Present : Akbar J.

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SUB-INSPECTOR OF POLICE *v.* FERNANDO.

250—M. C. Colombo, 1,140.

Motor car—Driving in a manner dangerous to the public—Factors to be taken into consideration—Volume of traffic—Cross roads—Ordinance No. 20 of 1927, s. 57 (2).

Where a bus was driven at twice the authorised speed along a road over which a volume of traffic may reasonably be expected owing to the vicinity of cross roads,—

Held, that the driver was guilty of driving in a dangerous manner.

Held further, that if the driver of a motor car drives it in such a manner that it is or is likely to be dangerous to the passengers in such vehicle or to other vehicles or persons on the road it would be an offence under section 57 (2) of the Motor Car Ordinance of 1927.

APPEAL from a conviction by the Municipal Magistrate of Colombo.

Rajakariar, for the appellant.

Ilangakoon, C.C., for the Crown.

July 22, 1929. AKBAR J.—

This is an appeal from a conviction for the offence of driving a motor bus in a dangerous manner, punishable under section 57, sub-section (2), of the new Motor Car Ordinance, No. 20 of 1927, and a sentence of Rs. 100 fine.

As the questions of law and fact which arose on this appeal were very perplexing, I issued a notice on the Attorney-General to enable him to be represented. The argument has been a full one, and I am indebted to the Crown Counsel for the help he has given me. The difficulty on the point of law is this: This Ordinance according to its short title was meant to amend and consolidate the law relating to motor cars and to amend the Vehicles Ordinance, No. 4 of 1916. Section 48 of Ordinance No. 4 of 1916, which still applies to ordinary vehicles and which also applied to motor vehicles before the Ordinance of 1927, is as follows :—

" If any person having the charge or care of any vehicles—

" (*a*) Shall drive the same on any public thoroughfare, street, or road recklessly or negligently, or at a speed or in a manner which is likely to endanger human life, or to cause hurt or injury to any person or animal or damage

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to any vehicle or to goods or person carried therein or which would be otherwise than reasonable and proper having regard to all the circumstances of the case, including the nature and use of the public throughfare, street, or road, and to the amount of traffic which is actually on it at the time, or which may reasonably be expected on it ;

" (*b*) Shall be in a state of intoxication while driving such vehicle, or while in charge of it on a public throughfare, street, or road—

he shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding fifty rupees, or to imprisonment, simple or rigorous, for any period not exceeding three months. "

Section 57 of the Motor Car Ordinance, which replaces the old section 48 so far as it applied to motor vehicles only, contains the following words in sub-section (2) :—" If any person drives a motor car recklessly or in a dangerous manner or at a dangerous speed, he shall on summary conviction by a Police Magistrate be liable to a fine not exceeding five hundred rupees. " Dangerous to whom ? Must the driving be dangerous to passengers in the vehicle or to pedestrians and vehicles on the road or to those who might reasonably be expected to appear on the road at any time or to all these ? Owing to the disappearence of what I consider to be very material words in the old section 48 of the Vehicles Ordinance, I was not sure what the intention of the draftsman was, whether to extend the provision of the law applicable on the point or to restrict it. Section 48 of the Vehicles Ordinance was modelled on the English Motor Car Act of 1903, which was drafted with the express purpose of reproducing the effect of the decisions under the earlier status of the two cases of *Smith v. Boon*[1] and *Mayhew v. Sutton*[2] (see *27 Halsbury, paragraph 683, note (i.)*). Under section 48 of the Vehicles Ordinance of 1916 the Court is authorized to pay " regard to all the circumstances of the case, including the nature and use of the public thoroughfare, street, or road, and to the amount of traffic which is actually on it at the time, or which may reasonably be expected on it, " but the new section contains the bare words prohibiting the driving of a motor car in a dangerous manner. The first question I have to decide is whether or not under these words I can take into account all the factors which the Court was directly bidden to take into account under section 48 of the Vehicles Ordinance. If I hold that I am not so authorized, the effect will be to emasculate the section and to make it almost useless for most purposes. As the object of the Motor Car Ordinance of 1927 was to consolidate the law relating to motor cars to enable the authorities to cope with the enormous increase of motor traffic

