

1930

Present : Dalton J.

DE SILVA v. DE SILVA.

779—P. C. Colombo, 17,254.

Speed trap—Motor car control—Warning motorists of trap—Obstructing police officers—Penal Code, s. 183.

Where the police were timing the speed of cars along a measured stretch of road called a motor car control, in order to ascertain whether the cars were exceeding the speed limit, and the accused from within the control warned the drivers of the speed trap and prevented the police from obtaining evidence of the commission of the offences by the drivers,—

Held, that the accused had voluntarily obstructed the police in the execution of their duty.

THE accused was charged under section 183 of the Penal Code with voluntarily obstructing a Police Sub-Inspector and a sergeant in the execution of their duty.

It would appear that the two officers were on duty in Turret Road, Colombo, timing the speed of motor cars over a measured stretch of road 220 yards in length along, what is called, a motor car control, for the purpose of ascertaining what cars, if any, were exceeding the speed limit laid down by the law.

Three cars had been detained for exceeding the speed limit, when it was noticed that the accused, leaning over a wall within the control, called out to the drivers and warned them of the speed

trap. The Magistrate found that at least six cars which entered the control at an excessive speed slowed down on receiving the signals of the accused and convicted him.

Hayley, K.C. (with him *R. L. Bartholomewsz*), for accused, appellant.—There is no evidence of any definite interference with the police on the part of the accused. It may be, for instance, that accused acted out of good nature or that he was merely amusing himself. There is no evidence connecting the accused with the motor car trade or proving that he knew that a speed trap was being worked. The law against motorists should not be strained. Counsel proceeded to cite *Bastable v. Little*¹ and *Betts v. Stevens*² and to comment on those cases.

Crossette Thambiah, C.C., for complainant, respondent.—The findings of fact justify the conviction. Counsel cited *Punchi Banda Korala v. Marthelis*³.

[DALTON J.—That case is no authority for the points now in issue.]

To this extent, that *Betts v. Stevens* (*supra*) was considered in that case, and the Court indicated that *Betts v. Stevens* (*supra*) was authority for the proposition that where an accused prevents the police from obtaining such evidence as would be accepted as sufficient in a Court of law that the drivers of motor cars were committing an offence, he is guilty of having wilfully obstructed the police in the execution of their duty within the meaning of the law.

December 4, 1930. DALTON J.—

The appellant was charged with voluntarily obstructing Police Sub-Inspector Toussaint and Police Sergeant Armitage, public servants, in the execution of their duty, in contravention of section 183 of the Ceylon Penal Code.

In the proceedings before the Police Magistrate the following circumstances were deposed to. The two officers were

on duty in Turret road, Colombo, timing the speed of motor cars over a measured stretch of road 220 yards in length through what is called a "motor car control" for the purpose of ascertaining what cars, if any, were exceeding the speed limit laid down by law. The sergeant was at the point of entry and the inspector at the exit of the control. Three cars had been detained for exceeding the limit, when it was noticed that cars which entered the control at an excessive speed suddenly slowed down after entering on the measured stretch. The sergeant then became suspicious, and walked along the control behind a hedge, and as a car came by he saw the accused leaning over a wall of a garden on the opposite side of the road, about 30 yards inside the control, and heard him call out to the car—"Hey, Fast driving, Fast driving". The sergeant watched him, and as two or three more cars came through accused called out—"Fast driving, Fast driving, trap." The sergeant then says he gave what he calls the "wash out" signal to the inspector and they both went up to the accused, who ran into the house. His name and address were subsequently taken, and he was also taken to the police station.

The Magistrate finds that at least six cars, which entered the control at an excessive speed, on hearing the accused shouting or on receiving his signals slowed down. Although the evidence of Sergeant Armitage as to the speed at which the cars entered the control is an estimate, he uses the terms "excessive speed" and "very fast"—with the experience of which he speaks, I see no reason to say the Magistrate is wrong in concluding that the cars entered the control travelling at an unlawful speed. One who is experienced in this work might have considerable difficulty in estimating in this way the exact speed, where he would have little difficulty in saying they were exceeding a definite rate—here 20 miles per hour—if they were going very fast. Three cars had in fact been timed over the measured distance and were found to have exceeded the

¹ (1907) 1 *K. B.* 59. ² (1910) 1 *K. B.* 1.

³ (1926) 28 *N. L. R.* 305.

speed limit. There is no doubt that the accused by his conduct prevented the police from bringing home their offences to the drivers of other cars.

The two English cases cited in the course of the argument seem to me to be against the appellant. There is no practical difference between the wording of the English Statute and the local section under which the charges are brought. In *Bastable v. Little*¹ the court had some doubt about the matter and came to the conclusion that no offence of obstructing the police was proved. Lord Alverstone said he was not prepared to draw the inference that the cars were breaking the law when they received the warning, whilst he attached importance to the fact that there was a complete absence of any evidence of conspiracy or agency on the part of the accused and the drivers of the cars. Darling J. whilst not differing from the Lord Chief Justice, stated that if the case had stated definitely that any of the cars when approaching the measured mile were going at an illegal rate of speed, and the warning prevented the police from taking the real place of the car as it passed, he reserved his opinion as to whether an offence had been committed.

That latter question came up for decision in the second case cited (*Betts v. Stevens*²). The only difference between the case before me and that case is that the accused in this case was some 30 yards inside the measured stretch, and in *Betts v. Stevens* (*supra*) the accused was outside the "control". There was evidence there, as here, as the report shows, that at the time the warning was given the cars were being driven at an illegal speed and the drivers upon receipt of the warning slackened their speed and proceeded over the measured distance at a lawful speed, whereby the police, as accused intended, were prevented from obtaining evidence as would be accepted as sufficient in a Police Court that the drivers of the

cars were committing an offence. On this evidence it was held the accused had wilfully obstructed the police in the execution of their duty.

It does not appear from the report what was the evidence that the cars were going at an illegal speed when the warning was given. If it was such evidence as would satisfy a Police Court that an offence had been committed no timing of speed through the control would be required. It is possible it may have been an admission made in the case in the form of not raising any dispute on the facts or such evidence as I have before me in the case now on appeal. The gist of the offence, as pointed out by Darling J., lies in the intention with which the thing is done. On the facts found here, there can be no doubt that accused was fully aware of the fact that the police were timing the speed of cars over the road in order to collect evidence of offences and that he intentionally and successfully prevented them from obtaining evidence of the commission of offences by the drivers of the cars referred to. He cannot say on this evidence, and in fact he does not say, he was merely and solely preventing a motorist upon the road from committing an offence. He gives no evidence or explanation at all of his conduct.

The Magistrate in the course of his judgment expressed the opinion that it might be immaterial whether the cars on entering the control were actually travelling at a greater speed than the law allows, or not. It is possible that the offence of wilful obstruction might be committed where the police had reasonable cause to believe an offence was being committed or was likely to be committed, and they were at the same time seeking to obtain evidence to that effect. It is not necessary, however, on the facts in this case to consider those questions here.

The conviction was correct, and the appeal must be dismissed.

¹ (1907) 1 K. B. 59.

² (1910) 1 K. B. 1.