1956 *Present :* Sansoni, J.

EDWIN SINGHO, Appellant, *and* S. I. POLICE, KADAWATTA, Respondent

S. C. 171—M. C. Gampaha, 24,378

Charge—Alternative charge—Duplicity—Particulars of offence—Motor Traffic Act No. 14 of 1951, ss. 153 (2), 153 (3), 219 (1), 219 (2)—Criminal Procedure Code s. 169.

The accused was charged and convicted on two counts, viz., (1) with having driven a motor bus recklessly or in a dangerous manner or at a dangerous speed, in breach of section 153 (2) of the Motor Traffic Act, (2) with having driven the same bus negligently or without reasonable consideration for other persons using the highway, in breach of section 153 (3) of the Motor Traffic Act.

Held, that the charges framed in the alternative were bad for duplicity.

SANSONI, J.—" I think the matter goes beyond the question of the accused being prejudiced by having to face a count which involves many different offences framed in the alternative : the more important consideration is that it is not clear, upon a conviction or an acquittal, of what offence he has been found guilty or acquitted. "

Held further, that, under section 169 of the Criminal Procedure Code, particulars setting out the details of each offence should have been mentioned in the charge.

APPEAL from a judgment of the Magistrate's Court, Gampaha.

Frederick W. Obeyesekere, for the accused-appellant.

L. H. de Alwis, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 6, 1956. SANSONI, J.—

The accused-appellant was charged on two counts :

1. That he " did on 16th April, 1955, at Kadawatta, being the driver of bus Z 6730, on a highway, to wit, the Colombo-Kandy road drive the said motor bus recklessly or in a dangerous manner or at a dangerous speed in breach of S. 153 (2) of the Motor Traffic Act No. 14 of 1951, and thereby committed an offence punishable under S. 219 (1) of the said Act.

2. At the same time and place aforesaid .... drive the said bus .... negligently or without reasonable consideration for other persons using the highway in breach of S. 153 (3) of the said Act, and thereby committed an offence punishable under S. 219 (2) of the said Act."

After trial the learned Magistrate convicted the accused on both counts and fined him Rs. 100 on the first count and Rs. 50 on the second count.

The chief witness for the prosecution said that when he had halted his car near the 14th milepost on the Colombo-Kandy road behind another car, the accused's bus came from behind him, flashed past him, overtook both cars and proceeded : at that time a lorry came from the opposite direction and the lorry driver had to swerve to his left to avoid a collision with the accused's bus. The witness further said that he followed the bus, driving at about 40 to 45 m.p.h., and was just able to get close enough to note the number of the bus.

The next incident which the same witness spoke to seems to have happened about three miles from where the first incident took place. The accused's bus overtook another vehicle while a car was coming from the opposite direction. The driver of that car had to drive on to the grass verge in order to avoid a collision. The witness complained at the Kadawatta Police Station, which is between the 9th and 10th mileposts.

Another witness called for the prosecution spoke to a third incident. He said that when he was standing outside his house, which is about 1/4 mile on the Colombo side of the Kadawatta Police Station, he saw this bus being driven very fast round a bend.

The accused gave evidence on his own behalf. He said that the 14th milepost is at Imbulgoda while Kadawatta is at the 10th milepost. He also said that he had been driving buses for eighteen years and had never been convicted of any offence. He was definitely of the view that this particular bus was so old that it could not be driven at more than 20 to 25 m.p.h., and if it was driven faster it " will come out in pieces "—to use his own words.

The learned Magistrate has accepted the evidence of the chief witness called for the prosecution, in preference to that given by the accused. He rejected the evidence of the other prosecution witness. I see no reason to interfere with his findings on the questions of fact.

Mr. Obeyesekera raised certain legal objections to the charge itself. He submitted

1. that the charges which were framed in the alternative were bad ;

2. that no particulars were furnished ;

3. that the place of the alleged offences was wrongly set out in the charge.

With regard to the first objection, it is clear that the charges framed in the alternative are bad for duplicity. The first count is in respect of three different offences, while the second count is in respect of two different offences. It was held in *Police Sergeant, Lindula v. Stewart* [1] and in *S. I., Police, Dehiowita v. K. N. Perera* [2] by Jayewardena, A.J., that charges similar to the one in question were bad for duplicity, but he held that the irregularity may be cured under S. 425 of the Criminal Procedure Code if the accused has not been prejudiced. In the later case of *Pakir Saibo v. Nayar* [3], Wijeyewardene, J., also dealt with a case of duplicity, but did not say whether such duplicity was fatal. On the other hand, Schneider, A.J., in *Abeyasuriya v. Jayasekera* [4] seems to have been of the opinion that a charge which included several distinct offences was illegal.

In England the Court of Criminal Appeal has consistently quashed a conviction which followed upon a charge which was bad for duplicity. In *R. v. Wilmot* [5] the accused was convicted on a count in an indictment which charged him with having driven a motor vehicle " recklessly or at a speed or in a manner which was dangerous to the public having regard to all the circumstances of the case ". In appeal, the objection was taken that the count was bad for duplicity. In upholding the objection and quashing the conviction Lord Hewart, L.C.J., followed the decision in *R. v. Surrey Justices, ex parte Witherick* [6] where a conviction of an accused charged with having driven a motor vehicle " without due care and attention or without reasonable consideration for other persons using the road " was quashed. The *ratio decidendi* was set out in the judgment of Avory, J., who said : " It is an elementary principle that an information must not charge offences in the alternative, since the defendant cannot then know with precision with what he is charged and of what he is convicted and may be prevented on a future occasion from pleading autrefois convict ". Lord Hewart in the later case said that there is a duty cast on the Court in the interests of justice to quash the conviction in such a case even though the point was not taken at the trial.

In my view the conviction of the accused in this case should be set aside on this objection alone. I think the matter goes beyond the question of the accused being prejudiced by having to face a count which involves many different offences framed in the alternative : the more important consideration is that it is not clear, upon a conviction or an acquittal, of what offence he has been found guilty or acquitted.

With regard to the second objection taken by Mr. Obeysekera, I think this is a case where particulars setting out the details of each offence should have been mentioned in the charge. The need for this was all the greater because the prosecution led evidence of three separate incidents at three different places on this highway, and in fairness to the accused he should

[1] *(1923) 25 N. L. R. 166.*
[2] *(1926) 27 N. L. R. 511.*
[3] *(1940) 42 N. L. R. 151.*
[4] *(1921) 22 N. L. R. 380.*
[5] *(1933) 24 Cr. App. R. 63.*
[6] *(1932) 1 K. B. 450.*

have been given " particulars of the manner in which the alleged offences were committed " under S. 169 of the Criminal Procedure Code. The failure to do so has, in my opinion, occasioned a failure of justice. As a matter of practice such particulars are always stated in indictments and I have no doubt they are often stated in charges framed in Magistrate's Courts ; see, for instance, *Lourensz v. Tyramuttú* [1].

The third objection taken on behalf of the accused is in a manner connected with the second objection. In both counts the place of offence is mentioned as Kadawatta. The evidence disclosed that the prosecution was relying on acts of bad driving at three different places, only the last of which appears to have been Kadawatta itself. No indication of this was given to the accused, who may well have been misled as to the case which the prosecution intended to present against him. He was entitled to sufficient notice of that case, and such particulars as to the place of the offence as were given were inadequate if not misleading.

For these reasons I set aside the conviction of the accused and acquit him.

Conviction set aside.