

In Re: B. Chandrasekaran

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Court : Chennai

Decided On : Aug-13-1957

Reported in : (1957)2MLJ559

Appellant : In Re: B. Chandrasekaran

Judgement :

ORDER

Ramaswami, J.

1. These are connected Criminal Revision Cases filed against the convictions and sentences by the learned Third Presidency Magistrate, Saidpet, in C.C. Nos. 3564 and 3682 of 1956, 3685 of 1956 and 3686 of 1956 respectively under Section 292, Indian Penal Code and sentences of fine of Rs. 100 in each case.

2. The facts of these cases have been fully set out in the judgments of the lower Court and need not be recapitulated.

3. The short point for determination is whether these publications which constitute the subject-matter of enquiry viz., the Tamil quarterly journal sold very cheaply in street corners and book stalls catering for prurient tastes called (Body and sensation) and which deals from cover to cover with nothing but sex, sexual organs, curiosities of love and of sex life and gratification of normal and abnormal sexual appetites and varieties of sexual intercourse etc., constitute publication of obscene matter falling within the purview of Section 292, Indian Penal Code.

4. The definition of obscenity both in language and in law is vague.

5. The Oed, S.V. 'Obscene' says : ' ad L. obscenus, obscoenus adverse, inauspicious, ill-omened; transf. abominable, disgusting, filthy, indecent : of doubtful etymology' The precise meaning, says Craies, 'is decidedly ambiguous', but ' the test of criminality. . is whether the exhibition or matter tends to deprave'.

6. In Craies's definition not only is it necessary to define ' deprave ' but it is extremely improbable that the original intention of the law was this alone. The law merely codifies social resentment, but why social opinion originally resented ' obscenity ' is a difficult question of psychology. Meanwhile, with regard to the meaning of the idea and the etymology of the Latin term, it is to be noted that the differentia of obscene things, acts and words is, negatively concealment, or, positively, publication. In other words, to take a considerable percentage of a obscene matter, this consists of natural acts and terms, and the exploitation of the organs from which they are derived, which, on being made public, offend social opinion. Thus, a plausible derivation of the word connects it with Latin obscurus, 'concealed' and terms in various languages corroborate this. But the primary meaning of the Latin word seems to have been 'inauspicious, ill-omened', and the Latins resented obscenity just for this reason of ill-omen. A parallel to this is the social objection to profane swearing. The most probable derivation, therefore, is perhaps that of. Connected with the Lat. Scoevus, 'left', 'left-handed', and inauspicious, the word obscenus, obscoenus, may presuppose obscoevinus. On the strength of the verb obscoevare, found in Plautus [Asinaria II, 1, 18]. (Hastings Encyclopaedia of Religion and Ethics, Vol. IX, pages 441-442.)

OBSCENE

New Standard Dictionary Funk and Wagnalls.--Offensive to chastity, delicacy, or decency; expressing or presenting to the mind or view something that decency, delicacy and purity forbid to be exposed; offensive to morals; indecent; impure.

7. Obscene Publication (Law), an indecent publication which, whether true or false, tends to deprave and corrupt.

8. A New English Dictionary Murray.--Offensive to the senses, or to taste or refinement; disgusting, repulsive, filthy, foul, abominable, loathsome.

9. Offensive to modesty or decency; expressing or suggesting unchaste or lustful ideas; impure, indecent, lewd.

Webster's New International Dictionary.--Offensive to chastity or modesty; expressing or presenting to the mind or view, something that delicacy, purity and decency forbid to be exposed; impure; as, obscene language; obscene pictures.

Impure, indecent, unchaste, lewd.

