

1971

Present : Wijayatilake, J.

T. SUBRAMANIAM, Appellant, *and* R. U. LIYANAGE (S. I. Police),
Respondent

S. C. 60/70—M. C. Point Pedro, 2770

Motor Traffic Act (Cap. 203)—Rules of the road—Breach of s. 118 (10)—Burden of proof.

In a prosecution for breach of section 148 (10) of the Motor Traffic Act the burden is on the complainant to establish that, at the area of intersection, traffic was not regulated by a police officer or by means of traffic signals or by notices under section 150.

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

R. Viragananthan, for the accused-appellant.

Tivanka Wickramasinghe, Crown Counsel, for the Attorney-General.

February 3, 1971. WIJAYATILAKE, J.—

This appeal raises a very important question in regard to the burden of proof on a charge of negligent driving read with Section 148 (10) of the Motor Traffic Act. Learned counsel for the appellant draws my attention to the judgment of Sinnetaimby, J. in *Daniel v. Lewis*¹ where he held that in a prosecution for breach of Section 150 (10), Motor Traffic Act 14 of 1951 now 148 (10), of the present Motor Traffic Act—Chapter 203—the burden is on the complainant to establish that, at the area of intersection, traffic was not regulated by a police officer or by means of traffic signals or by notices under section 152 (present section 150). He took the view that these ingredients do not amount to a proviso or exception and they only constitute a conditional clause.

Mr. Vivagananthan submits that the prosecution has failed to call this evidence and therefore the conviction cannot stand. It is clear from a perusal of the reasons of the learned Magistrate that he has found the accused guilty of negligent driving on the basis of Section 148 (10). In fact, he proceeds to state that neither of the roads is a main road and it is quite clear that the accused had no right of way and that the accused should have stopped his vehicle. Counsel further submits that the charges are misleading as they appear to relate to offences under the Penal Code.

Learned Crown Counsel submits that although Section 148 is referred to in the charge there are several other items in the charge under which the accused could have been convicted. Be that as it may, it is quite evident that the conviction is based on Section 148 (10). In view of the judgment of Sinnetaimby, J. and the cases relied on by him *Nair v. Saundias*² and *Sanitary Inspector, Mirigama v. Thangamani Nadar*³ with which I agree, I set aside the conviction and send the case for a trial *de novo* before another Magistrate on fresh charges if so advised.

Conviction set aside.

¹ (1959) 61 N. L. R. 157.

² (1936) 37 N. L. R. 459.

³ (1953) 55 N. L. R. 302.