

Present : Schneider A.J

1921.

SUB-INSPECTOR OF POLICE, BENTOTA, *v.* ZOYSA *et al.*

459-462—P. C. Balapitiya, 49,242.

Penal Code, s. 291—Escorting priests to get "pirith ceremony" performed—Attack on members of the procession—Is procession "religious ceremony" ?

L, desiring to have a "pirith ceremony" at his house, sent persons to escort the priests from the temple to his house. The procession from the temple consisted of four tom-tom beaters and a person blowing a horn and of four persons bearing a canopy, under which walked two persons carrying relics and sacred books and of some priests. The first accused struck some of the members of the procession, and the procession broke up as the musicians fled. The priests and the rest of the people proceeded to the house of L; the accused went near the house, and by threats prevented it taking place.

Held, that a conviction under section 291 of the Penal Code was bad. It is of the essence of the offence that the disturbance must take place while the assembly is actually engaged in the performance of the religious worship or ceremony.

The disturbance of the procession would not constitute the offence created by section 291, Penal Code, unless the procession was a religious ceremony. The object of the procession was to escort the priests in order that they may perform the religious ceremony in the house.

What the accused did near the house of L did not constitute an offence under section 291.

THE facts appear from the judgment.

F. de Zoysa, for accused, appellants.

Amarasekere, for complainant, respondent.

May 30, 1921. SCHNEIDER A.J.

The first, second, fourth, and fifth accused have appealed from a conviction under section 291 of the Penal Code of having voluntarily caused disturbance to an assembly lawfully engaged in the performance of a religious ceremony. The third accused had been acquitted by the Magistrate. I will accept the facts proved to be the following: One Leidiris, a Buddhist, desiring to have a "pirith ceremony" at his house, sent persons to escort the priests from the temple to his house. A procession consisting of one Sohandia blowing a horn, and of four tom tom beaters playing on their tom-toms and walking behind him, and of four persons bearing a canopy,

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under which walked two persons carrying relics and sacred books, and, lastly, of some priests was wending its way along a village path on its way to Leidiris' house, when the first accused struck Sohandia with a stick and pushed the two men who were carrying the relics.

This attack broke up the procession as the musicians fled. However, the priests proceeded to the house of Leidiris, as also the rest of the people in the procession, together with the books and relics, but no "*pirith* ceremony" took place. The reason given was that the accused came near the house, and by threats prevented it taking place. Leidiris says that the ceremony was not performed. Zoysa, the Police Officer, says that he went to Leidiris' house upon receiving a complaint that the accused had caused a disturbance; he found that preparations had been made for the ceremony, but that no ceremony had been held. All the evidence is that no ceremony took place in the house.

The language of the section under which the accused have been convicted is clear that it is of the essence of the offence that the disturbance must take place while the assembly is actually engaged in the performance of the religious worship or ceremony.

According to the evidence the disturbance complained of in this case was caused at two distinct stages: First, when Sohinda was assaulted as the procession was wending its way. This disturbance would not constitute the offence created by section 291, unless the procession was a religious ceremony. There is no evidence upon which I could hold that it was such a ceremony. The evidence is that the object of the procession was to "escort" the priests in order that they may perform the religious ceremony in the house. The music of the horn and tom-toms were apparently intended to honour the priests as they proceeded to the scene selected for the performance of the ceremony. The relics and books were the things required for the ceremony. I have seen a Buddhist priest escorted from a railway station to the temple he was proceeding to visit with the beating of tom-toms along the high road. I am unable to conceive how such a procession can be said to be a religious ceremony. Supposing the priests in this instance had proceeded in a motor car or in a horse and carriage from their temple to the house, would any obstruction to the progress of their vehicle be a disturbance of a religious ceremony? I cannot think it would be.

The evidence of the attack upon the procession, therefore, fails to prove the commission of the offence created by section 291. Nor is the offence established by what the accused did near the house of Leidiris. The evidence is that their threats prevented the religious ceremony from being performed at all. No attempt was made even to commence it. The threats of the accused appear to have been taken so seriously that the ceremony, for which preparations had been made, was abandoned altogether that night.

The acts of the accused may amount to other offences, but they are not guilty of having caused disturbance to an assembly engaged in the performance of a religious ceremony.

I therefore set aside the conviction of the accused, and acquit them.

Accused acquitted.

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