

1946

Present : Howard C.J.

JAMES PERERA, Appellant, and WALDRON (S.P.), Respondent.

344—M. C. Colombo, 11,019.

*Defence (Miscellaneous) Regulation 17 (1)—Charge under—Actual words used by accused not set out in charge—Legality of conviction.*

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 by persons engaged in the performance of essential services—

*Held*, that the charge should have set out the actual words used by the accused who spoke in Sinhalese.

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

*H. V. Perera, K.C.* (with him *Walter Jayewardene, CC.*, *Rasa-Ratuam* and *C. E. L. Wickremesinghe*), for the accused, appellant.

*E. P. Wijetunge, C.C.*, for the Attorney-General.

*Cur. adv. vult.*

May 29, 1946. HOWARD C.J.—

The appellant was convicted under Regulation 17 (1) of the Defence (Miscellaneous) Regulations on a charge that, at Colombo on November 21, 1945, he did an act, to wit, address a large number of persons engaged in the performance of essential services thus: "From the 1st of this month lightermen have worked only an 8-hour day. From the 13th they struck work. We welcome the motor workers who have joined in the strike and I hope many others would join too"—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. Against this conviction the appellant appeals.

The evidence against the appellant was that of the Police officers Sub-Inspector Goonetilleke and Sergeant Chandrasekera who attended

the meeting at which about 300 persons were present consisting of lightermen from Colombo harbour and motor workers. There was a strike in progress. The appellant, according to the two Police officers, made a speech in Sinhalese. After the meeting the two officers went to the Pettah Police Station and made a note in English of the speech made by the appellant. These notes were made ten minutes after the meeting. The prosecution was based on the words set out in the charge which were taken from these notes. The Inspector stated that he did not take down all that the appellant said and only noted down what he considered important. Mr. Perera has contended *inter alia* that the conviction cannot be maintained inasmuch as the charge does not contain the actual words used by the appellant who spoke in Sinhalese and not English. Moreover the whole of the appellant's speech was not recorded, and the appellant was charged on what amounted to a precis made by the Inspector of what had actually been said. In my opinion there is considerable substance in Mr. Perera's contention. So far as the proof of what the appellant actually said is concerned I am of opinion that the same principles must apply as in a case of a seditious libel. In the 31st edition of Archbold p. 1117 it is stated that the seditious parts of the publication relied on should be set out in the indictment correctly. If the libel is in a foreign language, it should be set out in such language verbatim together with a correct translation. In this connection I would refer to *Zenobia v. Axtell*<sup>1</sup>. In the present case the words set out in the charge were not the actual words used, but an English translation of the words used made from memory by the Police officers. The actual words used should have been set out in the charge. The appellant did not go into the witness box and say what words he actually used.

In that connection Crown Counsel has referred me to the case of *Khare v. Massani*<sup>2</sup>. In that case the complainant, Dr. Khare, brought criminal proceedings for defamation against the defendant on the ground that the latter in a paper known as *The Nagpur Times* published defamatory matter in relation to words used by the complainant on a certain occasion. The complainant was not able to give the actual words he used and in those circumstances the Court held that it could only gather their import from the impressions left on the mind of those present. It was argued that as the appellant in this case failed to give evidence as to the words he used the Court was entitled to gather their import from the impressions left on the minds of the Police officers. I am of opinion that this case has no relevance in a criminal charge such as this where a burden rests on the prosecution to prove what words were actually employed.

On this ground alone I allow the appeal and set aside the conviction.

*Appeal allowed.*