1931
*Apr. 28.

MARIE THEIRLYNCK .... APPELLANT;

AND

HIS MAJESTY THE KING.............. RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA

Criminal law—Keeping of common bawdy house—Evidence of general reputation—Sufficiency of evidence—Prima facie evidence under s. 986 (1) Cr. C.

Evidence of the general reputation of a house is admissible to show that it is a bawdy house.

Held that, in view of such rule, it was sufficient, in order to affirm the appellant's conviction, that the evidence made it clear that the house was being maintained for the purpose of prostitution without direct proof of the act itself and that such proof may be made, not only by bringing evidence of general reputation but also of such facts, circumstances and conditions as would warrant the inference and belief that the house was being so maintained. More particularly it is clear that, under s. 986 (1) Cr. C., the delay that occurred in opening the premises on the demand of the police officers was *prima facie* evidence of guilt.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta (2), dismissing (Lunney J.A. dissenting) the appellant's appeal against her conviction for keeping and maintaining a common bawdy house.

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*PRESENT:—Anglin C.J.C. and Rinfret, Lamont, Smith and Cannon JJ.

(1) [1897] A.C. 231, at 235, 237.

(2) (1931) 25 Alta. L.R. 236; [1931] 1 W.W.R. 352.

The material facts of the case and the conditions existing at the house when the arrest was made have been summarized by Mitchell J., who delivered the judgment of the majority of the appellate court, as follows:

About 6 p.m. two city constables proceeded to the house and found it occupied by the accused. The front portion of the building purported to be a confectionery store. At the rear are living rooms occupied by a Chinese cook, and at times one or two girls. Adjacent to this is what is known as the private dwelling of the accused. The stock consists of a very limited supply of cigarettes, cigars and soft drinks. The shelving contains only "dummies." The city shop licence held by accused covering 1930 had not been renewed. The entrance to the shop portion is kept locked and bolted at all times. The window in the entrance door is screened, the view blocked and the glass barred over with a strong wire screen. The constables have "visited these premises off and on every few days in the past three months" and are known to the accused. The police find it difficult to obtain ready access to the place but customers are scrutinized and have little difficulty in gaining admission. No person wishing to purchase goods could get in there without being scrutinized. On the evening in question the constables, after considerable delay, were admitted to the premises by the accused. The latter first pulled aside the window curtain of the door to ascertain who were there, and instead of opening the door ran back into the room behind the store, later returning and admitting the constables who proceeded to the room in the rear of the premises. There they found the accused who was apparently in charge, and known to be owner of the store. A man was found seated on a couch, wearing an overcoat unbuttoned. Upon closer examination it was found that the fly of his pants "was all unbuttoned." A girl was found in a clothes closet, and on coming therefrom was seen to be adjusting her dress in some manner. This girl disappeared from the place almost immediately and has not since been seen by the police. During the past three months there have been two or three different girls stopping in this house, and men have been seen going to and coming from the same. One constable describes the traffic as heavy. What appears to have been a somewhat unusual supply of liquor was found in the adjoining house described as the accused's private dwelling. Upon being questioned by Constable Clarke as to why his pants were unbuttoned, the visitor gave the significant reply "Well you know." Two weeks previous to the occasion now in question, the same constables upon making an examination of the house were attracted by the action of the Chinaman cook adjusting an oil cloth on the floor of the toilet room and discovered a trapdoor in the floor beneath which a girl was concealed. They also at that time "saw in the toilet a laundry bag containing a number of used towels such as are used in these places." The evidence as to the general reputation of the premises is, in the main, as follows:—

Constable Clarke:

"Q. What is the general reputation of the place?—A. Oh, bawdy house. The accused several times when we have been going in or coming out, the accused has come out to the sidewalk and looked East and West to see if we were about. That is the general condition."

Constable Hunter:

"Q. What would you say as to the general reputation of this house? —A. It is known to the police as a bawdy house.

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COURT: You say it is known to the police as a disorderly house?—A. Yes.

Mr. CAMERON: Q. What is that based on?—A. The reputation you mean?

Q. Yes, there has to be something to base it on. Did some one tell you it was a bawdy house?—A. Well, I have gained my knowledge as a constable on the beat from those I came in contact with.

COURT: Q. You were on beat there?—A. Yes, for years, and I know the places well.

Mr. CAMERON: Q. That is all you found the reputation on?—A. Just merely on this ground.

Q. Men coming in and out?—A. I have no knowledge of the act of prostitution other than the traffic that has been observed.

A. M. Sinclair K.C. for the appellant.

W. S. Gray K.C. for the respondent.

On conclusion of the argument by counsel for the appellant and for the respondent, heard during the morning sitting of the court, judgment was reserved; and at the opening of the afternoon sitting, the judgment of the court was orally delivered by

ANGLIN C.J.C.—In this case the appellant was convicted by a stipendiary magistrate for keeping a common bawdy house. Lunney J. dissents on the alleged ground that there was no evidence. This is the only possible ground of law which could be urged, as, if the question were one of weight of evidence, there would be no appeal to this court under section 1023 of the Criminal Code.

On examination of the matter, we are inclined to the view that the judgment of Lunney J. amounts to nothing more than a holding that the weight of evidence does not justify the conviction and that no question of law is involved in the appeal; but, assuming that the question should be regarded as one of law, i.e., that the dissent is based on the ground that there is no evidence to warrant the inference of guilt, we are all clearly of the opinion that there was evidence on which it could well be found that the accused was guilty.

Whatever doubt there might be as to the propriety of the finding that the other circumstances in evidence establish a case of *prima facie* guilt against the accused, it is entirely clear that, under section 986 (1) Cr. C., the delay

that occurred in opening the premises on the demand of the police officers was *prima facie* evidence of guilt. The evidence of the facts in this particular is uncontradicted and suffices to maintain the conviction.

The evidence of the circumstances set out in the judgment of Mr. Justice Mitchell is as follows:

It is well settled that evidence of a general reputation of a house is admissible to show that it is a bawdy house. It is an element tending to establish the offence charged. Clarke J.A., in *Rex* v. *Roberts* (1), has pointed out that "the gist of the offence is the keeping of the house for purpose of prostitution, not the act of committing fornication." Having this in mind it seems to me that it is sufficient in this case, if the evidence makes it clear that the house was being maintained for a specific purpose without direct proof of the act itself. This may well be done by proof, not only of a general reputation but of such facts, circumstances and conditions as would warrant the inference and belief that the house was being so maintained.

The inference may be drawn in this instance from the manner in which the place was conducted, the arrangement of the premises, the presence of men and women, the frequency of the visits to the place by men and the hours, their appearance and conduct, as well as any other circumstance tending to show the likelihood of unlawful intercourse between the sexes, and particularly the conditions at the time of the arrest.

Here we have present many of the elements from which, when coupled with general reputation, guilt may properly be inferred. The suggestive answer to the constable, "You know" when interrogated respecting the condition of his trousers, the unusual action of the female inmate, are all of significance and relative to the charge.

We agree with what Mr. Justice Mitchell said and, accordingly, this appeal must be dismissed.

Appeal dismissed.

Solicitors for the appellant: *A. M. Sinclair* and *J. McK. Cameron.*

Solicitor for the respondent: *W. S. Grey.*

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(1) (1921) 36 C.C.C. 381.