

# CALCUTTA HIGH COURT

C.T. Prim

Vs.

State (Calcutta)

Criminal Appeal No. 474 of 1956

(Debabrata Mookerjee and B.K. Bhattacharya, JJ.)

29.04.1959

## JUDGMENT

### **B.K. Bhattacharya, J.**

1. This is an appeal against an order of conviction under Sections 292 and 292/109 Indian Penal Code and sentence of three months' R. I. and a fine of Rs. 500/and in default, R. I. for a further period of three weeks
2. The first appellant, C. T. Prim, is a partner of India Book House, at 1, Lindsay Street, Calcutta, and appellant No. 2 Mohonlat Lalwanj, is the salesman in the shop.
3. On 20-4-54 copies of three books, The Dark Urge, The Shame of Mary Quinn and Find Me in Fire along with three other books were seized by the police on the allegation that they were obscene. The learned Magistrate found that only the three books specified above came within the mischief of Section 292 Indian Penal Code.
4. It has been urged inter alia on the side of the appellants that the books are not obscene. Further it is contended that in the absence of mens rea the appellants, should not have been convicted. In the written statement filed by appellant Prim in the court of the learned Presidency Magistrate it was stated that the books formed part of a routine consignment from overseas, for which no specific orders had been placed and that as thousands of books with about 75 new titles came every month, it was not possible to scrutinize all the books, some of which had passed through regular editions before being issued in cheap editions.
5. Section 292(a) in its relevant portion reads as follows :

"Whoever .... for purposes, of sale .. has in his possession any obscene book .... shall be punished with imprisonment of either description for a term which may extend to three months or with fine or with both."

6. Mr. Chaudhury, learned counsel for the appellants, has argued that in the absence of any proof as to mens rea the conviction of the appellants should not be maintained. In support of his contention he has referred to several decisions, including *Srinivas Mal v. Emperor*<sup>1</sup>, *Hariprasada Rao v. The State*<sup>2</sup>, and *Bholaprosad Lala v. The King*<sup>3</sup>. It is beyond question that unless a statute either clearly or by necessary implication rules out mens rea as a constituent part of the crime, no one should be found guilty of an offence under the criminal law unless he has got a guilty mind. Their Lordships observed in the case of *Srinivas Mal* :

"Offences which can be held to be committed without a guilty mind are usually of comparatively minor character, and the selling of articles at more than their controlled price under the Defence of India Rules which is punishable with imprisonment for three years, does not come within that limited and exceptional class".

The maximum punishment prescribed under Section 292 Indian Penal Code is imprisonment of three months or fine or both. The offence is not of a minor character, for the liberty of the subject is at stake. The aforesaid analogy of imprisonment for three years, in my opinion, cannot always be the real yardstick for measuring the true character of an offence. A sentence of three months' rigorous imprisonment is not insignificant in that sense. It has been argued on behalf of the State that mere possession of any obscene book for sale is an offence and that by implication mens rea has been ruled out. But possession connotes conscious possession and in that sense it cannot be argued that mens rea or guilty mind has been dispensed with. Let us take an extreme case. A blind person may be used as a tool for the purpose of selling obscene books. Unless he knew what type of books he was entrusted with for sale or unless he knew that he was being, used as a disseminator of obscene literature, he should not be found guilty. But mere illiteracy on that part of a vendor cannot succeed easily nor would the plea of innocence be easily available, for example, to a man selling obscene post cards in wrapped up packets. Nor would one conversant only with the English language, possessing for sale obscene literature written, for example in French or Spanish, escape liability ipso facto. All the surrounding circumstances may have to be taken into consideration. What is most important, a man is deemed to have intended the natural consequences of his act. As was stated by Chief Justice Cockburn in *R. v. Hicklin*<sup>4</sup>,

"If there be an infraction of the law the intention to break the law must be inferred."

Mr. Justice Blackburn stressed this point :

"It is an universal principle when a man is charged with doing an act of which the probable consequences may be highly injurious, the intention is an inference of law resulting from doing the act".

This principle was followed in *Empress of India v. Indarman*<sup>5</sup>, where Straight, J. observed that there was no alternative open but to presume that the accused intended the natural consequences of his act, namely, corruption of the minds and prejudice of the morals of the public. Now, on facts can it be said in the instant case that the appellants had no mens rea ? There is no evidence whatsoever that the publishers

<sup>1</sup>51 Cal WN 900 : (AIR 1947 PC 135)

<sup>2</sup>1952 SCA 139 : AIR 1951 SC 204

<sup>3</sup>53 Cal WN 300 : (AIR 1949 Cal 848)

<sup>4</sup>(1868) 3 QB 360

from abroad sent these books to the firm as a matter of routine and without any specific indent. The appellants cannot be heard to say that the firm was used as a dumping ground for foreign publications. Moreover, when law enjoins that something should not be done it was the duty of the appellants to have seen whether the books received fell within the category of obscene books. There should have been some readers or selectors to verify the nature of the publications received. So far as the three impugned books are concerned the very suggestive pictures on the covers should have prima facie been a pointer. There is nothing to show that the appellants were mere innocent receptacles of these books. Mens rea, therefore, cannot be said to have been absent, once it is found as pointed out below, that the books are obscene.

