

1962

Present : Sri Skanda Rajah, J.

V. ELIYATHAMBY *et al.* Appellants, and INSPECTOR OF POLICE,
KALMUNAI, Respondent

S. C. 579-581—M. C. Kalmunai, 5448

Charge of uttering obscene words—Quantum of evidence—Penal Code, s. 287.

A charge under section 287 of the Penal Code for uttering obscene words cannot be maintained if the aggrieved party states in his evidence that he was not annoyed by the use of the words in question.

APPEAL from a judgment of the Magistrate's Court, Kalmunai.

A. H. C. de Silva, Q.C., with E. A. G. de Silva, for the accused-appellants.

As A. de Silva, Crown Counsel, for the Attorney-General.

August 28, 1962. SRI SKANDA RAJAH, J.—

The first charge is one under section 287 of the Penal Code. That charge alleges that the 1st accused used certain obscene words to the annoyance of one Murugapper Moothathamby. Murugapper Moothathamby himself has given evidence. He appears to have been questioned as to what he felt when he heard these words and he has answered "When the 1st accused abused me I did not feel anything". To maintain a charge under section 287, Moothathamby should have stated that he was annoyed by the 1st accused uttering these obscene words. If he did not feel anything, it means that he did not feel annoyed. Therefore that charge must fail. If authority is required for this proposition one can find it in the case of *Croos v. Shaaifi*¹, which judgment I had occasion to refer to and follow in a recent judgment of this Court.

The other charges are dependent on the first charge. If the conviction on the 1st count fails, then the convictions on the other three counts must fail. Therefore, I set aside the convictions of the accused and acquit them.

Appeal allowed.

¹ (1926) 28 N. L. R. 233.