

Present: Lyall Grant J.

1930

KANDIAH v. ENDY SINGHO.

357—M. C. Colombo, 4,753

Guide—Plying for hire—Conducting passengers in a park—Ordinance No. 27 of 1906, s. 8.

Where a person, found passengers walking in a park, conducted them round the flower beds and received a voluntary payment for doing so,—

Held, that he was not guilty of plying for hire as a guide within the meaning of section 8 of Ordinance No. 27 of 1906.

R. C. Fonseka, for the accused, appellant.

June 12, 1930. LYALL GRANT J.—

This is an appeal on a point of law from a conviction for plying for hire as a guide not being a licensed guide. The offence is charged as being one under section 10 of Ordinance No. 27 of 1906. This is obviously a mistake, as section 10 applies to the return of licences, and the accused is not charged with this offence. The conviction under this section is obviously wrong. It is, however, open to me to correct the conviction by altering it to a conviction under the proper section if I am satisfied that by this procedure no injustice would be done to the accused. The accused was represented by a lawyer in the lower Court and no objection was taken, and I think it is quite clear that the accused and his lawyer both clearly understood what the offence was with which he was charged, namely, an offence under section 8 of the Ordinance. That section provides *inter alia* that any person who shall ply for hire as a guide shall be guilty of an offence. The ground of appeal was that the facts proved did not show that the accused was plying for hire as a guide. The facts as related by the police constable are that he saw some

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passengers walking about Victoria park and that the accused called a gentleman and a lady into the park and showed them the flower plants, going round with them. After showing them round the park, he took them along the road leading to the Town Hall, where there was a car halted into which the passengers got, and the police constable says he saw the gentleman put something into the accused's hand, whereupon he arrested the accused. He says he found money in the pocket of the accused and that the accused is not a licensed guide. In cross-examination he said that he saw the money given. The defence was a total denial of the incident and a statement that the case was engineered by the watcher of the park, who was an enemy. This statement is corroborated by a friend of his whom he called as a witness. I would here remark that the Magistrate has said that the accused and his witness have contradicted each other on a most material point in his defence. He does not indicate the point in question and I am unable to discover it.

I find the question to be decided, viz., whether the facts alleged by the prosecution amount to plying for hire as a guide, not an easy one. In the ordinary sense of the words, "plying for hire" means offering oneself in some way for a reward agreed upon; and what is meant by the words "as a guide"? One would not think that much guidance was required to look at the flowers in Victoria park. There is another Ordinance which deals with the case of persons persistently following, accosting, or addressing persons against their will and to their annoyance, but there is nothing to show that in this case there was any such annoyance. According to the police constable's evidence the passengers were quite satisfied with the accused.

The Ordinance under which the charge is brought provides that by-laws may be made to regulate fees which may lawfully be demanded by guides, and presumably such by-laws exist. There is nothing to show that this accused either represented himself to be a licensed guide or demanded a fee. Supposing that a person wished to find a particular house in Colombo and was unable to do so and someone offered to show him the way to the house, did so, and received a *santhosum* or tip, could it be said that such an act infringed the employment of the Guides Ordinance? I do not think so, and I do not think that the present case in any way differs from the case I have supposed.

One comment that occurs to one is that, if the accused was committing an illegal act in a public place, such as a park, one would have expected the police constable to have sent him away as soon as he attempted to speak to the passengers, rather than carefully to have waited for what must have been a considerable time, following him around, until the offence, if it was an offence, was complete and then to have arrested him.

This seems to be a typical case where the duty of the police is to prevent offences.

I do not think it is clearly proved that the accused was plying for hire as a guide or that he is guilty of any offence under the employment of the Guides Ordinance.

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The conviction is quashed and the accused acquitted.

*Appeal allowed.*

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