

Present: De Sampayo A.J.

1915.

RATNAYAKE *v.* WEERARATNE.

62—P.C. Ratnapura, 28,052.

Police Ordinance, No. 16 of 1865, s. 90—Is dola a "drum"?—Beating tom-tom without a license—Is it necessary to prove that the repose of the inhabitants was disturbed?

A *dola* is not a "drum" within the meaning of section 90 of the Police Ordinance, No. 16 of 1865.

"It seems to me that the Ordinance contemplates the aggravating and ear-splitting noise caused by the beating of tom-toms and drums."

"The Ordinance should be applied with some degree of common sense."

In a charge under section 90 of the Police Ordinance for beating drums without obtaining a license, it is not necessary to prove that the repose of any person has been disturbed.

THIS was an appeal from an acquittal, with the sanction of the Attorney-General. Accused was charged, under section 90 of Ordinance No. 16 of 1865, with having caused tom-tom (*i.e.*, *dola*, or drum and fiddle) to be beaten without obtaining a license. The Magistrate acquitted the accused, as there was no evidence to prove that the repose of any person was disturbed. The Attorney-General appealed.

V. Grenier, for the appellant.

No appearance for the respondent.

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The complaint made to the Court by the Police was that the accused caused tom-toms to be beaten without obtaining a license, in contravention of section 90 of Ordinance No. 16 of 1885. The Police had no evidence to prove that the repose of any person had been disturbed by the music on the night in question, and as the Magistrate considered that that was a necessary ingredient of the offence the accused was acquitted. This appeal is taken by the Solicitor-General.

The Magistrate is mistaken in his view of the law. See *Karunaratne v. Rapiel*¹ and the Full Bench decision therein cited. The question still remains whether the Ordinance aims at such use of music as in this case. The complaint itself explains what it meant by tom-toms, thus: "i.e., *dola*, or drum and fiddle." A *dola* is no doubt a kind of drum, but it is not beaten with sticks, as a tom-tom or an ordinary drum is. In fact it is not beaten at all, but is played upon gently with the fingers of the hand. I hardly think that the accused can be said to have "beaten" a drum in the sense of the Ordinance. It seems to me that the Ordinance contemplates the aggravating and ear-splitting noise caused by the beating of tom-toms and drums. The *dola* is subdued in tone, and when played by a person who knows anything about it, is not at all disagreeable. It usually goes with the fiddle, as it did in this instance, and is a highly appreciated musical instrument in an Eastern orchestra. On this occasion the *dola* and fiddle were played at the Central Hotel at Ratnapura, presumably just as more refined music is played in bigger hotels. The human voice naturally joins in, though if the music were to get upon the nerves of any one the voice would be at fault, and not the *dola*. The time was not extraordinary either; it was between 9 P.M. and 11 P.M. No one complained, and but for the officious interference of the constable who wanted the music to be stopped there was nothing serious to complain of. In any case the matter was too trivial to be brought into Court, and I think the acquittal of the accused does nobody any harm or injustice. If a license were required every time a *dola* is played at a social function at a private house or hotel, the pleasures of life would be irksome indeed. The fact is that the Ordinance should be applied with some degree of common sense. I suppose the Solicitor-General has taken this appeal in order to set aright the Magistrate's interpretation of the law. That has been done by my ruling, that the prosecution was not bound to prove that the repose of the inhabitants was disturbed, and I think that, the law being thus vindicated, the case may be left there. The appeal is dismissed.

Appeal dismissed.