

Sept. 15, 1911

Present : Grenier J.

WIRATUNGA v. GABO SINNO *et al.*

576—P. C. Kurunegala, 270.

“ Rabana ”—Is it a drum?—Beating of “ rabana ” in a manner calculated to disturb the repose of the inhabitants—Ordinance No. 16 of 1865, s. 90.

A “ rabana ” comes under the description of a drum, and the beating of a “ rabana ” at night in such a way as to disturb the repose of the inhabitants is an offence under section 90 of Ordinance No. 16 of 1865.

A PPEAL from an acquittal, with the sanction of the Attorney-General.

The facts appear sufficiently from the following judgment delivered by the learned Police Magistrate (W. A. Weerakoon, Esq.) :—

Accused in this case played a “ rabana ” in their house at night on their New Year Day. Mr. Wiratunga, a neighbour, appears to have got annoyed at this and set the police in motion, and the result is the present prosecution.

Mr. Modder, for complainant, urges that the “ rabana ” is a drum, and the playing of it, if done without a license, is an offence punishable under section 90 of the Police Ordinance.

Mr. Tennekoon, for accused, contends that the “ rabana ” is not a drum within the meaning of the Ordinance in question.

After hearing argument on both sides, I have come to the conclusion that the contention of the defence is a sound one, and must be upheld.

The section of the Ordinance referred to runs : “ All persons who shall beat drums or tom-toms, or have or use any other music calculated to frighten horses, unless they shall have obtained a license, shall be guilty of an offence.” The words “ calculated to frighten horses ” are significant. They go to show that the object of the prohibition as to the beating of drums and tom-toms is to prevent native processions with music from becoming a danger by frightening horses on the road. Now, the only musical instruments that are used in native processions, whether in connection with religious rites or customary ceremonies, are the “ bere ” and the “ tam-mattama.” The “ rabana ” is not used at all on such occasions, for it is essentially an instrument of indoor music, as distinguished from the “ bere ” and the “ tam-mattama,” which are instruments of outdoor music. I hold then, that the drum contemplated in the Ordinance is the “ bere,” and not the “ rabana.”

What, then, is a “ rabana ” ? The “ rabana ” is an instrument which produces music other than the music of drums and tom-toms. The question then arises as to whether the music produced by the “ rabana ”

is music such as is calculated to frighten horses. There is no proof that it is, and I do not think that any one who has listened to "rabana" playing will be prepared to assert that it is. I hold that the music produced by the "rabana" is not music calculated to frighten horses.

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There remains one more point to be considered, and that is a point which was raised by Mr. Modder as a sort of *dernier ressort* at the argument. He urged that, whether the "rabana" was a drum or not, the playing of it in the night amounted to making a "noise so as to disturb the repose of the inhabitants." I am afraid I cannot yield to this argument. The word "noise" as the context itself shows excludes music, and the sound produced by the "rabana" is music equally with the sound produced by drums or tom-toms, or even more so, it is not a noise at all.

The conclusion I arrive at then is that the playing of a "rabana" does not require a license under section 90 of the Police Ordinance.

Accused are accordingly acquitted.

Gladwin Koch, for the complainant, appellant.

No appearance for the respondents.

Cur. adv. vult.

September 15, 1911. GRENIER J.—

The respondents were charged with an offence punishable under section 90 of Ordinance No. 16 of 1865, in that they beat a "rabana" by a roadside at 11 P.M. in a manner calculated to frighten horses, and that they made a noise in the night by the beating of the "rabana" calculated to disturb the repose of the inhabitants. I have taken the charge from the printed form on page 7. The offence is one which falls under the section of the Ordinance I have mentioned. Two of the accused pleaded guilty, and were each fined Rs. 10. The case proceeded to trial against the fourth, fifth, and sixth accused, and the Magistrate has acquitted them on certain grounds which do not appear to me to be tenable. I think it has never been disputed that a "rabana" comes under the description of drum, and that the beating of a "rabana" at night in such a way as to disturb the repose of the inhabitants was an offence under the Ordinance. Numerous cases have been decided upon the footing that a "rabana" is a drum, and I must confess, therefore, that I cannot follow the learned Police Magistrate in the rather fine distinctions he has drawn in regard to the so-called musical instruments which he has mentioned in his judgment. The case against the respondents presents some features of aggravation, and I think they should be dealt with in such a manner as to deter them from disturbing the repose of their neighbours, especially when there is illness in the house. I would set aside the acquittal and fine each of the accused Rs. 20; in default of payment of fine each of them will undergo two weeks' rigorous imprisonment.

Appeal allowed.