1974 *Present :* **Rajaratnam, J., and Wijesundera, J.**

K. H. SEDIRIS, Appellant, *and* A. KARUNARATNE (P.S. 1802), Respondent

S.S. 934/70—M. C. Gampaha, 40546

Motor Traffic Act (Cap. 203)—Section 151 (1)—Charge of driving " when under the influence of alcohol "—Burden of proof.

The accused-appellant was convicted for driving a motor vehicle (a bus) when he was under the influence of liquor, in breach of section 151 (1) of the Motor Traffic Act. The main witness for the prosecution stated that the appellant appeared to have taken liquor and described in detail how the appellant drove the bus over a distance of nearly a mile in a dangerous manner.

Held, that the evidence of the main witness alone was sufficient to establish that the appellant was under the influence of liquor at the time he drove the bus. In such a case it is not invariably necessary that there should be expert or medical evidence. The extent to which the accused person should be under the influence of liquor need not be the same as would justify a conviction in England.

Carthelis v. Ibrahim (56 N. L. R. 561) considered.

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

G. E. Chitty, with *Mano Devasagayam* and *G. E. Chitty* (jnr.), for the accused-appellant.

Palitha Wijetunga, State Attorney, for the Attorney-General.

Cur. adv. vult.

February 26, 1974. WIJESUNDERA, J.—

The appellant appeals against the conviction and sentence for driving a motor vehicle when he was under the influence of liquor, in breach of Sec. 151 (1) an offence under Sec. 218 of the Motor Traffic Act.

As learned counsel who argued the appeal strenuously maintained that the charge has not been proved beyond reasonable doubt it is necessary to set out the evidence even briefly. The main witness for the prosecution was one Nissanka who was returning home from Gampaha in the bus driven by the accused-appellant. There were about 100 passengers and the bus left the Gampaha stand at about 6.30 p.m. He was seated very close to the appellant. As the bus started it was driven very fast and the speed he gave was 30 m.p.h. When it was on the Yakkala road it began to swerve and waver and it was about to knock a way side ridge. He himself and the people behind observed the condition of the appellant but at first did not interfere. As it proceeded the bus was " driven in a zig-zag manner " ; the people inside began to shout asking the appellant to stop the bus. The appellant slowed down and some people got down from the bus, ran in front and stopped the bus. He observed that the appellant had taken liquor but could not say whether he was drunk. There was a drizzle at the time. Nissanka with some others went to the police station close by and complained. He is certain there was at least one head lamp burning. When the police came they found the appellant in a boutique close by and as he was smelling of liquor the police had him examined by a doctor at about 7.45 p.m.

The appellant gave evidence and stated that as he proceeded there was a drizzle which increased and it was raining heavily. While taking the bus down it began to skid. He tried to switch on the lights, but found the lighting system not functioning. Then he stopped the bus, went to a boutique and had two drams of arrack after which the police came. He also stated that he sent the conductor to the Depot soon after he stopped the bus. He further called one Odiris Singho who claimed to have been a passenger of the bus. Odiris Singho stated that the bus slipped and skidded near the hospital and ultimately it was stopped. When he questioned the appellant, the appellant told him that he could not proceed as the lights had failed. A mechanic of the C.T.B. was also called to say that on instructions from his superior he came over to this bus at 10.00 p.m. and found the fuse had blown. Thereafter he took the bus to the Depot with the help of a torch and the lights of another bus flashing behind.

Learned Magistrate rejected the evidence of the appellant and this witness. Mr. Chitty submitted that the mechanic was not cross-examined by the prosecuting officer and therefore the evidence should not have been rejected. The fact that the witness was not cross-examined does not necessarily mean that the witness's evidence will be accepted. His evidence by itself or for diverse reasons may appear to be so unworthy of credit that

it is needless to cross-examine. In fact the story that he took the bus back with the help of a torch and the lights of another bus on a public road when the difficulty according to him was only a blown fuse which could have been repaired is to me unbelievable. Why did he turn up so late? Besides, the learned Magistrate had put to him a number of questions and the prosecution may have rightly thought that he had no more questions to ask. This submission of Mr. Chitty therefore must fail.

Mr. Chitty next submitted that there was no reason why the evidence of Nissanka should have been accepted in preference to that of Odiris Singho. This is entirely a question for the Magistrate. In the case of Nissanka he immediately went to the police and complained but in the case of Odiris Singho he had to be fished out by the accused from Kirindiwela presumably on a subsequent occasion. Mr. Chitty also stated in this context that the version that the bus skidded and zig-zagged was due to the reason given by the defence may well be true. But when the distance over which the bus was driven in a "zig zag manner" is considered this version cannot be true.

The appellant's evidence was that he had two drams of arrack at the boutique after the bus was halted. The lady doctor who examined the appellant detailed the test to which she subjected the appellant and concluded that he was under the influence of liquor at 7.45 p.m., at the time of examination. This evidence shows that he had taken an excessive quantity of liquor sometime before and could not have been the quantity he stated that he took in the boutique and the Magistrate rejected his evidence.

The doctor added that she could not say what his condition was at 6.30 p.m. Mr. Chitty in this context cited the case of *Carthelis v. Ibrahim*[1]—reported in 56 N.L.R. 561. Gratiaen J. stated that the extent to which an accused person should be under the influence of liquor should be the same as would justify a conviction in England, that is to say, the prosecution should prove that the accused was incapable of having a proper control of the vehicle at that time. But the corresponding section in English law cited at page 562 of that judgment is very different to our Section which reads. "No person shall drive a motor vehicle on a high way when he is under the influence of liquor or any drugs". To give the interpretation in the case referred to above will be to read into our section the words of the English Section. The question before me is a simple one—has the prosecution established that the appellant was under the influence

[1] *(1955) 56 N. L. R. 561.*

of liquor ? To establish this it is not necessary that there should be invariably expert or medical evidence. In this case although the medical evidence is that the doctor cannot speak to his condition at 6.30 p.m. there is the evidence of Nissanka, a 66 year old citizen, against whom nothing had been urged. He has stated that the appellant appeared to have taken liquor and described in detail how the appellant drove the bus over a distance of nearly a mile. This evidence alone is sufficient to establish that the appellant was under the influence of liquor at the time he drove the bus. Even if the rule laid down by Gratiaen J., is to be applied, the appellant was still in breach of the provision of the Motor Traffic Act.

Accordingly, I dismiss the appeal and affirm the conviction. I see no reason to interfere with the sentence and I affirm the sentence.

RAJARATNAM, J.—I agree.

Appeal dismissed.