

1946

Present : de Silva J.

N. M. PERERA, Appellant, and POLICE, Respondent.

223—M. C. Colombo South, 4,588.

Defence (Miscellaneous) Regulation 17 (1)—Charge under—Words of argument addressed to persons engaged in the performance of essential services—Cannot constitute interference—Charge should set out the words used by accused.

Where the charge against the accused was that in contravention of Regulation 17 (1) of the Defence (Miscellaneous) Regulations he addressed a large number of persons engaged in the performance of essential services in terms which were likely to prevent or interfere with the carrying on of their work—

Held, that the act specified in Regulation 17 (1) was some action which by itself would interfere with the work of persons engaged in essential services, not an argument which would leave the option to the person addressed either to follow it or to ignore it.

Held, further, that the charge should have set out the Sinhalese terms used by the accused.

A PPEAL against a conviction from the Magistrate's Court of Colombo South.

H. V. Perera, K.C. (with him *S. Nadesan* and *C. E. L. Wickremasinghe*),
for the accused, appellant.

T. S. Fernando, C.C., for the Attorney-General.

May 17, 1946. DE SILVA J.—

The charge against the accused in this case was that on November 21, 1945, at the Ratmalana within the jurisdiction of this court in contravention of Regulation 17 (1) of the Defence (Miscellaneous) Regulations he did an act, to wit, address a large number of persons engaged in the performance of essential services thus :

“ Brothers, the other bus companies have stopped work to-day to get their legitimate dues. You all like one body must fight shoulder to shoulder until you attain final victory ”.

having reasonable cause to believe that such act will be likely to prevent or interfere with the carrying on of their work by persons engaged in the performance of essential services, and that he thereby committed an offence under Regulation 17 (1) punishable under Regulation 52 (3) of the said Defence (Miscellaneous) Regulations. He was convicted of this charge and was sentenced to a term of three months' rigorous imprisonment.

In appeal Mr. Perera on his behalf contends that the speech alleged to have been made by the accused does not amount to an act which would prevent or interfere with the carrying on of the essential services as provided in Regulation 17. He also contends that the charge set out is that the accused used certain terms in English whereas the evidence is that the accused addressed the employees of the bus company in the Sinhalese language, so that the evidence does not support the charge made against the accused.

It is difficult to contend that where an argument or a speech is addressed to a person engaged in an essential service the fact that the person addressed has the option of accepting that advice would make the argument or speech an act which would prevent or interfere with the carrying out of the duties of that person. The act specified in the regulation appears to be some action which by itself would interfere with the work of persons engaged in essential services, not an argument which leaves the option to the person addressed either to follow it or to ignore it.

There is separate provision in the Defence Regulations for dealing with persons who strike or encourage strikes in essential services. So that it is to be presumed that Regulation 17 (1) was intended to meet offences other than encouraging strikes.

The witnesses have given the Sinhalese terms which were alleged to have been used by the accused, but he was not charged with having used such terms. Even if the charge had been regularly framed by setting out the terms used by the accused, Mr. Fernando for the Crown concedes that the words do not necessarily mean that the accused urged the employees to strike or to stop work.

In the circumstances I find that the charge made against the accused has not been established. I set aside the conviction and acquit the accused.

Appeal allowed.

