

1947

Present : Wijeyewardene S.P.J.

DE SARAM, Appellant, and KELLY (Inspector of Police),
Respondent.

S. C. 126—M. C., Colombo, 87,435.

*Motor car—Failure to give signal—Visible to drivers of vehicles concerned—
Motor Car Ordinance, s. 91.*

A person cannot be convicted of having failed to give a signal under section 91 of the Motor Car Ordinance, No. 45 of 1938, unless there is evidence that there were vehicles on the road which were concerned in the accused giving the signal.

A PPEAL against a conviction from the Magistrate's Court. Colombo.

A. H. C. de Silva, for the accused, appellant.

Boyd Jayasuriya, C.C., for the Attorney-General.

July 14, 1947. WIJEYWARDENE S.P.J.—

The accused in this case was charged with (1) having failed to give a signal under section 91 of the Motor Car Ordinance, No. 45 of 1938, and (2) with driving a car with an indistinct front number plate.

The Magistrate acquitted the accused on the second count, found him guilty on the first count and discharged him with a warning.

The accused has filed a petition of appeal and also papers in revision. The evidence for the prosecution was given by a Sub-Inspector and a Police Constable. The Sub-Inspector said that he was standing on the pavement at Darley Road—Slave Island junction near Hyde Park Corner,

and that the accused "failed to extend his right arm indicating his intention to turn right into Darley Road". He said that the figure "5" of the No. 4573 was defaced and the other figures partially "worn off". He added that the car was travelling at about 25 miles per hour and denied that there was any incident between him and the accused after he gave the signal to the accused to halt. He admitted however in cross-examination that the accused had made a complaint against him and added that he believed it was done on the same day.

The constable supported the Sub-Inspector and said that the accused did not give a signal. He said however that only the figure "5" of the number was worn off. His statement that the accused did not give a signal must be looked at in the light of his subsequent statement that "the Inspector detected this case and not I". If that means anything it means that he did not detect the failure of the accused to give the signal. He contradicted the Inspector and thereby supported the accused in stating that "the accused and last witness passed words. They were arguing for about 5 minutes". He again contradicted the Inspector when he said that the accused was driving at about 10 to 15 miles per hour, as stated by the accused himself. He further admitted in cross-examination "except for the figure 5 the rest of the number plate was all right".

The accused himself gave evidence. He has been driving cars from 1930 and has never been convicted of any motoring offence. He says that he gave the signal to show that he intended to turn to Darley Road. He says there was a military lorry about 15 feet ahead of him when he was coming down Union Place. The presence of the lorry might perhaps account for the failure of the Inspector to notice the signal given by the accused especially as the Inspector was standing on the pavement on the left hand side.

As pointed out by me the constable contradicts the Inspector on more than one point. If the constable is to be believed, and no reason is suggested why the constable should not be believed, the Inspector has not been frank in his evidence with regard to the incident that happened immediately after and the Inspector has also given a wrong estimate of the speed of the accused's car. On the other hand I do not see any reason why the evidence of the accused should not be accepted. He states that he gave the signal. It is quite possible that the Inspector did not see the signal. Moreover, under section 91, the driver of the car is expected to give a signal to be visible to "the drivers of all vehicles concerned". According to the Inspector there was no traffic immediately in front of the car. He says there was traffic behind the accused's car but adds "I was not interested in that traffic". This evidence leaves me in some doubt whether there was any vehicle on the road "concerned" in the accused giving the signal.

Taking all these circumstances into consideration I acquit the accused.

Accused acquitted.