

Present: Wood Renton A.C.J.

1913.

LAURENSZ v. JAYASINGHE.

756—P. C. Tangalla, 798.

Penal Code, s. 183—Voluntary obstruction to a public servant in the discharge of his duties—Verbal refusal.

A mere verbal refusal to allow a public servant to perform his duty does not constitute voluntary obstruction within the meaning of section 183 of the Penal Code. *Fernando v. Alia Marikar*¹ followed, *Rasavasagram v. Siwandi*² distinguished, *Hendrick v. Kiri Hami*³ commented upon.

THE facts appear from the judgment.

Bartholomeusz, for the accused, appellant.—The accused did not do anything to prevent the removal of the fish by the public servant. A mere verbal protest or refusal is not voluntary obstruction within the meaning of section 183 of the Penal Code. See *Fernando v. Alia Marikar*,¹ *Hendrick v. Kiri Hami*.³ The decision in *Rasavasagram v. Siwandi*,² on which the Magistrate relies, does not apply to this case. That case was decided under a different enactment where the words of the section were not the same.

October 30, 1913. WOOD RENTON A.C.J.—

The accused-appellant has been convicted under section 183 of the Penal Code of having voluntarily obstructed a sanitary inspector in the discharge of a public function, namely, the removal of fish

¹ (1912) 1 C. A. C. 173.

² (1906) 9 N. L. R. 88.

³ (909) 2 Leader 105.

1918.

WOOD
BENTON
A.C.J.

*Laurens v.
Jayasingha*

alleged to be unfit for human consumption for examination by the proper authorities. The Police Magistrate has convicted him, and sentenced him to pay a fine of Rs. 80, or in default to undergo one month's rigorous imprisonment. The obstruction offered by the accused to the sanitary inspector was purely verbal, and the decision of Sir Alfred Lascelles C.J. in *Fernando v. Alia Marikar*¹ is a direct authority for holding that a mere verbal refusal to allow a public servant to perform his duty does not constitute voluntary obstruction within the meaning of the section under which this charge was laid. The learned Police Magistrate relied on my own decision in *Rasavasagram v. Siwandi*² in support of his construction of section 183. That case was decided, however, under an entirely different enactment, in which the words are "obstruct or impede." I do not think that it is in any way in conflict with the decision of Sir Alfred Lascelles C.J. in *Fernando v. Alia Marikar*.¹ The appellant's counsel has referred me to a decision of Sir Joseph Hutchinson C.J. in *Hendrick v. Kiri Hami*,³ to the effect that the voluntary destruction by an accused person of real evidence of the commission of an offence sought to be obtained by a public officer in the discharge of his public duty would not bring the case within section 183. That decision has no application to the facts now before me. The point raised in *Hendrick v. Kiri Hami*³ was, however, argued before me in 355—P. C. Ratnapura, 3,948.⁴ In that case an arachchi went to the house of the accused with a view to procuring evidence to show whether a charge that the accused was selling toddy illicitly was true or false. When he arrived in front of the house of the accused, the latter kicked over a pot containing toddy, with the obvious intention of destroying the evidence which it would have supplied against him. I held that there was an obstruction of the arachchi within the meaning of section 183. Sir Joseph Hutchinson C.J. indicated that he did not agree with that view. I can only say, however, with the greatest respect, that I adhere to the opinion which I there expressed. The point is covered by the judgment of the King's Bench Division in *Betts v. Stevens*.⁵ In that case constables were on duty observing and timing the speed of motor cars driven along a certain road with a view to the prosecution of the drivers of such cars as should be travelling at an illegal speed. For that purpose they had measured certain distances along a road. The defendant warned the drivers of cars which were approaching the measured distance of the presence of the constables, and the purpose for which they were there. There was evidence that at the time the warning was given the cars were driven at an illegal speed, and the drivers, upon receipt of the warning, slackened their speed and proceeded over the

¹ (1912) 1 C. A. C. 173.

² (1906) 9 N. L. R. 88.

³ (1909) 2 Leader 105.

⁴ S. C. Min., July 20, 1906.

⁵ (1910) 1 K. B. 1.

measured distance at a lawful speed. The constables were thereby prevented, as the defendant intended that they should be, from obtaining such evidence as would be accepted as sufficient in a Police Court that the drivers of the cars were committing an offence. In the King's Bench Division, Lord Alverstone C.J., Darling J., and Bucknill J. held that the defendant had wilfully obstructed the constables in the execution of their duty within the meaning of the Prevention of Crimes Amendment Act, 1885 (48 and 49 Vict., chapter 75), section 2. The Court explained the earlier decision in *Bastable v. Little* ¹ on the ground that there was no evidence that any of the cars were going at an unlawful speed. It results, however, from both of these authorities that where, as in 355—P. C. Ratnapura, 3,948, ² there is evidence that an offence is being committed, the voluntary destruction of the evidence of its commission may amount to an obstruction of a public officer charged with the duty of collecting such evidence. I have made these observations because Sir Alfred Lascelles C.J. in *Fernando v. Alia Marikar* ³ referred to *Hendrick v. Kiri Hami* ⁴ as an authority in support of the view which he took in the former case. In *Hendrick v. Kiri Hami* ⁴ two points were involved, a verbal refusal to allow a search and the spilling of toddy by the person accused. I agree with Sir Joseph Hutchinson's view on the former point, but I entirely differ from his view in regard to the latter.

I follow the decision in *Fernando v. Alia Marikar*,³ set aside the conviction and the sentence, and acquit the accused.

Set aside.

1913.

WOOD
BENTON
A.C.J.

*Laurens v.
Jayasinghe*

¹ (1907) 1 K. B. 59.

² S. C. Min., July 20, 1906.

³ (1912) 1 C. A. C. 173.

⁴ (1909) 2 Leader 105.