1957 *Present :* **T. S. Fernando, J.**

JUSTIN PERERA and others, Appellants, *and* P. B. RATNAYAKE (Inspector of Police), Respondent

S. C. 1,123—1,135—M. C. Colombo South, 75,832

Wrongful restraint—Ingredients of offence—Must obstruction be to a person only ? — Obstruction of vehicle while it is being driven—Culpability—Penal Code, s. 330.

Obstruction of a vehicle when it is being driven by a man can amount to wrongful restraint of that man within the meaning of section 330 of the Penal Code. In such a case the fact that the man is allowed to go unmolested provided that he does not attempt to take the vehicle with him is immaterial.

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

M. M. Kumarakulasingham, with *D. R. P. Goonetilleke*, for the accused-appellants.

K. V. S. Shanmuganathan, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 14, 1957. T. S. FERNANDO, J.—

The appellants (thirteen of them) were convicted in the Magistrate's Court on two charges. The first charge alleged that they were members of an unlawful assembly, the common object of which was wrongfully to restrain one Albert Silva from proceeding from the premises of a garage of a bus company driving a bus of that company on to the main road outside the garage. The second charge alleged that in prosecution of the said common object they committed the offence of wrongfully restraining Albert Silva in the manner alleged in the unlawful assembly charge.

The facts alleged in the evidence led by the prosecution were not disputed by the defence. The appellants were on the day in question either employees, ex-employees or sympathisers of the employees of the bus company referred to above. It would appear that, without any previous warning to the company, most of its employees had struck work and had assembled early morning outside the gate of the garage premises. It is quite unnecessary for the purpose of this appeal to go into the causes which led to the strike. The management of the bus company, being thus deprived of the services of most of their drivers and conductors, had requested Albert Silva, one of their employees who had not joined the strike, to drive bus No. IC 1510, one of its buses, out of the garage

and on to the road preparatory to commencing their daily passenger service. This was the first of the buses lined up for transport of passengers that day, and the evidence shows that there were about thirteen other buses behind it manned by non-strikers and ready to be driven off. It is not contested by the defence that driving off became impossible as a result of the appellants, and possibly a few others who have not been charged in this case, jumping in front of the leading bus IC 1510 as it emerged out of the gate on to the space outside and before it could reach the tarred portion of the road. Having jumped forward, the appellants and the others either sat down or reclined on the ground in front of this bus, and some of the appellants declared or announced that Albert Silva would not be permitted to get on to the road driving that bus and they even challenged him to attempt to drive off by running over them. The obstruction thus offered to Albert Silva driving off was admitted in an unusually candid statement made in the witness-box by the 12th accused-appellant who testified that the object of the appellants was to prevent the buses of the company concerned leaving the garage on the day in question and that it was their intention not to allow a single bus to leave the premises. Albert Silva was held up in this way from about 5.15 a.m. till 2.45 p.m. when police officers arrested the appellants and led them away to the police station, incidentally removing the obstruction to the passage of the buses of this bus company.

The only point raised against the conviction is one of law and is formulated in the manner set out below. It is urged that, as the obstruction caused was to Albert Silva driving off in the bus and as Albert Silva was free to get out by himself without attempting to take the bus with him, no offence of wrongful restraint was committed. It is contended that the essence of the offence is that the obstruction alleged shall be to *a person*, and it is argued that here no obstruction was caused or even intended to be caused to Albert Silva proceeding out of the gate on to the road by himself. It would appear that a similar point has been raised successfully in certain High Courts of India, but it must be noted that Indian Courts have not taken a uniform view on this point. I shall refer later to a few of the Indian decisions which have definitely rejected the point as unsustainable.

While it is correct that the offence of " wrongful restraint " is included in our Penal Code in the group of " *Offences Affecting the Human Body* " (Chapter XVI), the definition of the offence in section 330 :—

> " Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed is said ' wrongfully to restrain ' that person. "

itself appears to throw some light on the question of law that has been raised. Is not a person prevented from proceeding in a direction in which that person *has a right to proceed* when he is not permitted to proceed armed or equipped or even encumbered with anything with which he may lawfully be armed, equipped or encumbered ? If it is lawful, for instance, for a person to lead his dog along the road, is he not being wrongfully restrained within the meaning of section 330 when obstruction

is offered to his so leading the dog, although it is made clear to him that he would be allowed to proceed if the dog is not brought along with him ? I should myself have thought that the question does not admit of serious argument had it not been earnestly raised by Mr. Kumarakulasingham who contended that the state of the decisions both here and in India left the question in some doubt.

Such examination as I have been able to undertake of the state of the decisions in Indian Courts on the interpretation of section 339 of the Indian Penal Code (which is in exactly the same terms as section 330 of our Code) confirms the opinion that first commended itself to me that the question must be answered against the appellants. In *Emperor v. Lahanu* [1], a case where there was an obstruction to the complainant proceeding with his bullocks in a direction in which he had a right to proceed, Fawcett J., also dealing with the argument that obstruction must be *to a person*, made the following observations which are very pertinent to the question I have formulated above in respect of a man leading his dog along a road :—

> " On the other hand, this view of personal obstruction must obviously have some limits. Suppose A wants to proceed in a certain direction with a pair of boots on, and B says : ' I will not allow you to do this. You must take your boots off and go without them if you want to proceed. ' If B has no right to say that A cannot wear his boots while proceeding, surely there is wrongful restraint falling within the definition in section 339, Indian Penal Code. Again, supposing A has a stick or box with him and B wrongfully prevents him taking it with him, would not this be wrongful restraint ? And similarly, if A is wrongfully prevented from taking a bicycle with him, or riding it, on his way to a place, I can see no adequate ground for the view that there is no wrongful restraint if B is willing to let him proceed without his bicycle. The circumstances of the case must, in my opinion, be considered, and if the obstruction to A's taking a thing with him amounts to obstructing A himself from going in a manner he has a right to go, I think there is wrongful restraint. "

