

Y. A. Bazeer and others v. Perera

COURT OF APPEAL.

RATWATTE, J., AND ATUKORALE, J.

C.A. (S.C.) 458—468/76—M.C. ANURADHAPURA NO. 58498.

NOVEMBER 7, 1979.

Criminal Procedure—Fauna and Flora Protection Ordinance (Cap. 469), sections 2, 5 (1), 10, 72 (1)—Charge sheet specifying wrong Gazette setting out boundaries of National Park—Correct Gazette not produced—Evidence Ordinance, section 57.

The accused-appellants were charged with unlawfully entering the limits of the Wilpattu National Park as specified in *Government Gazette* No. 14,860 dated 27.6.69. This particular Gazette does not specify the limits of the Wilpattu National Park but of an area called Wilpattu East Intermediate Zone which is also a National Park. No other Gazette was produced.

Held

(1) The fact that a wrong Gazette was mentioned in the charge sheet was a defect which alone was sufficient to vitiate the conviction.

(2) Oral evidence of the contents of a Gazette, in the absence of the Gazette itself is insufficient to establish the existence of or the boundaries of the National Park. Hence, the relevant Gazette containing the Minister's Order pertaining thereto must be produced in evidence; and the failure to do so is fatal to the prosecution case.

APPEAL from the Magistrate's Court, Anuradhapura.

E. R. S. R. Coomaraswamy, with *M. L. M. Ameen, Dudley Fernando* and *A. M. M. S. Abdul Cader*, for the appellants.
Sarath de Abrew, State Counsel, for the respondent.

Cur. adv. vult.

December 7, 1979.

ATUKORALE, J.

The appellants were charged on two counts under the Fauna and Flora Protection Ordinance (Chapter 469—1966 Supplement Vol. 1, page 9). After trial they were found guilty on the first count and sentenced to pay the maximum fine of Rs. 500 each. They were acquitted on the second count. The present appeal is against their conviction and sentence on the first count.

On the first count they were charged with having acted in contravention of the provisions of section 5(1) of the Fauna and Flora Protection Ordinance by jointly and unlawfully entering the limits of the Wilpattu National Park as specified in *Government Gazette* No. 14,860 dated 27.6.1969 and having thereby committed an offence punishable under section 10 of the said Ordinance.

Mr. Coomaraswamy, learned counsel for the appellant, has during the course of his submissions referred us to this *Government Gazette*. His contention was that this Gazette does not specify the limits of the Wilpattu National Park and that the

conviction cannot therefore stand. A perusal of this Gazette shows that it contains the following Order made by the Minister of State :

“ With effect from the date on which this Order is published in the Gazette—(1) the limits of the Wilpattu East Intermediate Zone defined in the Schedule to the Order published in Gazette No. 10,357 of February 22, 1952, shall be altered by the substitution for such limits, of the limits set out in the Schedule hereto ; and

(2) the Wilpattu East Intermediate Zone shall be a National Park.”

It then proceeds to set out in the Schedule the boundaries of the Wilpattu East Intermediate Zone, a part of the western boundary of which is defined as “ the eastern and part of northern boundaries of the Wilpattu National Park.” It is thus very clear that this Order sets out the boundaries not of the Wilpattu National Park but of the National Park called the Wilpattu East Intermediate Zone. I am of opinion that this defect alone would vitiate the conviction of the appellants.

Learned counsel for the appellants also submitted that the failure of the prosecution to produce the Gazette referred to in the first count is by itself fatal to this conviction. He submitted that oral evidence in the absence of the Gazette is insufficient to establish the existence or the boundaries of the National Park. I am inclined to agree with this submission. Section 5(1) of the Ordinance prohibits any person from entering or remaining within any National Park except under the authority and in accordance with the conditions of a permit issued by the prescribed officer. Section 72(1) defines “ National Park ” to mean a National Park constituted by Order under section 2(1). Section 2(1) empowers the Minister by Order published in the Gazette to declare that the whole or any specified part of a National Reserve to be a National Park. Section 2(4) empowers the Minister by Order published in the Gazette to alter or vary the limits of a National Park as from a specified date. It is thus clear that the constitution of a National Park must be by Order of the Minister published in the Gazette. This Order would define the boundaries of the Park. Hence to establish the existence and the boundaries of a particular National Park the relevant Gazette containing the Minister's Order appertaining thereto must be produced in evidence. Oral evidence of the contents of the Order is inadmissible. Nor does the Order fall into any of the classes of documents enumerated in section 57 of the Evidence Ordinance of which the court is bound to take judicial notice.

It is thus incumbent on the prosecution to produce the Gazette in evidence at the trial. No doubt this may sometimes cause hardship and difficulties to officers entrusted with these prosecutions. But these cannot be permitted to override the interests of justice. For the above reasons I quash the convictions and the sentences imposed by the learned Magistrate and acquit the appellants.

RATWATTE, J.—I agree.

Convictions quashed.

G. G. Ponnambalam, Jnr.,
Attorney-at-law.