7. The most important question is whether the three books are really obscene. The word "obscene" has nowhere been defined in the Indian Penal Code. The true test of obscenity, as laid down in (1868) 3 QR 360 as far back as 1868 was whether the tendency of the matter charged as obscenely was to deprave and corrupt those whose minds were open to such immoral influences and into whose hands a publication of this sort might fall. It is true that Victorian standards have now-a-days undergone considerable change in the approach to the question of sex. This liberal approach was stressed by Stable, J. in his Charge to the Jury in what is known as the Philanderers case, *R. v. Martin Seeker and Warburg, Ltd*<sup>6</sup>, when he observed :

"Your task is to decide whether you think that the tendency of the book is to deprave those whose minds today are open to such immoral influences and into whose hands the book may fall this year or last year when it was published in this country or next year, or the year after that".

The law as formulated in *Hicklin's case*<sup>7</sup>, remains practically unchanged, for the standard applicable has not been affected in any way, as was expressly approved by Lord Goddard in the Reiter case : *R. v. Reiter*<sup>8</sup>, There cannot also be an inflexible standard for all countries, as was indicated in *Sukanta Halder v. The State*<sup>9</sup>,

8. A question may arise whether only young and adolescent persons are sought to be protected by law from corruption and depravity within the meaning of Hicklin's case, (1868) 3 QB 360. Protection of the young has always been stressed by the law. Chief Justice Cockburn referred to 'young persons' in his judgment. In *Steele v. Brannan*<sup>10</sup>, at p. 286 Chief Justice Bovill spoke of "the minds of the young and unwary". In *Kherode Chandra Roy v. Emperor*<sup>11</sup>, Chatterji, J. deplored the effect on "the minds of the young of either sex", and the adolescent mind or 'impressionable' 'immature mind' was referred to in Sukanta Halder's case, AIR 1952 Calcutta 214. The criterion of youth may not be the only or the decisive factor but young persons no doubt are included in the category of the general public. It was stated to the Jury by Stable, J. in Philanderers case, (1954) 2 All England Reporter 683 :

"A mass of literature, great literature, from many angles is wholly unsuitable for reading by adolescents but that does not mean that the publisher is guilty of a criminal offence for making these works available to the general public".

<sup>6</sup>(1954) 2 All England Reporter 683

<sup>8</sup>(1954) 2 QB 16

<sup>10</sup>(1872) 7 CP 261

<sup>7</sup>(1868) 3 QB 360

<sup>9</sup> AIR 1952 Cal 214

<sup>11</sup> ILR 39 Cal 377

But, it is difficult, in my opinion, to subscribe to the theory of eliminating altogether the effect of a publication on the minds of young persons, for they also constitute the public. The average public, it should be borne in mind, does not consist of Archbishops on the one hand and libertines on the other. Neither a man of wide culture or rare character nor a person with depraved mentality should be thought of as being the reader of the literature in question. The effect produced by the publication on the ordinary member of the society has to be ascertained. Such ordinary persons are expected to be of normal temperament (*vide Sreeram Saksena v. Emperor*<sup>12</sup>). The standard of the reader is neither one of exceptional sensibility nor one without any sensibility whatsoever, as was pointed out in Sukanta Halder's case, AIR 1952 Calcutta 214.

9. The main question now is whether the three books in question are obscene. The *Dark Urge* is the story of a sadist who overcome with uncontrolled and abnormal sex urge indulges in horrible cruelties in his physical relations with various women besides the woman who became his wife. The learned Magistrate has referred to the obscene passages contained at pages 8, 35-37, 43, 68-69, 74-75, 109-110 and 120. We have gone through the book as a whole with special reference to the contents of the pages mentioned above. Several other pages have appeared to us to be no less obscene, particularly pages 25 and 42. Mr. Chaudhuri does not dispute the fact that the descriptions of physical intimacy are direct. According to him the totality of the effect on the mind of a person would be not of lasciviousness but horror. We are unable to agree with this view. Physical intimacy has been stressed to a degree which was not necessary in delineating the character of a person who as a little boy was cruelly treated by his father and was domineered over by his mother. If the object was merely to describe the revolt in the principal character against the normalcy's of life on account of unnatural and cruel home, the author has far exceeded the limits. It is true that this man ultimately commits suicide. But this end would not justify the obscenities in describing the orgies, of "an elusive ogre, who under the masquerade of love displays a terrible lust that knows no bounds" (as has been frankly admitted in the caption on the cover). The details of preliminaries of physical connection and of sex union itself are nauseating and in our opinion likely to corrupt the minds of the average reader by arousing immoral sex urge.

