictive feeling in another or to irritate him. A "breach of the public peace" is a violation of that quiet, peace, and security which is guaranteed by the laws for the personal comfort of the subjects of this country². "Offence" means an act punishable under the Penal Code³.

Whether words are insulting would depend on a variety of circumstances, such as the context in which they are uttered, the intention, the tone and the attitude of the person uttering them, and the situation

¹ *S. I. Police v. Wijesekera*, (1935) 38 N. L. R. 30.

Balasuriya v. Dharmasiri, (1932) 1 C. L. W. 343.

U. J. Perera, Police Vidane v. H. J. Fernando, (1936) 1 C. L. J. (Notes of Cases) 49.

Marimuthu v. Dissanayake, (1939) 41 N. L. R. 31.

² *Wharton's Law Lexicon*, 14th Edn., p. 747.

³ Section 38 of the Ceylon Penal Code.

in which they are uttered. Acts which are insulting have to be determined similarly according to the circumstances in which they are done. There are cases in which it has been held that it is an insult to pull a Mahomedan by his beard¹, to make faces at another, or to make lewd and indecent gestures in the presence of a female², or to ridicule one in the course of caricature or in any one of the ways in which human feelings are moved and hurt³. Whether words or acts are insulting is a question of fact which falls to be determined on the evidence in each case.

The question whether insult was intentional is also a question of fact. The intention will not as a rule be proclaimed by the offender. It has to be inferred from his words, his tone, the manner in which the words are spoken, or his acts and other circumstances. It is not necessary that the person whom the offender intends to provoke or knows to be likely to be provoked should in fact be provoked or should actually commit a breach of the peace or an offence. The section requires that the person insulting should intend to provoke a person to commit a breach of the peace. It is immaterial whether the person insulted takes the insult in the manner intended.

The mere forbearance of the person insulted and provoked from committing a breach of the peace is insufficient to protect the offender⁴. The offence depends on the provocation given and not upon the provocation felt⁵. The offence is intended to prevent the doing of an act likely to occasion a breach of the peace. It is not necessary that the insulting words should result in an actual breach of the peace, nor, indeed, is it necessary that the person insulted should in fact be provoked or yield to his resentment, because if it were so it would not be an offence to insult a person who by virtue of his position in life exercises restraint or is too weak to retaliate. The law is not designed to enable those who do not respect law and order to oppress those who do. The section punishes insults which are provocative of the breach of the peace, and their character is judged by the standard of an ordinary reasonable man, holding them criminal if they are ordinarily sufficient to arouse passions and provoke retaliation⁶.

Some of the decisions of this Court⁷, especially in cases where the insult has been directed against police officers⁸, seem to proceed on the footing that no offence is committed where the person insulted has not been actually provoked or where he has shown restraint. There is no justification for assuming that insult directed to a police officer or any other public officer does not fall within the ambit of the section.

¹ *Bhagwan Das v. Sadiq Ahmad*, (1925) A. I. R. Allahabad 318.

² *Syed Mahomed*, (1900) 1 Weir 622.

³ *Jaykrishna Samanta and another v. King Emperor*, 21 C. W. N. 95.

⁴ *Sooraparasu*, (1894) 1 Weir 621.

⁵ *Syed Mahomed*, (1900) 1 Weir 622.

⁶ *Gour's Penal Code of India*, sec. 6315, p. 1770.

⁷ *S. I. Police, Kalutara v. Silva*, (1928) 6 Times p. 74.

Rahaman v. Perera, (1929) 7 Times 66.

Corea Mudaliar v. Anthonipillai and wife, (1906) 5 *Thambiah Rep.* 88.

Sri Mudali v. Sebastian, (1898) 4 *Bal.* 133.

⁸ *S. I. Police v. Wijesekera*, (1935) 38 N. L. R. 30.

Herath v. Rajapakse, (1932) 1 C. L. W. 326.

Police Vidane v. H. J. Fernando, (1936) 1 C. L. J. (Notes of Cases) 49.

With respect, I am unable to share the view taken in those cases. Subject to what I have said above, with deference I agree with the view taken by Wood Renton J. in *Frazer v. Sinnaiya*¹ wherein he says :

“ I think it is not necessary that the complainant should say in so many words : ‘ I was provoked by the conduct to which I complain. ’ It is sufficient, I think, if the insult is clearly of a provocative character, of a character likely to produce a breach of the public peace on the part of the respondent towards whom it is directed, and if the Court is satisfied from all the circumstances of the case that the accused must have intended to produce, or must have known that he would produce, that result. ”

The Indian Courts in construing section 504 of the Indian Penal Code which is the corresponding section have consistently taken what I think is the correct view. I think it will not be out of place to record here the opinions expressed in some of the Indian cases.

In the case of *Queen Empress v. Jogayya*² it was observed “ the law makes punishable the insulting provocation which, under ordinary circumstances, would cause a breach of the peace to be committed, and the offender is not protected from the consequences of his acts because the person insulted became too terrified to accept the provocation in the manner intended. ”

In the case of *Kanshi Ram v. Fazl Muhammad and another*³ the complainant was not actually provoked by the insulting words but “ merely stepped back and stood quiet ”. The court said : “ If abusive language is used intentionally and is of such a nature as would, in the ordinary course of events, lead the person insulted to break the peace or to commit another offence under the law, the case shall not be taken away from the purview of section 504, merely because the insulted person exercised self-control or being terrified by the insult, or overawed by the personality of the offender, did not actually break the peace or commit another offence. ”

In the case of *Guranditta and another v. Emperor*⁴ it was argued that the complainant was a man of placid temperament and that as he belonged to a very peaceful community it was not likely that there would have been a breach of the peace as a result of the abuse in which the petitioner indulged. The Court observed : “ Moreover in dealing with section 504, I. P. C., we have not to judge the temperament or the idiosyncrasies of the individual concerned. ” In the case of *King Emperor v. Chunibhai Dahyabhai*⁵ the Court observed : “ We think that in order to constitute an offence under section 504, Indian Penal Code, it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. The public peace can be broken by angry words as well as by deeds. ”

The evidence in the instant case establishes all the essential ingredients of the offence alleged against the appellant. In my view the learned Magistrate has rightly convicted the appellant.

The appeal is dismissed.

Appeal dismissed.

¹ (1910) 14 N. L. R. 3.

² (1887) I. L. R. 10 Mad. 353.

³ (1932) A. I. R. Lahore 480.

⁴ (1930) A. I. R. Lahore 344.

⁵ (1902) 4 Bom. L. R. 78.