[1] *(1901) 84 L. T. 593.* [2] *(1902) 86 L. T. 18.*

which has arisen in the public streets, I must hold even in the absence of any authorities that the new sub-section (2) of section 57 authorizes the Court to consider each case on its facts and to take into account, not only the factors enumerated in section 48 of the Vehicles Ordinance, but, it may be, even other factors. So that in my opinion, if a driver of a motor car drives it in such a manner that it is or is likely to be, dangerous to the passengers in such vehicle, or to other vehicles, and persons on the road, it would be an offence under the new law. I am not sure whether the new section can be made to extend to driving which is dangerous to animals, which section 48 distinctly includes. That question, however, does not arise in this case. The second question that I had to decide was whether the intention of the draftsman was to go even further and to allow the conviction of a person for dangerous driving, when such driving was dangerous in the opinion of a reliable witness whose veracity and powers of observation could not be challenged, as in this case. The Crown Counsel fortunately did not go to this extent, and I therefore hold on this point that the old law with regard to expert opinion is still the law in force, which law is stated in *Best on the Law of Evidence* in paragraph 511 as follows :—" The ground of exclusion of such evidence is that opinions, in so far as they may be founded on no evidence, or evidence not recognized by law, are worthless, and in so far as they may be founded on legal evidence, tend to usurp the functions of the Court and Jury, whose province alone it is to draw conclusions of law or fact. " I come now to the facts of this case. The case seems to me to have been starved of the necessary evidence. Mr. Brockwell, who gives evidence for the prosecution, says that when he was travelling in his car on the Galle road towards Fort, bus No. B 1605 overtook him near the Bagatelle corner and that the bus was travelling at a very excessive speed, which he estimated from his speedometer at over 30 miles per hour and that the bus was overloaded and rocking from side to side and that he thought an accident was inevitable. He further stated he overtook the bus and reported the incident to the police constable at the Turret road junction, but he admitted that the road was a broad one. The accused's case, which was supported by the evidence of a witness who happened to travel in the bus at the same time, was that he overtook two bullock carts near the Alfred House Gardens and that he gave a signal to the car that was behind him not to overtake him. The accused stated that this car behind him overtook him and that the driver used a certain expression and got ahead of him and reported him to the police constable. The Municipal Magistrate has accepted the evidence of Mr. Brockwell and disbelieved the evidence of the accused and his witness. He was in a better position to judge the evidence than I am, and I must therefore accept his finding ; but

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even here if full effect is given to the Magistrate's finding the accused is entitled to be acquitted, because Mr. Brockwell stated that he could not swear to the indentity of the accused. So that the Magistrate must at least have believed the accused when he said that he drove bus No. B 1605 in question. What are the elements which the Court considered to be dangerous on the evidence of Mr. Brockwell? They are the following :—

(1) That the bus was driven at over 30 miles an hour ;
(2) That the bus was swaying to and fro ;
(3) That the bus was badly overloaded ; and
(4) That he thought that an accident was inevitable.

As regards the excessive driving, Lord Reading C.J. stated in the case of *Beresford and another v. Richardson*[1] as follows :— "The contention before us is that that conviction was wrong because the evidence established only that the appellants were driving at a speed in excess of the limit allowed by article 7 of the Heavy Motor Car Order, 1904, and that there was no evidence they were driving in a manner which was dangerous to the public. In my opinion there is no substance in the point.

"If the case had merely been that the appellants were driving at a speed in excess of the limit allowed, there would be force in the argument ; but the Justices have found as facts, circumstances which enabled them to say that the driving was in a manner dangerous to the public. Here it is established that the portion of the road over which the appellants were driving at this excessive speed contained dangerous cross roads, and further, that there was a considerable amount of traffic, the day being a bank holiday, and consequently to drive at that rate was, in the circumstances, driving in a manner dangerous to the public. Therefore there was evidence on which the Justices could come to the conclusion at which they arrived." I commend this case to the notice of the police, because that case shows how a prosecution of this kind should be proved. In this case there is no evidence as to what traffic was actually on the road in question at the time or which could be reasonably expected to be there at any moment. There is a bare sentence in Mr. Brockwell's evidence that 9.15 A.M. is a very busy time in the morning. I shall refer to this point letter. As regards the second point, that the bus was rocking from side to side, what Mr. Brockwell meant was, as he explained later, not that the bus was swerving from side to side of the road or going in a zigzag direction, but that it was simply swaying to and fro. The fact that the bus was overloaded or that it was creaking or swaying from side to side may be the subject of a prosecution under other sections of the law, but they are not evidence that the bus was driven in a dangerous manner. As regards the fourth, that is mere

[1] *(1921) L. J. K. B. 313, vol. 90.*

opinion evidence, because Mr. Brockwell has not stated why he thought an accident was inevitable. The only ground on which I can affirm this conviction is the ground that, having regard to the road and the traffic that may be reasonably expected on it at that time, the fact that the bus was driven at nearly twice the authorized speed would be evidence of dangerous driving. It was a busy time, and it is a well known fact that the road at that place was widened recently to cope with the increased motor traffic. It is a fact of which I can take judicial cognizance that there are cross roads in the vicinity. Taking all these facts into consideration, I think I am justified in coming to the conclusion that driving the bus over 30 miles an hour at the point in question was dangerous driving. The evidence of Mr. Brockwell, that the car was going at over 30 miles, was not mere opinion evidence, but was evidence based on the reading of his speedometer. For these reasons I think that the conviction can be justified on the evidence on the record, although such evidence is so scanty as to have made me to hesitate at one time to affirm the conviction. I dismiss the accused's appeal.

Appeal dismissed.