

Present: Garvin A. C. J.

BYRDE v. PERERA.

293—P. C. Colombo, 19,664.

Motor car—Wilfully hindering free passage—Speed limit—Vehicle's Ordinance, No. 4 of 1916, s. 22, r. 27.

The accused, the driver of a motor car, while fully aware that the complainant who was following him wished to overtake him, kept the complainant back for a distance of over two miles and obstructed the free passage of his car.

Held, that the accused was guilty of wilfully hindering the free passage of a car in breach of rule 27 framed under section 22 of the Vehicles Ordinance.

A PPEAL from an acquittal from the Police Court of Colombo. The facts appear from the judgment.

Hayley, for complainant, appellant.

Sandarasegara, K.C. (with *de Jong*), for accused, respondent.

July 23, 1926. GARVIN A.C.J.—

This is an appeal from an acquittal with the sanction of the Solicitor-General. The charge against the accused is that he did on February 4 last on the Colombo-Avissawella high road wilfully hinder the free passage of a motor car No. C 6457 in breach of rule 27 framed under section 22 of Ordinance No. 4 of 1916.

The accused was the driver of a car which was proceeding along the road in the direction of Colombo. Near the 8th milepost from Colombo the complainant, who was proceeding in the same direction, observed the accused's car ahead of him travelling at a moderate speed. As the conditions did not in his judgment admit of his passing the accused's car, the complainant travelled for about one-sixth of a mile behind it. He then signified his desire to pass by sounding his horn. A passenger in the leading car turned round and noticed the approach of the complainant. Presently the accused himself looked round. It is not denied that the accused was aware of the approach of the complainant's car and of his desire to pass.

The accused immediately increased his speed and kept to the middle of the road. The complainant followed, sounding his horn. He tried repeatedly to pass the accused's car, but each time the accused moved to the right and obstructed his passage.

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The complainant states that the accused was not travelling at more than twenty miles an hour. This is not expressly denied, and is probably a correct estimate, since the accused himself says that the road was in a bad state and he was travelling as fast as he could considering its state.

The complainant says that they travelled thus till they reached a point about five and a half miles from Colombo. There the accused's car touched a cart which was proceeding in the opposite direction and he came to a halt. The complainant himself stopped, got out of his car, and asked accused whether he would even now let him pass. What further transpired between the parties is of no importance. What is material is that the accused went on and continued to hold the road till he stopped to drop his passenger about four miles from Colombo.

These facts show that the accused, who was fully aware that the complainant was following him and wished to pass him, kept him back while the two cars travelled a distance of about two and a half miles, and then after they had all come to a halt resumed the journey and obstructed the passage of the complainant till he had to stop to drop a passenger about one and a half mile further on.

Unless the accused is able to offer a sufficient explanation of these facts consistent with his innocence, the complainant must be held to have established that the accused wilfully hindered the free passage of his car.

It was urged that the conduct of the accused was justifiable on two grounds:—

- (1) That the road was in a state of disrepair, that there were metal heaps at intervals on the road, and that the conditions generally were such that it would have been dangerous to let the complainant pass.
- (2) That inasmuch as the accused was travelling at a speed, which, having regard to the state of the road, was as fast as one could reasonably travel, he was entitled to retain the advantages of travelling ahead of the complainant's car.

Where the state of the road and the conditions to traffic are such that in the honest judgment of the driver of the leading car it would be dangerous to let a car pass him he is not bound immediately to make way at all hazards. It cannot be said in such a case that it is wilful hindrance. But it is difficult to believe that on a road 25 to 30 feet wide it was not possible over a distance of four miles to let another car go past except at grave risk. I do not think the accused intended to convey the impression that over the whole of this distance no suitable opportunity to let the complainant pass him presented itself. It is the second of these grounds which was mainly relied on by counsel for the respondent in justification of the conduct of the accused. Let it be assumed that the accused was

travelling at a speed of approximately twenty miles an hour, which, having regard to the state of the road, was in his judgment the utmost speed at which a motor car should travel.

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He was entitled to regulate his own actions by the opinion he had formed and travel well within the limits of speed prescribed by the law. But the law does not vest any user of the road with the right to determine, not only for himself, but for all those who happen to be travelling behind him at what speed they should travel and to enforce his judgment by obstructing their free passage. The assumption that such a right exists is wholly fallacious. In cross-examination the complainant admitted that he did not like dust. It might have been taken for granted that the complainant did not like dust any more than the accused or any other user of the road. But so long as the complainant was prepared to travel at a greater speed he was entitled to a free passage, even if his only reason for doing so was to avoid the dust from the accused's car. There is some indication that the accused's reluctance to let the complainant's car pass proceeded from a fear that having gained the advantage he would moderate his speed and leave the accused to travel in the dust thrown up by his car. Had the complainant acted in that manner the accused would not have been left without remedy under the law. But the case did not arise, and there is no reason to suppose that the complainant would have behaved with such gross discourtesy.

The use of the road is free to all. Each individual is entitled, within the limits prescribed by the law and with due recognition of the rights of others, to the fullest enjoyment of that privilege. Any person exceeding the speed limit, or within that limit infringing any of the provisions which the law has made for the regulation of traffic or the safety or convenience of the public, must be dealt with as provided by law. The co-operation of the public is essential to the due and efficient administration of these regulations. But this does not vest every individual with a right to obstruct, restrain, or prevent the free use of the road by another, even when in his judgment such use amounts to an infringement of any of these regulations. The remedy is prosecution in a Court of law.

That the accused obstructed the complainant and hindered the free passage of his car is beyond question, nor is there any doubt that he did so wilfully.

I allowed the appeal, set aside the acquittal, and convict the accused. But he is entitled to the benefit of the Magistrate's finding on the facts. Those findings tend to show that he acted in an erroneous belief as to his rights. Under the circumstances a fine of Rs. 10 will meet the justice of the case. The imprisonment in default of payment of the fine will be one week simple.

Appeal allowed.