Words and phrases Judicially Defined: Burrows.--It is quite clear that the publishing of an obscene book is an offence against the law of the land. It is perfectly true...that there are a great many publications of high repute in the literary production of this country the tendency of which is immodest, and, if you please, immoral... But it is not to be said , because there are in many standard and established works objectionable passages, that therefore the law is not as alleged on the part of this-prosecution, namely, that obscene works are the subject-matter of indictment; and I think the best of obscenity is this, whether the tendency of the matter charged as-obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall. R. v. Hicklin L.R. (1868) 3 Q.B. 360 per Cockburn, C.J., at page 371.

The word 'obscene' was originally used to describe anything disgusting repulsive, filthy, or foul. This use of the word is now said to be somewhat archaic or poetic; and it is ordinarily restricted to something offensive to modesty or decency, or expressing or suggesting unchaste or lustful ideas, or being impure, indecent, or lewd '(R. v. Beaver (1905) 9 O.L.R. 418 per Maclaren, J. A. at pages 424, 425).

9. Ramanatha Iyer: The Law Lexicon of British India (M.L.J.) (1940) (pp. 894, 895)-

10. Obscenity.--'Lewd, impure, indecent, calculated to shock the moral sense of man by a disregard of chastity or modesty' (Black L. Diet.)

11. Other definitions.--Impure, foul, filthy, offensive, disgusting.' 'Offensive to chastity, something that is foul, filthy and for that reason is offensive to pure minded persons' 8 Fed. 732. The character or quality of being obscene; conduct tending to corrupt the public morals by its indecency or lewdness.

12. Obscenity.--Includes on the one hand what is merely inauspicious, foul, or indecent, and on the other hand what is immodest, and calculated to excite impure emotions or desires. (Anderson L. Dict.)

13. Obscenity is applied to language spoken, written or printed, and to pictorial productions, and includes what is foul, and indecent, as well as immodest, or calculated to excite impure desires. (76 Mo. App. 313; U.S. v. Loftis 12 Fed. 671.

14. The obvious purpose of Acts passed against obscenity is to guard and protect the public morals, by erecting barriers which the evil-minded and lascivious may not overpass with impunity. U. S. v. Males 51 Fed. 41.

15. The law relating to obscene publications is practically the same in England, United States of America and India.

ENGLAND.

16. The law relating to obscene books, pictures etc., is contained in (a) Common Law misdemeanour, (b) Section 1 of the Obscene Publications Act, 1857, (c) Section 11 of the Post Office Act, 1953 and (d) Section 1 of the Venereal Disease Act, 1917, See also Indecent Advertisements Act, 1889, Town Police Clauses Act, 1847, Section 28; Vagrancy Act, 1824, Section 4; Judicial Proceedings (Regulation of Reports Act, 1926; Children and Young Persons Act, 1933, Section 39; Children and Young Persons (Harmful Publications) Act, 1955.

17. In order to constitute an obscene libel at common law, there has to be an intention to corrupt public morals which may however be presumed from the nature of the matter and the circumstances of the publication. If the probable effect of the publication is to prejudice public morality and decency , the defendant must be taken to have intended the natural consequences of his acts--every man if he be a rational man must be considered to intend that which must necessarily follow

from what he does--per Alderson B in *Gathercole's Case* (1888) 2 Lewin C.C. 237 and Lord Ellenborough in *King v. Dixon* (1814) 3 M. &S.; 11 and it is no defence that his object was to expose conduct which is or which he considers immoral and pernicious. *R. v. Barraclough* L.R. (1906) 1 K.B. 201 *R. v. De Montalk* (1932) 23 Cr. Appl. Rep. 182. If the publication be obscene it is an offence against this Act, although there was no intent on the part of the publisher to corrupt morals (*R. v. Hicklin* : *Scott v. Wolverhampton* (1868) L.R. 3 Q.B. 360. The test of obscenity is this whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall (per Cockburn, C.J., in *R. v. Hicklin*⁸, approved in *R. v. Reiter* (1954) 1 All E.R. 741; in which case it was held that in determining whether or not such a book is obscene, regard must be had to that book alone; other books, not the subject of charges, may not be referred to. See also the summing up of Stable, J., in *R. v. Marin Seeker Warburg Ltd* (1954) 2 All E.R. 683.