10. *The Shame of Mary Quinn* is the sordid tale of incest between brother and sister. The recent death of the father and indifference on the part of a slatternly mother addicted to drink, according to the author, drew the brother and the sister together and the latter revels in sexual intimacies. The brother after some mental struggle becomes a priest. But the girl is shown as indulging in promiscuous sex relations but does not forget the brother. Finally the brother and the sister meet in a Church where the latter is murdered by the former who had come to think that the sister was evil itself. The descriptions are unabashed. The preliminaries to physical union have been described so luridly as to be absolutely lascivious. We have gone through pages 15, 17-18, 24-25, as mentioned in the learned Magistrate's judgment, as also several other pages. Having also read the book as a whole we cannot but think that the book has a depraving and corrupting effect. It is true that incest may exist in society but through the ages this has been looked upon with horror. Merely to highlight the warping effect of unhealthy surroundings on the minds of the young people or to show the most unhappy ending of incestuous relations the author need not have described the intimate details of physical passion. Instead of creating a

<sup>12</sup> AIR 1940 Cal 290

horrifying effect the book is likely to give rise to lascivious thoughts and some of the readers may even take it as glorification of a most horrible form of sexual relationship. To solve

sociological problems the author need not have taken recourse to such realistic view and immodest details. We have read the book as a whole and we are satisfied that it falls within the category of obscene literature.

11. The third book in question is Find Me in Fire. The story centres round a young disillusioned soldier returned from war. He lost his limb in war and had an artificial limb. He deflowers a young girl, who has just left the school, in a graveyard. Then he suddenly falls for a young woman of 27. On account of her Jewish origin and her introvert nature she finds escape in books but on a sudden impulse she yields to the desires of this ex-soldier. The preliminaries of physical intimacy have been depicted in lurid details. The overall effect, lasciviousness, is hardly affected by passing references to momentary loathing and revulsion, Mr. Chaudhuri has argued that the book deals with the problems of race and colour on the one hand and the problems of young persons without anchorage on the other. Whatever the object, the author could have done far better if he had not painted physical desires in such libidinous details. We have gone through the book as a whole and besides the pages specially-referred to by the learned Magistrate, namely, 131-133, and 215-216; we have perused also other passages including page 83. As in the case of the other two books, this one also utterly lacks the grandeur and the restraint of real literature. It appears to us, as in the other two cases, to be a mere string of pornographic details. If there be any sociological purpose behind this book, a desire to expose the defects of present day society and lack of absence of kindness at home, the object could have been achieved without indulging in intimate details of physical union between a man and woman or in describing the details of the female body through the narcissism of the Jewish woman. The descriptions of the female body are in no sense artistic. The details abound in suggestions. A book may be obscene although it contains but a single obscene passage, as was observed in ILR 3 Allahabad 837 and such passages appear in many places in the book.

12. The three books in question cannot claim to be sociological treatises. The sale of these must have been open to the public, there being no restrictions whatsoever as to who would be permitted to purchase them. It will not do to say that one object of the books was to hold up to the reader contemporary life in the West. It is not necessary for a country to know only the worst side of the life in some other part of the world. Nor will innocent motives or object be of any avail, as was pointed out in Hicklin's case, (1868) 3 QB 360 and in (1872) 7 CP 261 referred to above. Mr. Chaudhuri has referred us to many books including the Decameron, Laxness' Independent People, and The Mountain is Young. But it is no defense to show that other books freely circulating now are not subject to any ban. This is also the view of Straight, J. in Inderman's case, ILR 3 Allahabad 837 referred to above. In the Reiter case, (1954) 2 QB 16 Chief Justice Goddard commended the following passage :

"The character of other books is a collateral issue, the exploration of which would be endless and futile. If the books produced by the prosecution are indecent or obscene, their quality in that respect cannot be made any better by examining other books \*\*\*".

13. Taking a most dispassionate view of the matter, the only conclusion which we are led to adopt is that the books are meant to pander to the prurient taste of the public and appeal to their baser instincts. They are found to be "obscene" within the meaning of Section 292 Indian Penal Code. In our opinion the appellants have been rightly convicted.

14. Taking into consideration all the facts and circumstances of the case, we do not think a sentence of rigorous imprisonment is called for. The ends of justice will be fully met if the sentence is reduced only to a fine of Rs. 250/- in default S. I for 6 weeks in case of appellant No. 1 and of Rs. 100/-only in case of No. 2 and in default S. I. for 5 weeks, under Section 292 Indian Penal Code, there being no separate sentence under Section 292/109 Indian Penal Code and we order accordingly. Subject to the modifications as to sentence only pointed out above the appeal stands dismissed.

**Debabrata Mookerjee, J.**

15. I agree.

Appeal dismissed.