1934 *Present :* **Dalton J.**

KING *v.* SABAPATHY.

79—D. C. (Crim.) Jaffna, 3,699.

Cognate offence—Charge of attempting to cause grievous hurt—Conviction of endangering life by rash and negligent act or criminal intimidation—Irregular—Criminal Procedure Code, ss. 182 and 183.

Where an accused is charged with attempting to cause grievous hurt by driving a motor car at a person, he cannot be convicted under section 327 of the Penal Code of doing an act so rashly or negligently as to endanger human life or under 486 of criminal intimidation.

APPEAL from a conviction by the District Judge of Jaffna.

No appearance for accused, appellant.

M. F. S. Pulle, C.C., for Crown, respondent.

Cur. adv. vult.

September 3, 1934. DALTON J.—

The accused was charged with attempting to cause grievous hurt to one Vallipuram Kandiah by deliberately driving a motor car at him. The District Judge states he accepts the evidence of the witnesses for the prosecution and finds the accused guilty of the offence, but then he goes on to find that it is possible that accused only intended to frighten the complainant by driving at him and then intending to swerve off. In that event the offence charged has not been proved, whatever other offence accused may have committed, for this possible explanation of accused's conduct as found by the trial Judge is inconsistent with an attempt to cause grievous hurt, and the trial Judge has misdirected himself on the law.

Mr. Pulle, who appeared for the Crown, respondent, urged that, accepting the position that the offence charged had not been proved to the satisfaction of the trial Judge, on the facts found to be true, accused could be convicted of committing an offence punishable by section 327 or section 486 of the Penal Code although not charged with any such offence.

[1] *31 N. L. R. 136.*
[2] *33 N. L. R. 113.*
[3] *20 N. L. R. 44.*
[4] *19 N. L. R. 57.*

Section 327 penalizes a person who does an act so rashly or negligently as to endanger human life of the personal safety of others. Section 486 provides the punishment for criminal intimidation.

He accordingly asks me, in the event of my coming to the conclusion on the findings of the trial Judge that the offence charged in the indictment has not been proved to have been committed, to enter a conviction against the accused for one of the other offences, which he urges the evidence discloses he has committed. The evidence which has been accepted by the trial Judge certainly discloses most outrageous conduct on his part and his unfitness to be in charge of a motor car on the public roads. This conviction Counsel asks me to enter under the provisions of either section 182 or section 183 (1) of the Criminal Procedure Code.

In support of this request I was referred to the decision in *King v. Ranhamy* [1], where it was held that, under the provisions of section 183, where an accused person is indicted for murder he may be convicted of causing death by a rash and negligent act. In the course of his decision in that case Lyall Grant J. referred to English law as supporting his conclusion. So far, however, as the offences of manslaughter and dangerous driving are concerned, the matter has since been decided in England in the case of *Rex v. Stringer* [2] referred by the Court of Criminal Appeal to a Bench of five Judges. In that case a man was knocked down and killed by the accused's motor lorry. The accused was charged on an indictment containing two counts: (1) manslaughter and (2) dangerous driving of a motor vehicle. He was acquitted on the former charge and convicted on the second count. Accused appealed, it being submitted on his behalf that where there had been an acquittal of manslaughter, there could not be a conviction on the same facts for dangerous driving. In the course of the argument counsel for the Crown pointed out that manslaughter and dangerous driving are entirely distinct offences, and the Court agreed that on the count in the indictment for manslaughter the accused could not have been convicted of the second offence, *i.e.*, dangerous driving. The Court went on to express the opinion that it is undesirable that a charge of dangerous driving should be made a count in an indictment for manslaughter.

It is not necessary to consider if that latter opinion is applicable in Ceylon, having regard to the provisions of the law here, but the finding of the Court in the case as to the distinction between the two offences named is relevant to the case before me, for on the facts the offence under section 327, of which Crown Counsel urges appellant may be convicted, is one of endangering life by rash or negligent driving. Just as manslaughter and driving a motor vehicle recklessly or in a manner dangerous to the public are entirely distinct offences, so also, in my opinion, are the offences of attempting voluntarily to cause grievous hurt and doing an act so rashly or negligently as to endanger human life.

With respect to the provisions of sections 181 and 182, it has been held that the operation of the latter section is limited to cognate offences. The subject is dealt with in Sohoni's *Code of Criminal Procedure* at pp. 586-595 on a consideration of the equivalent provisions of the Indian Criminal Procedure Code, sections of which are in practically the same

[1] *32 N. L. R. 160.* [2] *(1933) 1 K. B. 704.*

terms as sections 181, 182, and 183 of our Code. Cases are cited, for example, in which it has been held that sections 181 and 182 do not relate to offences of so distinct a character as murder and theft, rape and kidnapping, dacoity and dishonestly receiving stolen property, abetment of forgery and using a forged document.

The scope of the equivalent provision of section 183 is dealt with by Sohoni at p. 593. It applies to cases in which the charge is of an offence which consists of several particulars, a combination of some only of which constitutes a complete minor offence. He points out, however, that the section does not apply to a collateral or concurrent offence. Cases are then referred to, in which it has been held that section 183 does not apply amongst others to such offences as murder and kidnapping, criminal trespass and riot, riot and assault, extortion and theft, the first named offence being the offence charged. Further, under this section the Court cannot find a man guilty of the abetment of an offence on a charge of the offence itself.

Local decisions on the points raised are few in number. Those cited to me were the following: *Canagasingham v. Meyadin Bawa,*[1] in which Akbar J. held that on a charge of theft or criminal breach of trust, an accused person can under section 182 be convicted of criminal misappropriation, on the ground that it was an offence of the same type as the offences charged, and that being so, there may be a doubt as to whether the facts amounted to one or other of the offences named.

In *The King v. Arnolis*[2] the accused was charged with dishonest retention of stolen property, and under section 182 the Court convicted him of theft.

In *Premawardene v. Siriwardene*[3] it was held that on charges of wrongful restraint, criminal force, criminal intimidation, and misconduct in public under sections 332, 343, 486, and 488 respectively of the Penal Code, the accused could not be convicted under section 182 of insult under section 484, the latter offence being something entirely different from wrongful restraint or the use of criminal force. Lyall Grant J. there points out that the instances in the illustrations given in the section are instances of offences of much the same character, offences which it is often difficult to distinguish.

Applying the law referred to above to the case before me, I am of opinion that on a charge under section 317 of attempting to cause grievous hurt, the accused cannot be convicted under the provisions of section 182 of an offence laid under section 327 of endangering life by a rash or negligent act. The two offences do not seem to me to be offences that are cognate or allied in any way. The accused further cannot be convicted under section 183. The same reasoning applies to the request to record a conviction of criminal intimidation which is a separate and distinct offence from the offence charged.

The request of Counsel for respondent, therefore, to enter a conviction against the accused for an offence with which he has not been charged must be refused. The conviction for the offence charged cannot for the reasons given stand. The appeal must therefore be allowed, the conviction being quashed.

Appeal allowed.

[1] *33 N. L. R. 356.* [2] *23 N. L. R. 225.* [3] *30 N. L. R. 292.*