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QUEEN'S BENCH DIVISION (ENGLAND)

KELLY v PURVIS

Ackner LJ and Webster J

11, 12 November, 2 December 1982

[1983] QB 663; [1983] 1 All ER 525; [1983] Crim LR 185; (1982) 76 Cr App R 165; [1983] 2 WLR 299; (1982) 147 JP 135

CRIMINAL LAW – BROTHEL – ASSISTING IN MANAGEMENT OF – MASSAGE PARLOUR OFFERING SEXUAL SERVICES NOT INCLUDING FULL SEXUAL INTERCOURSE – WHETHER A BROTHEL.

Section 33 of the *Sexual Offences Act* 1956 (UK) provides that:

"It is an offence for a person to keep a brothel, or to manage, or act or assist in the management of, a brothel."

Section 13 of the *Criminal Law Amendment Act* 1885 (UK) provides that:

"Any person who — (1) keeps or manages or acts or assists in the management of a brothel ... shall commit an offence."

P was charged with assisting in the management of a brothel at promises known as "Celebrity Sauna". These premises were a licensed massage parlour. The evidence was that on payment of the entry fee, customers were provided with massage and sauna; upon payment of an additional fee, extra services such as masturbation were offered by the masseuses, including P. There was no evidence that full sexual intercourse was offered at the massage parlour. The magistrate dismissed the information, holding that, although he was satisfied that the eleven masseuses were common prostitutes, the premises were not a brothel because there was no evidence that full sexual intercourse was provided there. On appeal—

HELD: Appeal allowed.
On a charge of assisting in the management of a brothel, it is not essential that there is evidence that normal sexual intercourse is provided in the premises. It is sufficient to prove that more than one woman offered herself as a participant in physical acts of indecency for the sexual gratification of men.

***Per curiam*: To constitute a brothel, it is not essential to show that the premises are in fact used for the purpose of prostitution (which involves payment for services rendered); a brothel can exist where women offer sexual intercourse without charging.**

ACKNER LJ: *[In reading the judgment of the Court, His Honour set out the facts, referred to the statutory provisions set out above, and continued]:* ... **[303 WLR 11; 528 All ER]** The case upon which the defendant strongly relies, and which persuaded the magistrate to dismiss the information, is *Winter v Woolfe* (1931) 1 KB 549. This case concerned a cottage about two miles from Cambridge, frequented in the main by undergraduates, where sexual intercourse took place with a number of women. The women were not however, proved to be prostitutes and therefore, at the close of the case for the prosecution, it was successfully submitted that there was no case to answer. Accordingly, the Court held that although the occupier of the cottage knew what was going on, the premises were not being used as a brothel.

Avory J in giving the judgment of the court, held, at p554, that the justices had "given too restricted a meaning to the word 'brothel' as it is used at common law, and as it is used in section 13 of the *Criminal Law Amendment Act* 1885." It was not necessary to prove that the women resorting to the premises were prostitutes known as such to the police, or that they received payment for acts of fornication committed by them with men. It was sufficient to prove that with the knowledge of the occupier persons of opposite sexes were permitted there to have illicit sexual intercourse. This case, in our judgment, merely demonstrates that to constitute premises as a brothel, it is not essential to show that they are in fact used for the purpose of prostitution, which involves payment for services rendered. A brothel is also constituted where the women

(for there must be more than one woman) do not charge for sexual intercourse. In the course of his judgment (and this is what is essentially relied upon by the defendant) Avory J expressed his willingness to accept the definition of a brothel given by Grove J and Lopes J in *R v Justices of Parts of Holland, Lincolnshire* (1882) 46 JP 312. Grove J said that, at p312:

> "The sole question is, whether there was any evidence to support this conviction before the justices for permitting these licensed premises to be a brothel...I don't think that the matter of nuisance is of any importance, for it is too well known that these places are often kept in such a way as to be no nuisance at all, but kept perfectly private. But what needs only to be proved is this, namely, that the premises were kept knowingly for the purpose of people having illicit sexual connection there."

Lopes J said, at p315:

> "Now the sole question before the justices was, whether the applicant permitted his premises to be a brothel. What is the meaning of permitting the premises to be a brothel? I think my brother Grove has given a very apt definition, namely, that it is permitting people of opposite sexes to come there and have illicit sexual intercourse. That is a very complete and satisfactory definition of the whole matter."

R v Justices of Parts of Holland, Lincolnshire was concerned with whether there was any evidence to support the conviction by the justices for permitting licensed premises to be a brothel. There was evidence that the prostitutes, accompanied by two men, went into the house; that the police had watched the house; that they observed soon afterwards, by shadows on the blinds, these four people undressing in a double-bedded room. When the police at a later hour knocked at the door, considerable delay occurred in opening it. Then they found that the two prostitutes had been transferred to the bed of the landlord's wife, three women in one bed, while in the double-bedded room were the two men by themselves. It was argued that the conviction could not be supported by the evidence of one isolated act.

The Court, however, held that although only one instance was proved, still it supplied strong evidence of the mode of conducting the house, and it was reasonably to be inferred that this had not been a solitary instance of such conduct, but one of many instances. There was the concealment of the two prostitutes by the wife of the landlord showing that this had been no extraordinary case but a frequent occurrence. The wife gave no evidence. The Justices were thus held not to be bound to state a case, there being no point of law raised before them. That case merely decided that there was evidence before the justices from which they could infer either that the premises were being used for the purposes of prostitution, or that persons of opposite sexes were permitted there to have illicit sexual intercourse. It was not a case which called for an exhaustive definition of a brothel.

In *Winter v Woolfe* (1931) 1 KB 549; 64 JP 312; (1930) 29 Cox CC 214, Avory J, in expressing his willingness to accept the definitions given by Grove J and Lopes J was doing no more than justifying his view that the justices were giving too restricted meaning to the word "brothel." We therefore answer the question raised by the case stated in these terms. On a charge of assisting in the management of a brothel in contravention of section 33 of the *Sexual Offences Act* 1956, it is not essential that there be evidence that normal sexual intercourse is provided in the premises. It is sufficient to prove that more than one woman offers herself as a participant in physical acts of indecency for the sexual gratification of men.

We should perhaps add, although this has not featured in our reasoning that the view which we have expressed above does give content to section 6 of the *Sexual Offences Act* 1967 which provides that premises shall be treated for the purposes of sections 33 to 35 of the Act of 1956 as a brothel if people resort to it for the purpose of lewd homosexual practices in circumstances in which resort thereto for lewd heterosexual practices would have led to it being treated as a brothel for the purposes of those sections.

The appeal will be allowed and the case remitted to the magistrate to hear and determine according to the law as it has been laid down by this court.
