

1929.

*Present : Akbar J.*

GOVINDAN *v.* SILVA

890—*M. C. Colombo, 14,513*

*Accosting passengers—Evidence of persons annoyed—Ordinance No. 7 of 1889, s.*

In a charge of accosting passengers against their will and to their annoyance, the fact that the persons accosted were annoyed must be established by their own evidence.

**A** PPEAL from a conviction by the Municipal Court of Colombo.

*R. C. Fonseka*, for accused, appellant.

January 18, 1929. **AKBAR J.**—

The accused was charged with persistently and without any lawful excuse following and accosting some passengers against their will and to their annoyance, in breach of section 1 of Ordinance No. 7 of 1889 and section 3 of Ordinance No. 4 of 1841.

It will be noticed that it is incumbent on the prosecution to prove that the accosting was against the will of the passengers and that it caused annoyance to them. Now, these are matters peculiarly within the knowledge of the passengers. Strange to say only two Police Constables gave evidence for the prosecution, and the passengers have not been called. How they can claim to speak on behalf of people who are not present to give evidence I fail to understand.

In my opinion, much as I regret to hold it, such a charge cannot succeed, unless the persons who are annoyed are called, and they definitely state they were annoyed.

Apart from the intrinsic danger of allowing strangers, especially Police Constables, to testify to signs of emotion on the part of the absent passengers, it may well be that the so-called signs of annoyance, such as looks of displeasure on the faces of the passengers, &c., are really methods of indicating pleasure and endearment on their part. I feel obliged reluctantly to set aside the conviction and acquit the accused.

*Set aside.*