

CRIMINAL REVISION.

Before Henderson and Akram J.J.

SREE RAM SAKSENA

v.

EMPEROR.*

1940

Feb. 9, 15.

Obscenity—*Test of obscenity of a picture—Indian Penal Code (Act XLV of 1860), s. 292.*

The test of obscenity of pictures is whether they would shock or offend the taste of an ordinary or decent-minded person and not whether they may have an undesirable effect upon a person of depraved or prurient mind.

Queen v. Hicklin (1) referred to.

A picture of a woman in the nude is not *per se* obscene. When there is nothing in it to offend an ordinary decent person, it is impossible to say that it is obscene within the meaning of s. 292 of the Indian Penal Code.

Per AKRAM J. For the purpose of deciding whether the picture is obscene or not, one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, the person in whose hands it is likely to fall, *etc.* No hard and fast rule can, therefore, be laid down for the determination of the matter.

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The material facts of the case and arguments in the Rule appear sufficiently from judgments.

Amiya Prosad Maitra for the petitioner.

Lalit Mohan Sanyal for the Crown.

Cur. adv. vult.

HENDERSON J. This is a Rule calling upon the Chief Presidency Magistrate, Calcutta, to show cause why the conviction of the petitioner under s. 292 of the Indian Penal Code should not be set

*Criminal Revision, No. 894 of 1939, against the order of J. Ahmed, Fifth Presidency Magistrate of Calcutta, dated June 23, 1939.

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aside. The prosecution was instituted in connection with certain photographs which were reproduced by the petitioner by some mechanical process and then issued for sale in the streets. The learned Magistrate was right when he said that the only question for his determination was whether these postcards are obscene. They are all postcards of women in the nude. Blocks were prepared from photographic reproductions published in booklets entitled "Perfect Womanhood", "Sun Bathers" and "Eve in the Sunlight". These books were purchased by the petitioner from well-known book-sellers of repute in Calcutta.

The conviction cannot be upheld unless we are prepared to say that a picture of a woman in the nude is *per se* obscene. If the postcard reproductions are obscene, the originals are equally so and the book-sellers are as guilty as the petitioner. It appears from his judgment that the learned Magistrate was not prepared to go so far as to hold that the originals are obscene. He was also influenced by a suggestion of the prosecution, which is not supported by any evidence, that the photographs are of low-class shameless foreign prostitutes. He was also influenced by the motive which he attributed to the petitioner and to the fact that these reproductions were sold in the streets. Instead of being influenced by these matters the learned Magistrate should have merely considered whether there is anything obscene in the postcards themselves.

In dealing with matters of this kind reliance is always placed upon the observations of Cockburn C. J. in the case of *Queen v. Hicklin* (1). The learned Chief Justice said this:—

I think 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.

(1) (1868) L.R. 3 Q.B. 360, 371.

It was not disputed by the Crown that there is nothing in these postcards which would shock or offend the taste of any ordinary or decent-minded person. It was equally not disputed by the defence that they might have an undesirable effect upon a person of depraved or prurient mind.

In my judgment, the former test should be applied. If the latter test is applied, it is not possible to attach any real meaning to the words used by Cockburn C. J. No question of depraving or corrupting the minds of persons into whose hands they might fall could possibly arise. When there is nothing in them to offend an ordinary decent person it seems to me to be impossible to say that they are obscene.

The Rule is accordingly made absolute. The conviction and sentence are set aside and the fine, if paid, will be refunded.

AKRAM J. In this case, the petitioner and one Kishan Lal Varma were put upon trial under s. 292 of the Indian Penal Code on a charge of printing and selling certain obscene pictures.

The accused admitted the printing and the sale of the pictures but denied that they were obscene or tended to corrupt the morals of the public.

The trying Magistrate convicted the accused and on the application of one of them the present Rule was issued.

The pictures which are all of nude female forms have been reproduced from some of the photographs contained in the picture books named "Sun Bathers". "Eve in the Sunlight", "Perfect Womanhood", "Health and Efficiency" which are being sold in the market.

The only question to be considered is whether or not these pictures can be characterised as obscene within the meaning of s. 292 of the Indian Penal Code.

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As to what is obscene, Cockburn C. J. in *Queen v. Hicklin* (1) expressed his opinion as follows:—

I think 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.

Unless, therefore, the pictures are an incentive to sensuality and excite impure thoughts in the minds of ordinary persons of normal temperament who may happen to look at them, they cannot be regarded as obscene within the meaning of s. 292 of the Indian Penal Code.

For the purpose of deciding whether a picture is obscene or not, one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, the person into whose hands it is likely to fall, *etc.* No hard and fast rule can, therefore, be laid down for the determination of the matter.

Considering everything I am unable to say that the pictures in the case before us fall within the purview of s. 292 of the Indian Penal Code. I, therefore, agree that this Rule should be made absolute and the conviction of the petitioner and the sentence passed upon him should be set aside.

Rule absolute. Accused acquitted.

A. C.R. C.

(1) (1868) L.R. 3 Q. B. 360, 371.