18. Publication of indecent matter may be justified if it is genuinely in the interests of or for the purposes of art, science, or any other form of learning, the justification must, however, depend on the facts of the particular case, on the form of the matter the circumstances of its publication and the nature of the defendant's business: *R. v. Thompson* (1900) 64 J.P. 456. In other words, if the necessary or natural effect of a publication is prejudicial to the public morality or decency, the motive of the defendant in publishing the obscene matter is immaterial. If the work is manifestly obscene the defendant must be taken to have published it with an unlawful intent; he cannot be heard to say that though he broke the law, he did so from a wholesome or salutary purpose, and not for gain; *R. v. Hicklin* L.R. (1868) 3 Q.B. 360 *Steele v. Brennan* (1872) L.R. 7 C.P. 261 *R. v. De Mvntalk* (1923) 23 Cr. App. Rep. 182. Therefore, in many cases it is material to consider to whom and under what circumstances the publication is made. Some matters may be properly published for example, to practitioners or students of medicine or surgery, the publication of which to boys or girls or even to the public indiscriminately would necessarily tend to the corruption of morals and therefore be illegal : *R. v. Hicklin* L.R. (1868) 3 Q.B. 360 and see *Me Gocan v. Langmuir* (1931) S.C.J. 10. The privilege which the law gives to reports of judicial proceedings, and the

proceedings of public meetings and certain bodies does not extend to reports containing matters of an obscene and demoralising character. *Steele v. Brennan* (1872) L.R. 7 C.P. 261; *R. v. Carlile* (1819) 3 B. & Ald. 167; *R. v. Creevery* (1813) 1 M. & S. 273 .

19. To sum up under the English Common Law, any one is guilty of a common law misdemeanour who publishes any obscene matter i.e., matter tending to deprave and corrupt those whose minds are open to immoral influences and into whose hands the publication may fall. This is the test laid down *R. v. Hicklin* L.R. (1868) 3 Q.B. 360 applied in *R. v. Reiter* (1954) 2 Q.B. 16, C.C.A. at pages 18, 19 : (1954) 1 All E.R. 741. It has been said that the test laid down in *R. v. Hicklin* L.R. (1868) 3 Q.B. 360 must be applied in the light of the changed approach to the treatment of sex since 1868 *R. v. Martin Seeker Warburg Ltd* (1954) 2 All E.R. 683. On 2nd July, 1954 at the central criminal Court Stable, J., told the Jury : Are we to take our literary standards as being the level of something that is suitable reading for the decently brought up young female aged fourteen. A mass of literature-great literature is wholly unsuitable for reading by the adolescent, but that does not mean that a publisher is guilty of criminal offence for making those works available to the general public. 'A book which might not affect the mind of an archbishop might well affect the mind of. . . a girl just budding into womanhood'.. In determining whether a book is obscene, regard should be had to that book alone and other books cannot be referred to for purposes of comparison; *R. v. Reiter* (1954) 2 Q.B. 16, C.C.A. at pages 18, 19 : (1954) 1 All E.R. 741 approving the dictum in *Galletly v. Laird* (1953) S.C.J. 16 (For a study of obscenity and the law in the United Kingdom see the following standard publications : Halsbury Laws of England Simonds edition Vol. 10, Section 13, para. 1274, pages 666-667; Harris Criminal Law, 19th edition, page 218; Russell on Crime, tenth edition, Vol. 2, P. 1717 and foll; Moriarty Police Law, Thirteenth edition, Ch. XI, p. 110 and foll; Stones Justice's Manual, 88th edition Special India paper edition (1956), Vol. 2, page 1705 and foll.

AMERICA.

