

1966

Present : G. P. A. SILVA, J.

T. M. SUGATHAPALA, Petitioner, and F. W. P. SUARES (S. I. Police,
Wariyapola), Respondent

S. C. 248/66—Application in Revision in M. C. Kurunegala, 37712

Criminal law—Offence of wrongful restraint—Requirement of intention to obstruct a particular person—Penal Code s. 332.

In a prosecution under section 332 of the Penal Code for wrongful restraint of a person who was travelling in a vehicle there must be proof that the accused knew that that particular person was travelling in the vehicle which was obstructed.

APPPLICATION to revise an order of the Magistrate's Court,
Kurunegala.

H. V. Perera, Q.C., with *Fritz Kodagoda*, for the accused-petitioner.

W. K. Premaratna, Crown Counsel, for the Attorney-General.

October 19, 1966. G. P. A. SILVA, J.—

This is an application in revision against the order of the Magistrate who, without proceeding to conviction of the accused, found the facts of the case proved and dealt with the accused in terms of Section 325 of the Criminal Procedure Code.

There were two charges alleged against the accused. The first was that he wrongfully restrained Kavisena Herat by obstructing the highway and prevented the said Kavisena Herat from proceeding towards Nikaweratiya in Vehicle No. EY 6846 and that he thereby committed an offence punishable under Section 332 of the Penal Code. Secondly, the accused was charged with criminal intimidation by uttering certain words, an offence punishable under Section 486 of the Penal Code. The learned Magistrate acquitted the accused on count two and found that the facts regarding count one were proved. As the order of the Magistrate is not appealable, this matter comes up before me by way of revision.

Mr. H. V. Perera, for the accused-petitioner raises two main points : one is a question of law and the other a question of fact, which in his submission must necessarily induce this Court to set aside the order of the learned Magistrate. The question of law is, that Section 332 of the Penal Code requires that a particular person should be obstructed by the accused. The charge sets out that Kavisena Herat was the person who was intended to be obstructed. The evidence in the case is that the accused did not know that it was Kavisena Herat who travelled in the vehicle that is alleged to have been obstructed. The evidence of Kavisena Herat himself supports the version of the accused that as soon as he got down from the vehicle and went up to the accused, he apologised to him and said that he was not aware that Kavisena Herat was travelling in the jeep. Apart from this there are two conflicting versions of Kavisena Herat and his driver as to the manner in which the accused behaved immediately before the alleged obstruction. The incident took place in broad daylight. According to the version of Kavisena Herat the accused was in a stationary position on his motor bicycle on the road and the obstruction took place as he approached. But, according to the driver, the motor bicycle was being ridden some distance away from the jeep in which Kavisena Herat was travelling, and it was when the two vehicles came face to face that the alleged obstruction was committed. The learned Magistrate has noticed this contradiction but does not say in his finding what impact it had on the actual charge of obstruction, the credibility of witnesses and such other matters except that he says that this type of contradiction is to be expected when there is delay in bringing cases to Court. But I think this item of evidence which gave a different version of the commencement of this incident, one of which is consistent with the version of the accused, necessarily redounds to the benefit of the defence and must create a reasonable doubt in the mind of the Magistrate in regard to the truth of the prosecution case. Having regard to both points raised by Mr. Perera, the application is in my view entitled to succeed.

I therefore set aside the finding of the Magistrate and also his order made under Section 325. The Crown costs which have been paid by the accused should be refunded to him.

Application allowed.