

1932

Present : Jayewardene A.J.

HERATH *v.* RAJAPAKSE.239—*P. C. Panadure, 13,041.*

*Public servant—Threat of injury—Must be calculated to deter from duty—  
Penal Code, s. 186.*

A threat of injury to a public servant within the meaning of section 186 of the Penal Code must be of coming injury such as is likely to operate on the mind to cause the public servant to do, or forbear or delay doing an act connected with the exercise of his public functions.

**A** PPEAL from a conviction by the Police Magistrate of Panadure.

*H. V. Perera* (with him *M. T. de S. Ameresekere*), for accused-appellant.

July 5, 1932. JAYEWARDENE A.J.—

The accused, who is a resident of Katunayaka near Negombo, on February 1, 1932, had gone on a visit, probably of inspection, to his estate at Ambalangoda, about 83 miles away. On his way to the estate he was held up at about 8 A.M. by the Kalutara Police near the Kalutara bridge and asked for his new licence for the year 1932. He had only his old licence and was charged with failing to renew his licence for 1932, in the Kalutara Police Court, but has been discharged. On his return journey at about 2 P.M., he was stopped at Wadduwa, a few miles from the Kalutara bridge, and again questioned by the Sub-Inspector of Police, Panadure, the complainant. The accused seems to have been angry and told the complainant that his car had already been trapped at Kalutara. He did not give his name and address till he was asked three times. As he was going off he said, addressing the Sub-Inspector, "You rascal, wait and see what I would do to you." In respect of this language three charges have been framed against the accused, namely:—

First, that he held out a threat of injury to a public servant to deter him from doing his duty, under section 186.

Second, for insult under section 484.

Third, for criminal intimidation under section 486.

Towards the end of his cross-examination, the complainant said that the accused raised his fist towards him as he used the words. In this he is not supported by his witness, the Excise Inspector. The Magistrate convicted on all three counts but fined him Rs. 5 on the first and second counts and passed no sentence on the third as it was included in the first count.

On a charge of threat of injury to a public servant it is necessary to prove that the threats were really calculated to cause the person to whom they were held out to act otherwise than he would have done of his own free will. What the section deals with are menaces which would have a tendency to induce the public servant to alter his action because of some possible injury to himself. *Rex v. Amirkhan*<sup>1</sup>. The word threat should not be narrowly construed as meaning a mere effusion of passion unattended with any fixed purpose of doing harm. [1 *Gour.* 1032 (4th Edition).] The threat must be of coming injury such as is likely to operate on the mind of the public servant and to cause him to do or forbear, or delay doing any act, connected with the exercise of his public functions. The complainant in the present case has not been threatened into inaction. On the very next day he charged the accused in the Police Court. I do not think that the words used by the accused were intended or calculated to influence the complainant in any way. On the contrary, their effect is best appreciated by the prosecution which has resulted in this appeal. His mind was steeled to further action.

The charge of insult is not sustainable. It must appear from the words used and having regard to the person to whom they were addressed that the accused intended or knew that it would be likely to cause him to break the peace or commit some other offence. *Rahaman v. Perera*<sup>2</sup>, *Waas v. Samarasinghe*<sup>3</sup>, *P. C. Negombo*, 74,620<sup>4</sup>.

Lord Ellenborough C.J. observed in *Rex v. Southerton*<sup>5</sup> "To make it indictable, the threat must be of such a nature as is calculated to overcome a firm and prudent man".

The learned Police Magistrate says that the complainant is a new recruit to the Sub-Inspector's line, and hence the words used and the threat cannot be considered as mere verbal abuse or an empty threat, but might have had the effect of preventing him from prosecuting the accused for failing to renew his licence for 1932, and as the complainant is quite young he thinks that the abusive word "rascal" might have made this Police Officer commit a breach of the peace, as it was uttered in the presence of his subordinate, a constable.

I cannot agree with this somewhat novel view. The Sub-Inspector may be a raw recruit. The accused, who was a passerby in a car, could not know that and even if he did, a Sub-Inspector would be a firm and prudent man, in the language of Lord Ellenborough, who would not be likely to commit a breach of the peace, nor has he been threatened into inaction.

<sup>1</sup> (1886) *Unreported Cr. C.* 273  
[*Ratnalal*, p. 240 (4th ed.)].  
<sup>2</sup> 10 *C. L. R.* 160.

<sup>3,3</sup> *Weer.* 80.  
<sup>4</sup> *S. C. M.* 17 v. 32.  
<sup>5</sup> 6 *East.* 126.

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The Magistrate observes that the accused who had been held up by the Kalutara Police in the morning for the same purpose, and had travelled a long distance in visiting his estate, "lost his temper a bit". I agree with the Magistrate that the accused should not have lost his temper. There is no law, however, making a mere effusion of temper punishable. The very extravagance of the language in the circumstances was a clear indication of its hallowness. In my view there was neither a serious threat nor criminal abuse. The complainant has not suffered a moment's anxiety or mental anguish by the threatened injury. The conviction is set aside and the accused acquitted.

*Set aside.*

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