20. The American Law on this subject it as follows : The said law relating to Books, Magazines, Pamphlets etc., is contained in 33 American Jurisprudence, Section 10 (pp. 21-22);

The test which is substantially followed and accepted by most of the Courts in determining whether a book is obscene within a prohibitory statute is whether the tendency of the matter charged as obscenity is to deprive and corrupt those whose minds are open to such immoral influences, and into whose hands such a book may fall. Consequently, a statute making it a misdemeanour to sell, to give away, or show any obscene, lewd, lascivious, filthy, indecent, or disgusting book, paper, etc. is not violated by an article which attacks the clergy of a certain religious denomination in a vile and scurrilous manner, but which is not a lewd, lascivious, or obscene publication the tendency of which is to excite lustful or lecherous desire. However, expressions obscene in themselves need not be employed, it is sufficient if the idea conveyed is obscene.

A book may be thoroughly indecent and obscene, no matter how great its author or how fascinating its literary style, although it has been held that books such as Payne's edition of the 'Arabian Nights', Fielding's novel 'Tom Jones', the works of Rabelais, Ovil's 'Art of Love', the 'Decameron of Boccacio', the 'Heptameron of Queen Margaret of Navarre', (See R. v. Thompson (1900) 64 J.P. 456 saving from destruction as obscene literature Heptameron and Police v. Fouldet 1954 Cr.L.R. 868 saving Decameron and 'Alladdin' are not obscene, this conclusion, being reached upon the theories that these works are the product of great literary genius, that they rank with the higher literature and are not generally , purchased or appreciated by the class of people from whom unclean publications should be withheld, and that such books are not corrupting in their influence upon the young because they are not likely to reach them.

21. It makes no difference what the object in writing or publishing a book is; if the book is in fact obscene, the statute is violated. Furthermore, as a general rule, in determining whether a book is obscene, it must be considered broadly as a whole, and not judged by its vulgar and indecent paragraphs alone, although some authorities hold that under a statute making it unlawful to sell, print, etc., a book

containing obscene language, the whole book need not be admitted in evidence, but only those parts complained of.

22. The leading decision in the United States of America is that of *U.S. v. One Book entitled Ulysses* 72 F (2nd) 705. (2nd Cr. 1934). The definitive statement of law in this case is its dominant effect. But at the same time even isolated passages or obscene, impure, indecent and manifestly tending to the corruption of youth are sufficient to find a verdict of guilty. Similarly in *Paget Publications v. Watson* (1952) 1 All E.R. 1256 the Magistrate found the only the covers of a book were obscene, but nevertheless held that he had jurisdiction under the 1857 Act to order its destruction. Lord Goddard upheld him and pronounced the point unarguable. It is not necessary, he said, to show that a publication is obscene on every page. He did not, however, discuss the point or whether its individual passages or general character which renders the book obscene. See also *Rosen v. U.S.*, 161 U.S. 29 : 40 L.Ed. 606 *United States v. Dennett* 39 F. (2d) 564 *Comm v. Buckley* 200 Mass. 346; *People v. Eastman* 188 N.Q. 478; and the article in 52 *Harvard Law Review* 40 entitled 'Judicial censorship of obscene literature.'

23. The *Encyclopaedia Britannica* Vol. 16 at page 670 : In the United States the different states provide punishment for obscene publications etc. The Federal Government penalises sending of obscene matter through the mails under the *Tariff Act of 1930* (U.S. Code, S. 1305) the U.S. may ban the import of any obscene book. Obscene is legally defined in Courts as 'Tending to stir the sex impulses or to lead to sexually impure thoughts.'

24. The latest American decisions are set in the following extract from the well-known *Weekly News Magazine 'Times'* dated July 8, 1957.

