

1952

*Present : Swan J.*PREMADASA, Appellant, *and* JANSEN, Respondent*S. C. 828—M.C. Gampola, 3,704**Railway Ordinance (Cap. 153)—Offence of interference with the comfort of other passengers—Ingredients—Sections 12 and 43.*

Where one passenger by assaulting another passenger causes interference with the comfort of the other passengers both may be charged under section 12 of the Railway Ordinance, but to charge one of them with having interfered with the comfort of the other is a situation not contemplated by the Ordinance.

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

H. W. Jayewardene, for the accused appellant.

A. Mahendrarajah, Crown Counsel, for the complainant respondent.

Cur. adv. vult.

October 7, 1952. SWAN J.—

I do not think that this conviction can be allowed to stand. The appellant was charged under section 12 of the Railway Ordinance (Cap. 153) with having on the 9th June, 1952, at the Gampola Railway Station, wilfully interfered with the comfort of the *other passengers* on the Railway by assaulting one W. D. Dharmadasa. None of the *other passengers* were called as witnesses for the prosecution to say that they were in any way disturbed by the incident. The learned Magistrate, however, seemed to take the view that *other passengers* included Dharmadasa. If that had been the case for the prosecution the charge should have been differently worded. Mr. Jayewardene for the appellant takes the further objection that there should have been strict proof that Dharmadasa was a "passenger". The term "passenger" is defined in section 43 as "any person in or upon the railway being in possession of a ticket duly issued according to the conditions provided therefor".

In the case of *Namtial v. Perera*¹ it was held that before a person can be punished for interfering with the comfort of a passenger it must be proved that the person so interfered with was a passenger, *i.e.*, a person with a ticket or a free pass. The conviction was under section 14 of the Railway Ordinance 26 of 1885. It will be observed that the term passenger is not defined in that Ordinance. In the present case Dharmadasa did say that he was a passenger travelling in the same compartment as the accused. He was not cross-examined on the point, and in the circumstances, I think the learned Magistrate was right in holding that he was a "passenger" as defined in section 43. But on the matter of interference with the comfort of the other passengers I do not think Dharmadasa's alleged discomfort should have been taken into consideration. Where two passengers are involved in an incident which may cause interference with the comfort of the other passengers both may be charged under section 12, but to charge one with having interfered with the comfort of the other is, in my view, a situation not contemplated by the Ordinance.

I set aside the conviction and acquit and discharge the accused.

Appeal allowed.

¹ 1 *Tambyah* 55.