Present : Jayewardene A.J.

1926.

SUB-INSPECTOR OF POLICE, DEHIOWITA, *v.* K. M. PERERA.

200—P. C. Avissawella, 11,019.

Vehicles Ordinance—Rash and negligent driving—General charge—Irregularity—Ordinance No. 4 of 1916, s. 22.

The accused, the driver of a motor omnibus, was charged generally with all the offences mentioned in rule 32 of the by-laws framed under section 22 of the Vehicles Ordinance. The evidence was directed to the point that a horse belonging to the complainant was injured by its striking against the mudguard of the omnibus.

The Magistrate, while holding that the injury was not caused in the manner sought to be established by the prosecution, convicted the accused of driving his 'bus on the public road in a manner as to cause danger to human life, or injury to any person, or animal, in breach of the aforesaid rule.

Held, that the conviction was bad.

"In cases under section 48 or by-law 32 the prosecution should, after a consideration of the evidence available, decide which of the offences under the section or the by-law the accused appears to have committed and frame only such charges as appear to be appropriate to the facts which it can prove."

APPEAL from a conviction by the Police Magistrate of Avissawella. The facts appear from the judgment.

H. V. Perera (with *C. J. C. Jansz*), for accused, appellant.

Keuneman, for complainant, respondent.

JAYEWARDENE A.J.—

In this case the accused, who is the driver of a motor omnibus, has been convicted of driving "his 'bus on the public road rashly and negligently in a manner as to cause danger to human life, or injury to any person, or animal in breach of rule 32 of by-laws framed under section 22 of Ordinance No. 4 of 1916," an offence punishable under by-law 34 framed under the same section. and sentenced to pay a fine of Rs. 30.

The accused complains in his petition of appeal, and I think there is good ground for his complaint, that "no proper charge was framed against the accused and he has thereby been greatly prejudiced in his defence ; the charge in the plaint being both vague and meaningless." It appears that the accused was driving his 'bus along the Alutgama-Karawanella road, along which a horse-keeper was taking a horse on the right hand side of the road, a motor car had just then passed the horse, which had become restive As the accused's 'bus approached the horse, the horsekeeper says he signalled to the accused to stop by putting his right hand up

1925.

JAYEWARDENE A.J.

Sub-Inspector of Police, Dehiowita, v. K. M. Perera

and cried out several times, but the accused, without heeding the signal, drove on, and the near mudguard of the 'bus struck one of the hind legs of the horse, causing an injury, and the horse had to be destroyed. The learned Magistrate, however, finds that the horse was injured, not by coming in contact with the 'bus, but by striking its leg against a railing on the side of the road. On these facts the Police reported to Court that the accused did on the day in question "drive his motor 'bus No. A1117 on the public road recklessly and negligently at a speed or in a manner which is likely to endanger human life, or cause hurt or injury to any person, or animal, or which would be otherwise than reasonable and proper, having regard to all circumstances of the case, including the nature and use of the road and to the amount of traffic which was actually on it at the time, or which may reasonably be expected to be on it, in breach of rule 32 of by-laws framed under section 22 of Ordinance No. 4 of 1916, and thereby committed an offence punishable under section 34 of by-laws framed under section 22 of Ordinance No. 4 of 1916." The accused appeared on Police bail, and the charges were read out from the Police report. The report contains all the offences about six in number, included in by-law 32, which reproduces the offences under section 48 of the Vehicles Ordinance of 1916. I had had occasion to analyse that section and to point out the various offences which it contains in my judgment in *Police Sergeant, Lindula, v. Stewart*,[1] and I also pointed out that unless there is a separate charge for every distinct offence included in that section, the charge would be bad for "duplicity," an irregularity which is not necessarily fatal to a conviction in view of section 425 of the Criminal Procedure Code, unless the accused has been prejudiced. The same remarks apply to charges for offences under by-law 32. In that case, however, the irregularity was not so gross as in the present case, where all the six offences have been included in one and the same charge. I am unable to say that in this case the accused has not been prejudiced by the failure of the prosecution to observe the requirements of section 178 of the Criminal Procedure Code, which regulates the framing of charges. In cases under section 48 or by-law 32, the prosecution should, after a consideration of the evidence available, *decide which of the offences under the section, or the by-law, the accused appears to have committed, and frame only such charges as appear to be appropriate to the facts which it can prove.* A further charge can always be added, if necessary.

In this case, I would hold that the irregularity is not cured by section 425, as, in my opinion, the accused must have been prejudiced by the way in which the charge has been framed.

The appeal is allowed, and the conviction set aside.

[1] 1 *(1923) 25 N. L. R. 166.*

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