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*Present* : Lyall Grant J.

HERATH *v.* WILLIAM SILVA.

503—*P. C. Kalutara, 26,770.*

*Wrongful restraint—Obstruction—Act which prevents a person from proceeding along a certain direction—Penal Code, s. 332.*

Where the accused was seated in the middle of a road and as a motor lorry approached, got up and walked backwards so that the driver of the lorry could not proceed without running over him,—

*Held*, that the accused was guilty of the offence of wrongful restraint.

**A** PPEAL from a conviction by the Police Magistrate of Kalutara. The facts appear from the judgment.

*Deraniyagala*, for accused, appellant.

*Grenier, C.C.*, for respondent.

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The accused was convicted of having wrongfully restrained the complainant from proceeding along the Colombo-Galle road in a lorry, an offence punishable under section 332 of the Ceylon Penal Code. The complainant's story, which was believed by the Police Magistrate, was that he was driving a lorry and that as he was driving the lorry the accused with one or two others was seated on the middle of the road and as the lorry approached the accused sprang up and walked backwards so that the driver could not proceed without running over him.

The complainant edged towards the side of the road and the accused moved in the same direction obstructing the passage of the lorry. The result was that the lorry ran off the road and was upset. The conviction was challenged both on the facts and on the law. On the facts there is ample evidence to support the Police Magistrate's conclusion and I see no reason to differ from his finding. The objection in law which is raised to the conviction depends upon the construction of the word "restraint" in section 332. The words "wrongful restraint" are defined in section 330 as follows:—

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed is said wrongfully to restrain that person.

The word "obstruct" in section 330 has not, so I am informed, been the subject of decision in Ceylon.

I was, however, referred to some Indian decisions which are referred to in Gour's *Penal Law of India*. Sir H. S. Gour says the obstruction referred to must be direct and actual and not indirect and ideal, and he refers to a case where putting Pariahs in the way of a Hindu procession, an act which deterred the latter from proceeding on its way, was held not to be obstruction.

Obstruction, he says, may consist of a physical impediment or of the use of physical force to control one's movement; it may also, however, consist of a threat or order which may operate on another's will and in consequence of which he changes its natural operation. In fact the offence is determined by the effect caused and not by the nature of the act by which it is brought about.

Counsel for the appellant, founding on this case and these and other remarks in Gour's commentaries, attempted to draw the following distinction. He said that the obstruction must be one which raises in the person obstructed a fear for his own safety and not merely a fear for the safety of the person obstructing. I do not think this is the only consideration arising in this case nor do I think that the distinction is a sound one.

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The accused put an actual physical obstruction in the way of the lorry, namely, the obstruction of his own body. The mere fact that physically the person obstructed might have been able to overcome the obstruction does not seem to me to alter the nature of the accused's act. The complainant could not have overcome the obstruction except by running the accused down, which would have been a criminal act.

An act by one person which prevents another from proceeding in a direction in which he has a right to proceed, unless the latter chooses to commit a criminal act, seems to me to amount to wrongful restraint.

In my view the Police Magistrate's finding is correct and the appeal is dismissed.

*Affirmed.*

