

1953

Present : Swan J.

EDMUND PERERA, Appellant, and VELOE (Sub-Inspector of Police), Respondent

S. C. 966—M. C. Gampaha, 6,411

Charge of uttering obscene words—Sinhalese words—Judicial notice of their meaning—Penal Code, s. 287.

Where, in a prosecution for uttering obscene words in a public place, the alleged obscene words are Sinhalese words, their English meaning should be set out in the proceedings.

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

Frederick W. Obeyesekere, for the accused appellant.

E. R. de Fonseka, Crown Counsel, for the Attorney-General.

Cur adv. vult.

March 2, 1953. SWAN J.—

The accused was charged with having uttered certain obscene words in a public place to the annoyance of Sub-Inspector Saparamadu and others. In the plaint the alleged obscene words which presumably are Sinhalese words, even which fact I am not supposed to know, are written in English characters. What these words mean in English the report and charge do not set out. Sub-Inspector Saparamadu in his evidence repeated the same words, adding something more. He did not give the English meaning of those words, nor did he even say that they were obscene. The accused denied that he uttered the words imputed to him and stated that he said something else, which again has not been translated. The learned Magistrate in convicting the accused says that the accused uttered "most indecent and disgusting words" adding that if it had not been for the presence of the Inspector he had no doubt that the accused "would have continued in the free flow of foul language".

In order to hold that the words were obscene the learned Magistrate must have acted as his own interpreter which this Court, in a series of judgments, has held a judge cannot do. English is the language of our Courts and in the case of *Ismail v. Thangiah*¹ my brother Gratiaen held

¹ (1949) 50 N. L. R. 357.

that any other language is a “ foreign ” language within the meaning of Section 301 (2) of the Criminal Procedure Code. In that case my learned brother came to the conclusion that the word “ *document* ” in Section 301 (2) was wide enough to include a written report initiating criminal proceedings. And that is exactly how this prosecution was launched. Although the learned Magistrate presumably was a Sinhalese himself and knew the meaning of the alleged obscene words he could not have taken judicial notice of their obscenity because Section 57 (9) of the Evidence Ordinance permits judicial notice to be taken of the meaning of only English words.

The conviction is quashed. The Police are at liberty to initiate fresh proceedings upon a proper report ; and, in that event, the learned Magistrate who hears the case will be well advised if he insists on expert evidence of the meaning of the alleged obscene words, although their meaning may be quite transparent to him as it is to me.

Conviction quashed.