'Sex' wrote U.S. Supreme Court Justice William, J., Brennan, 'has indisputably been a subject of absorbing interest to mankind through the ages'. But sex and obscenity, he pointed out are not synonymous and there has been plenty of disagreement about when the subject of absorbing interest becomes one of prurient interest. It was in a first major attempt to settle that issue that the Supreme Court, in a split decision, last week upheld U.S. and California criminal obscenity statutes. Before the Court were the combined cases of (1) *York Trashmonger*

Samuel Roth, 'convicted (and sentenced to five years in prison and fined \$ 5,000) for violating federal law by mailing obscene circulars and an obscene book (American Aphrodite) and (2) Los Angeles Mail Order Salesman David Alberts, convicted (and sentenced to 60 days in prison, fined \$ 500 and placed on probation for two years) under a California statute for 'lewdly keeping for sale' and advertising indecent books (e.g., Sword of Desire, She Made It Pay.) In the Roth Case, the major question was whether the U.S. Law abridged the First Amendment (freedom of speech and press) In the Alberts case, it was whether the California statute violated the 14th Amendment, restriction against any States' depriving any citizen of life, liberty or property without due process of law.

Four Supreme Court Justices (Felix Frankfurter, Harold Burton, Tom Clark and Charles Evans Whittaker) joined Brennan in the majority opinion affirming the convictions. 'Mail Order Man Alberts' 14th Amendment claim was tossed out the window in short order. But the majority dealt searchingly with Roth's First Amendment argument. Wrote Brennan:

All ideas having even the slightest redeeming social importance--unorthodox ideas, control versa ideas, even ideas hateful to the prevailing claimate of opinion have the full protection of the guarantees, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance. We hold that obscenity is not within the area of constiutional protected speech or press.

Just what is obscenity The old test, said Brennaa, allowed 'material to be Judged merely by the effect of an isolated excerpt upon particularly susceptible persons.' That standard was rejected, and the Supreme Court instead approved this test : Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests. Justice Brennan quoted with approval a lower Court's charge to the jury; 'You and you alone arc the exclusive Judges of what the common conscience of the community is.'

Chief Justice Earl Warren concurred in the result of the majority opinion, but fretted lest Brennan's ' broad language ' might eventually be applied to the arts and sciences and freedom of communication generally.' Justice William Douglas (joined by Justice Hugo Black) dissented, arguing that the majority test of obscenity made for 'community censorship in one of its worst forms. It creates a regime where, in the battle between the literati and the Philistines are certain to win ' Wrote Douglas : ' I have the same confidence in the ability of our people to reject noxious literature as I have in their capacity to sort out the true from the false in the theology, economics, politics or any other field.

Travelling a middle road was Justice John Marshall Harlan. On the ground that the states' bear direct responsibility for the protection of the local moral fabric but the U.S. Congress 'has no substantive power over sexual morality ' he concurred in rejecting Albers' 14th Amendment plea, but dissented' in the First Amendment Roth case. Wrote Harlan:

The danger is perhaps not great if the people of one state, through their legislature, decide that Lady Chatterley's Lover goes so far beyond the acceptable standards of candour that it will be deemed offensive and nonsellable, for the state next door is still free to make its own choice, At least we do not have one uniform standard. But the dangers to free thought and expression are truly great if the Federal Government imposes a blanket ban over the nation on such a book .

In each case the majority ruled that obscenity was not protected by the Constitutional guarantees of freedom of speech and expression. Justice William, J., Brennan, Jr., who wrote the majority opinion in the two cases, said,

The protection given to speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without social importance 'Justice Brennan noted, however that there is a sharp distinction between obscenity and sex.

'The portrayal of sex, e.g. in art, literature, and scientific works is not itself sufficient reason to deny materially the constitutional protection of freedom of

speech and press', he said. In dissent, Justice William O. Douglas and Hugo L. Black Warned that the decisions would 'give the censor free range over a vast domain.' Justice Douglas said

'Punishment is (being) inflicted for thoughts provoked, not for overt acts or anti-social conduct. Government should be concerned with anti-social conduct, not with utterances.... If the First Amendment (guaranteeing freedom of speech)... is to mean anything in this field, it must allow protests even against the moral code that the standard of the day sets for the community .

