1957 *Present :* L. W. de Silva, A.J.

WARLIS, Appellant, *and* SCOTT, Respondent

S. C. 1,380—M. C. Kurunegala, 25,448

Charge—Duplicity—Particulars of offence—Motor Traffic Act, No. 14 of 1951, s. 153 (2)—Criminal Procedure Code, s. 169.

A charge of driving recklessly or in a dangerous manner in breach of section 153 (2) of the Motor Traffic Act is not bad for duplicity or for want of particulars of the manner of the commission of the offence within the meaning of section 169 of the Criminal Procedure Code.

Edwin Singho v. S. I., Police, Kadawatta (1956) 57 N. L. R. 355, distinguished.

APPEAL from a judgment of the Magistrate's Court, Kurunegala.

T. B. Dissanayake, for accused-appellant.

A. C. de Zoysa, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

July 19, 1957. L. W. de SILVA, A.J.—

The appellant was tried on two charges framed under the Motor Traffic Act No. 14 of 1951 and was convicted on the first charge which has alleged that he did on August 21, 1956—

"Being the driver of bus No. IC 2405 drive the same on a public road to wit: along Alawwa-Narammala Road recklessly or in a dangerous manner in breach of section 153 (2) of the Motor Traffic Act No. 14 of 1951 and thereby committed an offence punishable under section 219 (1)"

of the said Act. Section 153 (2) is as follows :—

> " No person shall drive a motor vehicle on a highway recklessly or in a dangerous manner or at a dangerous speed. "

The two points taken on the appellant's behalf are as follows : (1) the charge sets out two distinct offences in the alternative and is therefore bad for duplicity ; (2) the charge is bad in that it does not set out particulars of the manner in which the offence was committed. Learned counsel for the appellant, relying on the judgment in *Edwin Singho v. S. I. Police, Kadawatta* [1], contended that the appellant was entitled to an acquittal. Learned Crown Counsel contended that that case was wrongly decided.

In that case, two charges had been framed under sections 153 (2) and 153 (3) of the Motor Traffic Act. The first charge, which alone has a bearing on this appeal, alleged that the accused drove a motor bus " recklessly or in a dangerous manner or at a dangerous speed in breach of section 153 (2) ". It appears to have been assumed that the first charge was in respect of three different offences. The judgment makes it clear that no other point of view was put forward or considered, and Sansoni J. citing a number of local and English decisions held that the charges framed in the alternative were bad for duplicity. He set aside the conviction taking into account the important consideration that it would not be clear upon a conviction or an acquittal of what offence the accused had been found guilty or acquitted. He also held that the omission to set out the details of each offence in the charge as required by section 169 of the Criminal Procedure Code had occasioned a failure of justice.

The two English cases followed by Sansoni J. in *Edwin Singho's case* [1] are *R. v. Wilmot* [2] and *R. v. Surrey Justices, ex parte Witherick* [3]. In *Wilmot's case* [2], the charge, after setting out the date and place, alleged that the accused

> " Drove a motor car recklessly, or at a speed or in a manner which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which was actually at the time, or which might reasonably have been expected to be, on the said road. "

The count was an exact copy of section 11 (1) of the Road Traffic Act, 1930, and it is not surprising that the charge was held bad for duplicity. In *Witherick's case* [3], the information charged the accused with driving a motor vehicle on a road " without due care and attention or without reasonable consideration for other persons using the road contrary to section 12 of the Road Traffic Act, 1930 ". It was held that the conviction was bad for duplicity since the section created two separate offences.

I do not think the reasoning of Sansoni J. and the cases cited by him apply to the facts of this case. The charge here is in two alternatives connoted by *recklessly or in a dangerous manner.* The charge in *Edwin*

[1] *(1956) 57 N. L. R. 355.* [2] *24 Cr. App. R. 63.*
[3] *(1932) 1 K. B. 450.*

Singho's case [1] alleged the accused drove his vehicle *recklessly or in a dangerous manner or at a dangerous speed.* It is thus apparent that the accused might have done one or two things without the other, and the view was taken that distinct offences were indicated. The present charge is not open to that objection. Driving recklessly or in a dangerous manner in my opinion connotes the commission of one offence in alternative ways. The charge sets out the *manner* in which the appellant drove his vehicle, and there is no uncertainty about it. I am of the opinion that the charge was correctly framed and the appellant was rightly convicted.

The second objection also fails. Section 169 of the Criminal Procedure Code states that when the nature of the case is such that the particulars mentioned in the last two preceding sections do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the *manner* in which the alleged offence was committed *as will be sufficient for that purpose.* There is nothing in the nature of this case which requires particulars of the manner in which the offence was committed. The manner is manifest in the charge. The Magistrate has found that the appellant drove the vehicle without any regard to the car which was moving in the opposite direction on the extreme left of the road and against which the appellant knocked his bus. The evidence further established that the appellant's bus had passed the point of impact and halted well on the left side of the road on the grass. The car was found almost in the drain after the impact. It is thus quite plain that one offence was committed and at one spot. In *Edwin Singho's case* [1], there was evidence of three separate incidents at three different places on the highway, and Sansoni J. observed that, in fairness to the accused, he should have been given particulars of the manner in which the alleged offences were committed as required by section 169 of the Criminal Procedure Code.

In view of the conclusion I have reached, there can be no question of what offence the appellant has been found guilty.

The appeal is dismissed.

Appeal dismissed.

[1] *(1956) 57 N. L. R. 355.*