

NELL v. MUTTU.

P. C., Colombo, 46,513.

1897.
March 23.

Uttering obscene words—Charge—Requisites—Conviction—Ceylon Penal Code, s. 287.

In a prosecution under section 287 of the Penal Code, for using obscene words in or near a public place to the annoyance of others the words alleged to be obscene must be set out in the charge and in the conviction, so that the Appellate Court may judge as to whether they were obscene or not.

The obscene words used by the accused sufficiently appearing in the evidence, the Supreme Court affirmed the conviction, but ordered the Magistrate to amend the conviction by setting out the obscene words.

THE facts sufficiently appear in the judgment.

Jayawardena, for appellant.

Wendt, for respondent.

23rd March, 1897. BONSER, C.J.—

In this case the appellant was sentenced to fourteen days' rigorous imprisonment for using obscene words in or near a public place to the annoyance of others. He has appealed against the sentence. The only ground of appeal which has been attempted to be urged is that the obscene words were not set out in the conviction. But the obscene words were deposed to by the complainant and appeared on the record. There is no pretence that the appellant was prejudiced in any way by the obscene words not being set out in the charge. I adhere to what I said in the *Chilaw case* (P. C., No. 5,957), heard in appeal on the 29th January, 1894, that the obscene words should be set out in the conviction, so that the Appellate Court may judge as to whether they were obscene or not. In the present case, there is no question that the words used were obscene words, and the objection is a purely technical one.

I send the case back to the Magistrate in order that he may set out in the conviction the obscene words which he finds were used by the appellant.

The appeal is dismissed.