INDIA.

25. The Indian, Law on this subject is covered in the following extracts from (a) The Law of Crimes by Ratanlal, 16th edition, page 646; and (b) Penal Code by V. B. Raju, I.C.S. (1957).

(a) Ratanlal:

The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall'. If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come, it will be an obscene publication, which it is the intention of the law to suppress. If in 'fact the work is one which would certainly suggest to the minds of the young of either sex or even to persons of more advanced years, thoughts of most impure and libidinous character, its publication is an offence, though the accused has in view an ulterior object which is innocent or even laudable. Anything' calculated to inflame the passions' is obscene. Anything distinctly calculated to incite a reader to indulge in acts of indecency or immorality is obscene, e.g. a book containing a description of defective sexual enjoyment with advice for heightening and prolonging such enjoyment in the case of normal persons. A book may be obscene although it contains but a single obscene passage. A religious or classical work does not become obscene, simply on account of its containing some objectionable passages, because the tendency of

such publication is not to deprave or corrupt morals. If objectionable passages in a religious book are extracted and printed separately and they deal with matters which are to be judged by the standard of human conduct as where they relate to immoral acts of human beings, and the tendency of such publication is to deprave and corrupt those whose minds are open to immoral influences, the publication may not be justified, though the passages form part of a religious book. If the detailed passages in a book are of an obscene character, the author's liability in respect of those passages will not be saved or avoided merely by reference to other passages in the book which may contain moral precepts of an unexceptionable character. The important point to look at is rather the form of the expression than the actual meaning, for the same meaning may be obscenely expressed by one form of language, and yet by the use of another form of language may be couched in expressions free from reproach. Obscene passages are not excused because the rest of the publication is unobjectionable. It is no justification that the matter published is written by an eminent writer or is composed in a style not easily understood by all, or that the publication is a medical one and sold only to registered subscribers.

(b) V.B. Raju, I.C.S.:

'If a publication is in fact obscene, it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent. It was not sufficient for him to say that his intentions were good. Intention is immaterial and the question is one of fact and not of law. If in fact the work is one which would certainly suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character, its publication is an offence, though the accused has in view an ulterior object which is innocent or even laudable.... If the publication is an obscene publication it would be no defence to say that the law was broken for some wholesome and salutary purpose.... A book may be obscene within the meaning of Penal Code, although it contains but a single obscene passage.... In a prosecution for an offence punishable under Section 292 if the prosecution succeeds in showing that the detailed passages on which they rely are of an obscene character, the author's liability in respect of those passages will not be saved or

avoided merely by reference to other passages in the book which may contain moral precepts of an unexceptionable character. The important point to look at is rather the form of the expressions than the actual meaning, for the same meaning may be obscenely expressed by one form of language, and yet by the use of another form of language may be couched in expressions free from reproach. Where matter contained in a book is obscene, it is no justification of an offence under Section 292 that the matter published was written by an eminent writer.... Since a passage which may not be obscene in its place, in technical publications and publications addressed to professional people may become so by publishing in a journal sold to the public'. (See pages 802-804). (Case Law referred. *Empress v. Indarman* I.L.R.(1881) All. 837; *Kherode Chandra Roy Chowdhuri v. Emperor* I.L.R.(1911) Cal. 377 *State v. Dim Math* *Emperor v. Harisingh* I.L.R.(1905) All. 100 *Qteeen Empress v. Parashram* I.L.R.(1895) Bom. 193 *Rahimatalli v. Emperor* A.I.R. 1920 Bom. 402 *Sarat Chandra Ghose v. Emperor* I.L.R.(1904) Cal. 247 *Kailaschandra v. Emperor* : AIR1932 Cal651 *Sreeram Seksena v. Emperor* I.L.R.(1940) Cal. 581 *Emperor v. Thakardutt* A.I.R. 1917 Lah. 288, *Markandeya, In re* A.I.R. 1918 Mad. 1195 *Emperor v. Harnamdas* A.I.R. 1947 Lah. 383 *Ramamurthy, In re* A.I.R. 1954 Mys. 164 *Sukanta v. State* : AIR1952 Cal214 *Emperor v. Vishnu* I.L.R.(1912) Bom. L.R. 20 : 19 I.C. 504.

