

## APPELLATE CRIMINAL.

*Before Mr. Justice Mosely.*THE KING *v.* BAS DEO AND ANOTHER.\*1939  
Oct. 10.*Rash and negligent act—Two men riding a bicycle on a public way—Likelihood of injury being caused to others—Penal Code, s. 279.*

It is a negligent act to carry any second person, whatever his age, build or weight, on a bicycle who is liable to change his position or fall off, if this is done on a public way where there is other traffic. Such an act is likely to cause injury to others.

*Myint Thein* (Government Advocate) for the Crown.

MOSELY, J.—This is an appeal by the Government of Burma against the acquittal of the two respondents for an offence under section 279 of the Penal Code.

The respondent Bas Deo was found riding a bicycle at 11-20 in the morning at the corner of Fraser Street and China Street, a crowded corner, and the accused Ramnad was found sitting on the pillion,—presumably sitting sideways as usual. It would make no difference, however, in my opinion, if he was sitting astride.

The respondents were charged with riding a bicycle in a rash or negligent way so as to endanger human life or be likely to cause hurt or injury to any other person, an offence punishable under section 279 of the Penal Code.

The majority of the prosecution witnesses said that the rider was not able to control the bicycle properly.

The two accused are young men of usual weight and build. I have no doubt that for a man to ride pillion on an ordinary bicycle in a crowded street is a negligent act which is likely to cause injury to the other persons and vehicles there : the reason is that with such a big load the bicycle cannot be propelled quickly nor

\* Criminal Appeal No. 812 of 1939 from the order of the 3rd Additional Magistrate of Rangoon in Criminal Summary Trial No. 710 of 1939.

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get out of the way of other traffic quickly, and if any emergency occurs the man sitting on the pillion is likely to shift his balance, and so the more prevent the rider from getting out of the way quickly. If the rider stops suddenly the man on the pillion is likely to fall off.

It is quite unnecessary in such a case to consider what is the maximum load that a bicycle can safely carry; all that need be said in this particular case is that this particular act was negligent and likely to cause injury to others. But I would go further also and say that it would be a negligent act to carry any second person (whatever his age, build or weight) on a bicycle, who is liable to change his position or fall off, if this is done on a public way where there is other traffic.

In appeal the order of acquittal will be set aside, and the appellants convicted of an offence under section 279 of the Penal Code. As this is a test case I propose to inflict a light penalty. Under section 562 (1-A) of the Criminal Procedure Code the accused will be released after due admonition. Their bail bonds will be cancelled.