Present: De Sampayo J.

WICKREMASURIYA *v.* MARY NONA.

1922.

186—P. C. Kandy, 8,024.

Ordinance No. 5 of 1889—Meaning of the term "brothel."

A place to which men resorted for purposes of prostitution with women who were to be found in the house is a brothel within the meaning of the term as used in Ordinance No. 5 of 1889. The occupation of a house or room by a single prostitute may not constitute it a brothel. It is not necessary to make a house of ill-fame a brothel that women should resort to it from outside; it is sufficient if prostitutes reside in the house and men visit them there for immoral purposes.

THE facts appear from the judgment.

Hayley, for accused, appellant.

[1] *10 A. C. 74.* [2] *5 Term Rep. 683*

May 22, 1922. DE SAMPAYO J.—

The accused, Mary Nona, has been charged under section 1 (1) of Ordinance No. 5 of 1889 with having kept and managed a brothel at Mahaiyawa in Kandy on March 10, 1922. The complainant is the Police Inspector of Kandy, and he called as his witness the Rev. Mr. Dant of the Baptist Mission. The defence was that this was a case of mistaken identity, and that the accused was at the time in question at Purijjala, about thirteen miles away from Mahaiyawa. The Police Magistrate, however, held that the evidence failed to establish to his satisfaction that the accused was not at Mahaiyawa at the time mentioned by Mr. Dant, viz., 9.45 P.M. I have no reason to disagree with this finding. As regards identity, Mr. Dant was quite sure that the accused was the woman whom he met at the house. The Police Magistrate discusses this matter also, and is satisfied with Mr. Dant's evidence, and I am unable to say that he is wrong.

Mr. Hayley, for the accused, has raised another objection in appeal, namely, that the evidence does not prove that the house was a brothel. In the Ordinance there is no definition of the term, but in *Pieris v. Magrida Fernando*,[1] Withers J., relying on an English case (*Singleton v. Ellison*[2]), said that a brothel was a place to which persons of both sexes resorted for the purpose of prostitution. I myself followed that case in *Morris v. Cornelis*.[3] But in a more recent case Schneider J. enunciated a view which makes the matter worthy of reconsideration, and which at all events appears to me to render the Ordinance more effective in its operation. For in *Silva v. Suppu*[4] the learned Judge expresses the opinion that the Ordinance used the word " brothel," not in the strict English law sense, but as commonly understood locally, that is to say, it is a place " to which men resorted for purposes of prostitution with women who were to be found in the house." The particular language of *Singleton v. Ellison* (*supra*), which discusses the meaning of the word, appears to me to be due to the peculiar circumstances of that case, for there a woman who used to receive men into her rooms for the purpose of sexual intercourse with herself alone was held not liable to be convicted for " keeping a brothel." The occupation of a house or room by a single prostitute may not constitute it a brothel, but I do not myself see that the exigency of language or of law requires that, in order to make a house of ill-fame a brothel, women should resort to it from outside, and that it is not sufficient if prostitutes reside in the house and men visit them there for immoral purposes. The note to *Singleton v. Ellison* given in the *Laws of England, vol. 9, p. 542*, shows that a good deal turned in that case on the nature of the charge made against the woman.

[1] *(1895) 1 N. L. R. 212.*
[2] *(1895) L. R. 1 Q. B. 607.*
[3] *3 Bal. N. C. 48.*
[4] *(1919) 21 N. L. R. 119.*

1922.

De Sampayo J.

Wickremasuriya v. Mary Nona

I think that the evidence in the present case, though not voluminous, is sufficient to show that the accused's house was a brothel. Mr. Dant was accosted by a young man, and taken to the house, where the accused received him and conducted him to a room. She there introduced him to a young woman, prepared a bed for use for himself and the girl, and told him that the fee was Rs. 10. Mr. Dant, who had been engaged in vigilance work, and, of course, had allowed himself to be taken inside the house only for the purpose of observation, left the house on the plea that the fee demanded was excessive. There were altogether about eight women in the house, evidently kept there for the purpose of prostitution, and one of them cautioned Mr. Dant to be careful how he left as people might be watching. Mr. Dant had gone on a motor cycle, which got disabled near the house, and the accused instructed the young man who had accosted Mr. Dant to remove the cycle as the Police might see it. What is the reasonable inference to be drawn from all these facts? It is clear that the women, whether they resorted to the house that day, or whether they were living there, were prostitutes; that if men resorted to the house, they would have been introduced to the women for the purpose of immoral intercourse, just as Mr. Dant was, and that the secrecy and caution exercised by the inmates, especially the accused, who undoubtedly ran the whole concern, are indicative of the character of the house. It is true that there was no evidence of other incidents such as that which happened in the case of Mr. Dant, but, as I have pointed out in *Morris v. Cornelis (supra)*, one instance is sufficient, if it proves the purpose for which the house is used. In my opinion a *primâ facie* case was established by Mr. Dant's evidence. It is significant that the accused, who called several witnesses to prove the *alibi* which she set up, did not give evidence herself at all, and did not in any way attempt to meet the charge so far as it characterized her house as a brothel.

The appeal is dismissed.

Appeal dismissed.