26. John D. Mayne in 'Criminal Law of India' (Third edition), in his commentary on Section 292, I.P.C. as it stood before it was amended and as it stands now giving effect to the International Convention for the Suppression of the Circulation of and Traffic in , Obscene Publications signed at Geneva on behalf of the Governor-General-in-Council on September 12, 1923, has stated;

The word ' obscene ' is one of considerable ambiguity. In one sense, Hiram Power's statue of Greek Slave, Ruben's picture of the Judgment of Paris, and the works of Matrial or Catullus must be considered as obscene, that is, as capable of exciting sensual feelings. But it could not be endured that a shopkeeper should be prosecuted for selling copies of the works just mentioned. I conceive that the word must be limited to those productions, the primary and palpable result of which is to excite to lust; Wnatever may have been the original object of such writers as Matrial or Catullus in their amatory odes, in the present day they are bought and

read as monuments of a classical age. Nor can there be any greater indelicacy than the delicacy of those who profess to find impropriety in some of the noblest works of painting and sculpture that have descended to our times. But, however difficult it may be to draw the line in words, the distinction between the two races will generally be bold enough .

To sum up in the words of Dr. Sir Hari Singh Gour's 'The Penal Law of India', 6th Edition, Vol. 11, page 1189:

The tests to be applied for determining whether a particular object is obscene or not must depend on various circumstances. The idea as to what is to be deemed to be obscene has varied from age to age, from region to region, dependent upon particular social conditions. There cannot be an immutable standard of moral values.

The Courts have more often restricted the use of the term ' obscenity ' to sexual immorality only. Such matters as would tend to stir in persons, into whose hands such matter is ordinarily expected to reach, sex impulse which leads to sexually impure and lustful thoughts, are declared as obscene, attracting the jurisdiction of the Court to ban out such publications. The true test is not to find out what depraves the moral in any way whatsoever, but what leads to deprave only in one way, viz., by exciting sexual desires and lascivious thoughts. The effect produced on an ordinary member of the society or a particular class of readers for which a particular publication may be meant has to be ascertained. It is neither a man of wide culture or rare character, nor a person of depraved mentality who should be thought of as being the reader of such literature. The standard of readers is neither of exceptional sensibility nor one without any sensibility whatsoever. The form and methods of expression together with the occasion and surrounding circumstances play an important part for determining whether a particular matter is obscene or not.

27. Evidence of criminal acts other than those strictly constituting the alleged offence with which a defendant is charged is admissible if it is relevant to the issue in that it tends to establish system, design or metis rea or to rebut a defence of accident. It is admissible if there is some specific feature distinct from a mere

tendency to prove bad disposition which connects the evidence with the crime charged : *Makin v. A.G. of M.S. Wales* L.R. (1894) A.C. 57 *Harris v. Director of Public Prosecutions* L.R. (1952) A.C. 694.

28. The conclusion drawn by eminent English writers In England there has recently been a drive against obscene publication giving rise to a series of prosecutions : *R. v. Reiter*, L.R. (1954) 2 Q.B. 16 *R. v. Martin Seder and Warburg Ltd.* (1954) Cri. L.R. 593. *Thompson v. Cham Libraries* (1954) Cri. L.R. 551 *R. v. Hutchinson*, *The Times* July 27, Sep. 13 (1954). *R. v. Self*, *Ibid.* July, 29 (1954) *R. v. Kaye*, *Ibid.*, Sep. 25 (1954) *R. v. Heinemann*. *Ibid.* Oct. 18 (1954) on this branch of law is that the best solution would be a comprehensive statute revising and codifying this branch of the law. This has been attempted by an English Society of Lawyers who appointed a committee originally presided over by Sir Allen Herbert and who have submitted recommendations to the Home Secretary in the form of a draft 'Obscene Publications Bill'. Clauses (i) and (2) therein are of considerable interest to us.

