

1930

*Present : Akbar J.*VANCUYLENBERG v. FERNANDO  
*et al.*54—*P. C. Colombo, 5,416.**Police officer—Right to order driver of motor vehicle to drive to police station—Obstruction caused to officer—Right of private defence against public servant—Penal Code, s. 92, exception 1.*

A police constable has no right to require the driver of a motor bus who has committed an offence under the Motor Car Ordinance to drive him to the police station.

The exception to section 92 of the Penal Code regarding the light of private defence against an illegal act done by a public servant in good faith, explained.

**A**PPEAL from a conviction by the Police Magistrate of Colombo.

*Sri Nissanka*, for accused, appellant.

*Vernon Grenier, Deputy S.-G.*, for the Court.

April 16, 1930. AKBAR J.—

The two accused were convicted of obstructing police constable Silva in the discharge of his duties and of using criminal force on him when he was lawfully discharging his duties as a public servant, punishable under sections 183 and 344 of the Penal Code.

There was a third count against the second accused, namely, of committing theft of the prosecutor's police whistle, but the Magistrate has apparently ignored this charge, for he says nothing in his judgment. The two accused have been sentenced to three month's rigorous imprisonment each, and they fully deserve this severe sentence if the conviction can be justified in law. The two accused are the driver and the conductor of bus No. 2011, which was plying for hire on August 17, 1929, a race day, taking passengers to and from the race course. Police constable Silva, the prosecutor, was on fixed duty at the junction of Turret road and Union place, when bus No. 2011

came up to his point and took the turn on the wrong side. The first accused, who was driving, ignored the constable's signal to stop and drove on. On the return journey, the constable stopped the bus and noted its number, and he then committed what I think was a blunder. He insisted on taking the bus to the police station, got on to the front seat, sat down and asked the accused to drive to the police station. The accused drove instead along Turret road and then turned to Park street, and so on to Rudd's lane, where the bus was stopped and the constable pulled off his seat. The constable had the number of the bus, and as admitted by the Deputy Solicitor-General, he was not within his right in insisting on being driven in the bus to the police station. The bus had a full load of passengers, and it was not fair to the passengers to take them all to the police station. So that, in law, I cannot see how the police constable can be said to have been obstructed in the discharge of his duties. A constable can only arrest a person under section 32 or 33 of the Criminal Procedure Code. Under section 32 (1) (f) a constable can arrest a person who obstructs him while in the execution of his duty. The facts in this case show that the first accused clearly violated the provisions of the Motor Car Ordinance when he went on the wrong side on his first trip, for which he could have been prosecuted. The constable would have had no difficulty in tracing the accused because he had the number of the bus. He signalled the bus to stop on its second trip, and the subsequent events, which took place when the constable overstepped his powers, cannot be said to be an obstruction of the police constable in the discharge of his duties. The accused, when he went on the wrong side, was guilty of a non-cognizable offence, and under section 33 a Police officer can arrest a person (not a whole bus full of passengers) for such an offence only when the person guilty refuses to give his name and address or gives a name and address

which the police officer has reason to believe to be false. In this case the police officer did not ask accused for his name and address, probably because he was satisfied that he could trace the accused through the number of the bus. The prosecutor's conduct therefore in insisting on being driven in the bus to the Cinnamon Garden police station was illegal and therefore the first charge on the evidence of the prosecutor himself fails. On the second charge, the accused cannot be convicted of the offence of using criminal force on the constable in consequence of anything done by the latter in the lawful discharge of his duty for the reasons stated by me. But in view of the defence, which has been disbelieved by the Magistrate, that the whole case is false and has been engineered by the constables, and the high handed conduct of the accused, it is still open to me to alter the conviction to one under section 343 of the Penal Code, that is to say, for using criminal force on the constable when the bus was stopped in Rudd's lane, irrespective of the question of law whether the constable was acting within his lawful authority when he got into the bus. That criminal force was used on the constable and that the accused ignored the signal to stop of police constable Simon Silva on the way to Rudd's lane there can be no doubt. The prosecutor was in uniform and his request was that the bus should be driven to the police station. The accused can only justify their act on the ground of self-defence. Under section 92 of the Penal Code the accused "have no right of self-defence against an act which does not reasonably cause the apprehension of death or grievous hurt, if done or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law". Although the prosecutor was acting beyond his authority he was acting in good faith (see section 51) and his request that the bus should be driven to the police station cannot be said to have caused reasonable apprehension

in the minds of the accused that they would be killed or grievously hurt at the police station. This important exception was put in section 92 to cover the acts of public servants acting in good faith, even beyond their authority, because what was done wrongly in the name of the law would be set right by the law in due course, so long as there was no immediate apprehension of death or grievous hurt as a result of the acts of the public servants concerned.

I think the justice of the case requires that I should alter the conviction to one under section 343 of the Penal Code. I convict the accused under section 343 of the Penal Code and sentence the two accused to one month's rigorous imprisonment each.

*Sentence varied.*