I would take the liberty of adopting respectfully the observations of Fawcett J. reproduced by me above and state that the offence does not cease to be an offence of obstruction *to the person* because the obstruction offered is to the person proceeding armed, equipped or encumbered with something with which he is lawfully entitled to be armed, equipped or encumbered and no obstruction is offered to the same person proceeding after shedding or leaving behind such arms, equipment or encumbrance. This point appears to me to be well brought out in the following comment on section 339 of the Indian Penal Code contained in Ratanlal and Thakore : The Law of Crimes (19th edition), at page 844 :—

> " The slightest *unlawful* obstruction to the liberty of the subject to go when and where he likes to go, *provided he does so in a lawful manner*, cannot be justified, and is punishable under this section. "

[1] *(1926) A. I. R. (Bomb.) 118.*

Mr. Kumarakulasingham cited two Ceylon decisions on the interpretation to be placed on section 330 and appeared to me to contend that the two Judges who heard these two appeals had taken contradictory views as to the meaning of the section. In the earlier of these two cases, *Herath v. William Silva* [1], in which the facts were that the accused was seated in the middle of the road and, as a motor lorry approached, got up and walked backwards so that the driver of the lorry could not proceed without running over him, Lyall-Grant J., in holding that the accused was guilty of the offence of wrongful restraint, stated :—

> " The accused put an actual physical obstruction in the way of the lorry, namely, the obstruction of his own body. The mere fact that physically the person obstructed might have been able to overcome the obstruction does not seem to me to alter the nature of the accused's act. The complainant could not have overcome the obstruction except by running the accused down, which would have been a criminal act. An act by one person which prevents another from proceeding in a direction in which he has a right to proceed, unless the latter chooses to commit a criminal act, seems to me to amount to wrongful restraint. "

I would respectfully agree with the statement of law contained in the above citation, and in that view of the matter it seems to me that there is no room for the argument that the appellants were not rightfully convicted.

I do not consider that there is anything stated in the course of the judgment of Moseley J. in the later case of *Jayasekera v. Appu* [2] which is of any assistance to the appellants. An examination of the facts of that case will reveal that there was no actual obstruction of any person at all. The obstruction complained of consisted merely of the cutting of a drain across a cartway. There was not even any evidence that any person actually attempted to take a cart across or indeed tried to go over the cartway and found that he could not do so by reason of the existence of the drain. In truth, such observations on the law as appear in the judgment of Moseley J. are against the view contended for by Mr. Kumarakulasingham. After stating that the essence of the offence is that the obstruction alleged shall be to a person—which is really no more than a reproduction of part of the definition of the offence—Moseley J. states " Obstruction of a vehicle alone (*when no men are obstructed*) cannot amount to wrongful restraint ". It would therefore almost appear that had it been necessary in that case the learned judge would have been prepared to say that obstruction of a vehicle when it is being driven by a man can amount to wrongful restraint of that man.

It is hardly necessary in the circumstances to enter upon a further discussion of the question, but it may perhaps be useful to refer to certain dicta contained in two fairly recent decisions of the Madras High Court.

[1] *(1918) 30 N. L. R. 376.*

[2] *(1941) 43 N. L. R. 260.*

In *Gopala Reddi v. Lakshmi Reddi* [1], where a person driving a cart along a path in front of the house of the accused was obstructed by the latter, Happell J. observed that he was " unable to see why the voluntary obstruction of a vehicle in which persons were travelling should not amount to the wrongful restraint of the persons in the vehicle. The fact that the person or persons may get down and then be left at liberty to proceed on their way unmolested seems to me immaterial ". The limits to which argument can be stretched are illustrated in the remarks quoted below from the judgment in the case of *In re Abraham* [2] where the act of the accused which constituted the wrongful restraint was the placing of a bus across a road in such a way as to prevent another bus from proceeding in the direction in which it was intended to be driven :—

> " It is absurd to say that because the driver and the passengers of the other bus could have got down from that bus and walked away in different directions, or even gone in that bus to a different destination in the reverse direction, there was therefore no wrongful restraint. Such a contention will make ' wrongful restraint ' under the Penal Code infructuous and meaningless. Proceeding in any direction must only mean proceeding in that direction and not in any other direction, much less in the reverse direction ."

As I have already indicated, the question of law raised on behalf of the appellants fails and the convictions must be affirmed.

On the question of punishment, the appellants have been sentenced to undergo a term of six months' rigorous imprisonment on each of the two counts, the sentences to run concurrently. In passing what appears to be a severe sentence on persons who have all hitherto been of good character, the learned Magistrate has stated that there can be no question of clemency in a case of this type. It must not be overlooked that the appellants were unarmed and the evidence discloses that they were indulging in some kind of protest at the buses being manned that day by persons who had not joined the strike and who were not the recognised drivers and conductors of the company. It may even be that in obstructing the new and obviously temporary drivers the appellants were acting under a misconception as to the law. The strike, such as it was, was of but eight hours' duration at the time the appellants were arrested and negotiations for a settlement of the strike were in progress from early morning till the time of arrest. In all the circumstances it seems to me that the facts do not call for the infliction of punishment of an exemplary nature. I would therefore set aside the sentences of imprisonment passed on the appellants and direct that each of them do pay a fine of Rs. 25 (and in default of payment of each fine undergo rigorous imprisonment for two weeks) on each count, making an aggregate fine of Rs. 50.

Convictions affirmed.
Sentences reduced.

[1] *(1947) A. I. R. (Mad.) at 125.*

[2] *(1950) A. I. R. (Mad.) at 234.*