

1949

Present : Gratlaen J.

ISMAIL *et al.*, Appellants, and THANGIAH, Respondent*S. C. 1,314-1,315—M. C. Kalmunai, 4,556**Criminal Procedure Code—Document in Tamil—Translation—Foreign language—Section 301.*

The word "document" in section 301 (2) of the Criminal Procedure Code is wide enough to include a written report initiating criminal proceedings before a Magistrate under section 148 (b) and an English translation of any words in it in a "foreign language" should be filed. The word "foreign" in that section means any language other than the official language of the Courts which is English.

Athamebbe v. Inspector of Police (1948) 49 N. L. R. 234 dissented from.

APPEAL from a judgment of the Magistrate, Kalmunai.

G. E. Chitty, for the accused appellant.

S. S. Wijesinha, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

April 7, 1949. GRATIAEN J.—

There are two appellants in this case. They were jointly charged with the commission of offences punishable under section 484 of the Penal

Code in that each had used insulting words to a Police Constable on an occasion the details of which I shall refer to in due course. Both were found guilty. The first accused-appellant was also convicted under section 344 with having used criminal force on the constable whilst the latter was engaged in the execution of his official duties.

I shall deal first with the charges of insult. It is not necessary to consider whether this is one of those rare cases when two persons may properly be tried together on charges of insult, because the convictions must be quashed for a more fundamental reason. In section 484 the actual words complained of must be set out in the charge and must be proved at the trial to have been uttered by the accused, because the Judge must be in a position to satisfy himself that the provocation caused by the alleged insulting language was capable of leading to one or the other of the consequences contemplated by the section. In this case, however, this has not been done. The words specified in the charge appear to be of Tamil origin transliterated into English. But neither in the charge nor in the evidence led at the trial is there any indication as to the meaning of these words. This omission has proved to be more than a technical irregularity in the present case, because both Mr. Chitty, who appeared for the appellants, and Mr. Wijesinha, who appeared for the Crown, shared my ignorance as to what the words complained of actually mean. In our desire for enlightenment we invited another Crown Counsel, a Muslim gentleman who was in Court, to help us, but he too failed as we had done. Finally, a Tamil advocate in Court claimed to recognize some of the words, but with how much confidence I really do not know. I feel that as an appellate Judge I have already persisted too far in my search for information on this puzzling matter.

So long as English remains the official language of our Courts it is necessary to insist upon strict compliance with the provisions of section 298 (1) of the Criminal Procedure Code (which requires the evidence of each witness to be recorded in English and not merely transliterated into English) and of section 301 (2) which requires that an English translation of every material portion of a document which is "in a foreign language" should be filed in Court. The word "document" in section 301 (2) is wide enough to include a written report initiating criminal proceedings before a Magistrate under section 148 (b). With the greatest respect, I cannot agree with my brother Basnayake's interpretation of section 301 (2) in *Athamlebbe v. Inspector of Police*¹. In the context in which it appears in the section, the word "foreign" must surely be construed as referring to any language other than the official language of the Courts. Section 301 (2) merely lays down a rule of convenience.

In the present case the absence of any evidence on the record as to the true meaning of the cryptic words set out in the charge makes it impossible for me to satisfy myself that the ingredients of an offence under section 484 of the Penal Code have been established. The convictions in respect of these offences must therefore be quashed.

¹ (1948) 49 N. L. R. 234.

The first accused has also appealed against his conviction under section 344 of the Penal Code. Here too I think that he is entitled to succeed. The case for the prosecution is that he obstructed a Police constable in the execution of his official duty, viz., to prevent a breach of the peace when an Irrigation officer was "engaged in releasing water which had been unlawfully blocked for the use of certain paddy fields". Up to a certain point the facts are common ground. The accused is one of many paddy cultivators in a district much affected by seasonal drought, and during certain periods of the year it is the concern of the Government to secure as best it can an equitable distribution of such water as is available. On August 18, 1948, the Cultivation Officer of the Pattipola Aru Scheme decided that a particular bund (within the jurisdiction of a "Vata Vidana" named Yassin Lebbe) should be cut so that neighbouring fields would be benefited by the water which would be released by this operation. A letter was accordingly given by the Cultivation Officer to be delivered to Yassin Lebbe by Ismail, who was the "Vata Vidana" of an adjoining area. A letter was also sent to the Police requesting that some form of assistance (the precise nature of which has not been proved) be given to the authorities during the proposed operation which was expected to prove unpopular with some cultivators who would have much preferred the bund to remain as it was. Police Constable No. 3634 Asaithurai accordingly accompanied Ismail to the spot with the letter containing orders for Yassin Lebbe. But Yassin Lebbe—perhaps, as the learned Magistrate suspects, to suit his own purposes—was conveniently absent. Ismail thereupon proceeded, in the teeth of opposition from the accused and other cultivators, to try and cut the bund himself. The constable claims that he himself was there solely "to prevent a breach of the peace", but it is clear that, in accordance with what he conceived to be his duty, he identified himself much more actively with Ismail's plan to cut the bund. It is equally clear that Ismail's actions, though well-intentioned, left much scope for misunderstanding and suspicion on the part of the accused and others as to his motives. It is not immaterial, in considering the accused's state of mind at the time, that shortly before this incident some persons disguised as policemen are alleged to have cut the same bund. At any rate, on the present occasion the 1st accused did push the constable during a heated argument as to his rights, with the result that the constable fell down from the bund. His uniform was soiled, and I can very well imagine that his dignity was also greatly wounded.

The question is whether an offence under section 344 of the Penal Code has been established beyond reasonable doubt against the 1st accused. His defence, in effect, was that he acted *bona fide* in defence of his proprietary rights against what he honestly believed to be an unauthorised act on the part of Ismail in attempting to cut the bund with the constable's assistance. To rebut this defence the prosecution sought to prove that the accused knew or had the means of knowing that Ismail was vested with official authority to cut the bund. On this part of the case, however, the prosecution introduced a great deal of inadmissible evidence. Such orders as the Cultivation Officer gave

his subordinates were admittedly reduced to writing, and are alleged to have been read out to the accused on the spot by the constable. The document or documents were, however, not produced, and the prosecution was permitted instead (without objection from the defence but nevertheless illegally) to lead oral evidence of the contents of the documents. I think that this circumstance vitiates the conviction which was largely based on inadmissible evidence. The accused must accordingly be acquitted. He would do well to realise that his good fortune is not likely to continue if he persists in obstructing the authorities.

Appeal allowed.