Clause (1) of the Bill provides:

Any person who shall distribute, circulate, sell, or offer for sale any obscene matter shall be guilty of an offence:

Provided that no person shall be convicted of an offence under this section unless it is established by the prosecution either--

(a) That the accused intended to corrupt the persons to or among whom the said matter was intended or was likely to be so distributed, circulated, sold, or offered for sale; or

(b) That in so distributing, circulating, selling, or offering for sale he was reckless as to whether the said matter would or would not have a corrupting effect upon such persons.

Provided also that in any proceedings under this Act the author, publisher and printer shall have the right to have and call evidence.

Clause (2) is as follows:

In deciding, for the purposes of any of the provisions of this Act, whether any matter is or is not obscene, the Court shall have regard to the following considerations:

(a) The general character and dominant effect of the matter alleged to be obscene.

(b) Evidence, if any, as to the literary or artistic merit, or the medical legal, political, religious. or scientific character or importance of the said matter : and for this purpose expert opinion shall be admissible as evidence.

(c) Evidence, if any, as to the persons to or among whom the said matter was, or was intended, or was likely to be distributed, circulated, sold or offered for sale.

(d) Evidence, if any, that the said matter has had a corrupting effect.

29. It is unnecessary for us to refer to the other clauses. It is high time that Sections 292 and 293 of the Indian Penal Code are amended in terms of 'this well thought out' Obscene Publications Bill .

30. The two latest Madras decisions on the subject are : Pandurangan, In re (1955) 1 M.L.J. 145 and Shankar and Co. v. State of Madras (1955) 2 M.L.J. 106.

It is pointed in 'Russell on Crime', Tenth edition, Volume II, at page 1720;

The publication of obscene matter being unlawful, on proof of publication, an intent to break the law is to be inferred; and it is for the defence to justify or excuse it. Where the indictment properly charges an intent to corrupt public morals, evidence of the sale of other matter of an obscene character is admissible as bearing on the question whether the sale of the incriminated book was deliberate or accidental.

A charge in respect of an offence under this Section 29a 'as pointed out by Dr. Nand Lal in his commentaries on Indian Penal Code, Volume I, page 1309,' must be specific in regard to the representations and words alleged to have been exhibited and uttered and to have been obscene. It is desirable, also, that the Magistrate should state, in his judgment, the representations and words, which he

adjudged to be obscene

31. A type-design charge under Section 292, Indian Penal Code is set out at page 1309 of Dr. Nand Lal's Indian Penal Code Vol. I (Krishen Lal and Co., Lahore).

32. Bearing these principles in mind if we examine the matter under question it constitutes obscene matter contemplated under Section 292, Indian Penal Code it is intended to be sold to pruriently minded adolescents all and sundry in order to stir the sex impulses and lead to sexual and impure thoughts. The publication is obscene on every page. It is unrelieved by a single ennobling thought. The general character and the dominant effect of the publication is obscene, impure, indecent, and manifestly tending to the corruption of youth. It has no literary or artistic or medical, legal, political, religious or scientific character or importance. It is plainly intended to be fare for the lewd, lascivious, and filthy minded who may secure it at street corners for a few annas. It does not become less smutty or more sanctified because the information has been copied from similar foreign works. Therefore, the learned Magistrate was perfectly justified in coming to the conclusion-that it constituted obscene matter falling within the mischief of Section 292, Indian Penal Code.

33. The convictions are therefore correct and the sentences of fine are appropriate. These Revision Cases are dismissed.

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