

1936

*Present : Fernando A.J.***KANDANA POLICE v. EDMUND**526—*P. C. Gampaha, 39,823.*

Charge—Driving a motor car recklessly or in a dangerous manner—Convicted of driving negligently—Motor Car Ordinance, No. 20 of 1927, s. 57 (2) and (3).

Where a person is charged with driving a motor car recklessly or in a dangerous manner, under section 57 (2) of the Motor Car Ordinance, he may be convicted of driving negligently under section 57 (3) of the Ordinance.

¹ *31 N. L. R. 473.*² *L. R. (1924) 1 K. B. 256.*

A PPEAL from a conviction by the Police Magistrate of Gampaha.

de Jong, for accused, appellant.

September 22, 1936. FERNANDO A.J.—

The facts in this case present no difficulty. I see no reason to disagree with the finding of the learned Police Magistrate who accepted the evidence of Mr. Kalpage and his driver. Their evidence establishes the fact that the accused reversed his bus in a crowded road without giving any signal or warning beforehand.

Counsel for the appellant argues that the learned Magistrate was wrong in amending the charge against the accused from one under section 57 (2) of the Ordinance to a charge under section 57 (3). Section 57 (2) refers to a person driving a motor car recklessly or in a dangerous manner or at a dangerous speed, and section 57 (3) refers to a person driving a motor car negligently. The accused was charged under section 57 (2), but in his judgment the learned Magistrate convicted him of an offence under section 57 (3).

Section 182 of the Criminal Procedure Code enables a person to be convicted in a case where he is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of section 181. Section 183 provides that where a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

It seems to me that in this case the accused was charged with reckless or dangerous driving which is a major offence within the meaning of section 183 in as much as other particulars would be necessary to constitute that offence beyond mere negligence, whereas negligence alone would be sufficient to constitute an offence under section 57 (3). On the evidence recorded by the Magistrate it is clear to my mind that the accused did commit an offence under section 57 (3) of the Ordinance. I, therefore, affirm the conviction and sentence, and dismiss the appeal.

Affirmed.