

Present : Lyall Grant J.

1930

SUB-INSPECTOR OF POLICE, BADULLA *v.* KAMURDEEN.

761—P. C. BADULLA, 4,871.

Motor car—Driving recklessly and dangerously—Failing to obey directions of Police officer—Ordinance No. 20 of 1927, ss. 55 and 57 (2).

Where the driver of a motor bus deliberately prevented a motor cyclist from overtaking him by persistently swerving to the right in such a manner as to endanger the safety of the bus and the motor cycle,—

Held, that the driver was guilty of driving recklessly and in a dangerous manner.

Where the driver failed to obey the verbal directions of a Police officer to proceed to a named place some distance away and wait until the officer arrived,—

Held, that he was not guilty of an offence under section 55 of the Motor Car Ordinance.

The section refers primarily to the directions of a Police officer in control of traffic who gives signals, which are to be immediately obeyed.

A PPEAL from a conviction by the Police Magistrate of Badulla.

C. V. Ranawake, for appellant.

Schokman, C.C., for respondent.

January 23, 1930. LYALL GRANT J.—

The appellant in this case was charged under five counts, the first four being offences under the Motor Car Ordinance, the last count under section 272 of the Penal Code.

The appellant was acquitted on the last count and convicted on each of the first four. The first charge was that the accused drove a motor bus recklessly and in a dangerous manner and at a dangerous speed and thereby committed an offence punishable under chapter 7, section 57 (2) of Ordinance No. 20 of 1927. The second charge was of driving the bus negligently—an offence punishable under section 57 (3) of the same Ordinance. The third charge was of failing to obey the verbal directions given by a Police officer in the execution of his duty to stop the bus in breach of section 55. The fourth charge was of failing to immediately stop the bus when, owing to the presence of the said bus on a highway, an accident occurred, causing injury to a person, contrary to section 48 (1). The accused was fined Rs. 50 and in default one month's rigorous imprisonment on each of these charges the sentences to

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run consecutively. The prosecution story which is accepted by the learned Magistrate was, that Sub-Inspector Wijsekara of the Badulla Police overtook the bus on the Bandarawela road and noticed that three persons were standing on the footboard at the back of the bus. Going alongside he asked the driver to stop, and when he stopped asked him where he was going. He told him (accused) to stop at Dikwella junction, which appears to be a considerable distance along the road, for the purpose of counting the passengers. The Inspector says he did this because he was alone and he wished to get the Town Arachchi of Dikwella as a witness.

The bus went ahead but did not stop at the junction and went down a side road.

The Inspector then blew his horn several times to attract the driver's attention and motioned the conductor to stop. The driver did not stop and the conductor jeered at the Inspector. The Inspector made several efforts to overtake the bus, which stopped once or twice, but apparently was unable to do so. He says that at several places where there was room he blew his horn and tried to overtake, but the accused always swerved to the right and prevented it.

On one of these occasions the right foot-rest of the bicycle struck against a milestone and broke, and the bicycle went into the drain. The Inspector was thrown off the bicycle and sustained injuries. The Inspector says that the driver saw him fall into the drain, stopped, looked back, and drove on again.

The complainant was medically examined ; he had a slight injury on the nose and on the left thumb.

There is independent evidence that at the spot where the collision occurred the road was sufficiently wide for two vehicles to pass.

The Magistrate has not found that the bus was driven at a dangerous speed, and there is in fact no evidence to support this part of the first charge. On the Inspector's evidence, which has been accepted, I think the Magistrate was justified in finding that the bus was driven recklessly and in a dangerous manner. The evidence shows that the driver must have been aware that the Inspector was attempting to overtake him and that he deliberately prevented him from doing so by swerving to the right as soon as the Inspector came abreast of him. Such conduct seems to me to be reckless in the sense that it is regardless of consequences, and it is also dangerous as is shown by the fact that the Inspector was twice thrown into the ditch.

I do not think I should be justified in taking a different view of the evidence from that taken by the Magistrate, and accordingly the appeal from the conviction on the first charge must be dismissed.

The driver was also convicted of driving the bus negligently, and the reasons given by the Magistrate are, that on the accused's own evidence he drove the bus negligently.

The learned Magistrate has however already held that the accused drove recklessly and dangerously by persistently swerving to the right in a manner endangering the safety of his own bus and of the following motor cycle. He has therefore, I think, held facts to be proved which are entirely inconsistent with his finding on the second charge. He says above that the accused's own account of the affair is entirely incredible. I think the Magistrate was in error when he convicted under the second charge and Crown Counsel did not wish to support the conviction on this count. The appeal to this extent therefore is allowed.

This third charge was, failing to obey verbal directions. The verbal directions were for the bus to stop at a named place some distance along the road. Section 55 reads "the driver of a motor car shall obey all directions whether verbal or by signals given by a Police officer in the execution of his duty to stop the car, or to make it slow down, or to pass on any indicated line of traffic" and the side note is "signals by Police officer to be obeyed." It is clear that this section refers primarily to Police officers in control of traffic, who give signals which are to be immediately obeyed. It seems to me that it is considerably stretching the section to say that it refers to directions given to the driver of a stationary vehicle to proceed to a certain spot some miles away and there to stop and wait for the Police officer to arrive. I am not satisfied that the section applies to such a case as we have before us and accordingly the conviction on this count is quashed. In regard to the last charge, the evidence is that when the Inspector was thrown of his bicycle the accused stopped and then drove on again. Section 48 says: "if owing to the presence of a motor car on a high way any accident occurs causing injury to any person, animal, or property, then the driver of the car shall immediately stop the car." The Inspector says that he (accused) saw him fall into the drain, stopped, looked back, and drove on again.

Reading the section as a whole I think its provisions were not complied with by the accused. Sub-section (1) must be read in conjunction with the rest of the section. The evidence shows that the driver did not stop long enough to allow the person injured or any one else to take his name and address, or give him an opportunity of obtaining the information or doing the matters referred to in the section. Accordingly I do not propose to interfere with the conviction on this count.

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