

1931

Present: Macdonell C.J.

SUB-INSPECTOR OF POLICE, TANGALLA v. DHARMA-BANDU.

359—*P. C. Tangalla, 27,515.*

Obscene article—Indecent as a whole—Tendency to corrupt minds—Penal Code, s. 285.

An article is obscene where the tendency of its contents would be to deprave and corrupt the minds of those who peruse it.

APPEAL from an order of acquittal by the Police Magistrate of Tangalla.

*M. F. S. Pulle, C.C., for Crown, appellant,
Soertsz, for accused, respondent.*

August 3, 1931. MACDONELL C.J.—

In this case the accused was charged with contravening section 285 of the Penal Code in that he printed for sale an obscene article in a paper or book. The learned Magistrate found that the article was not obscene and acquitted the accused. Now the learned Magistrate has said that the article taken as a whole is indecent, and if so, then it would seem that it is obscene also. The word obscene is defined in the Oxford Dictionary as follows:—"Offensive to modesty, expressing or suggesting unchaste or lustful ideas, impure, indecent, lewd." (This definition is also to be found quoted in the *Archibald*, 27th ed. p. 1321.) It would seem to

follow then, if this definition be correct, that in finding that the article taken as a whole is indecent the learned Magistrate has also found that it is obscene, and this Court in pronouncing it so is simply carrying out the findings of the learned Magistrate himself.

The law as to obscene publications is sufficiently put in *Regina v. Hicklin*,¹ per Cockburn C.J., who said in that case: "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."

A perusal of the article in this case, or of so much of it as was an exhibit therein, certainly leaves on my mind an impression that it was obscene and that the tendency of its contents would be to deprave and corrupt the minds of those into whose hands it may fall. The evidence seems to be that the paper could be purchased for 10 cents. In printing it therefore the accused was appealing to a fairly wide audience.

I think this appeal must be allowed and the case sent back with the direction to the Magistrate to convict.

Set aside.

