

REVISIONAL CRIMINAL.

Before Shadi Lal C. J.

ABDUL RAHMAN (CONVICT) Petitioner

versus

THE CROWN—Respondent.

1933

Dec. 21.

Criminal Revision No. 1304 of 1933.

Criminal Procedure Code, Act V of 1898, Section 263, Clauses (f) and (h)—Summary Trial—Record of proceedings—what it must shew.

Held, that the provisions of Section 263 of the Code of Criminal Procedure must be fully and strictly carried out, so as to enable the Judges of the Revisional Court to say whether the law has been complied with or not on the points to be recorded. Under Clause (f) the offence complained of and the offence proved must be shewn, and under Clause (h) the finding, and, in case of a conviction, a brief statement of the reasons therefor, must be recorded.

To describe the offence as "5 I. M. V. Act" is quite insufficient as Section 5 of the Indian Motor Vehicles Act (presumably meant) creates four distinct offences, and the nature of the offence, of which the accused has been found guilty, is not given. Equally insufficient is the bare remark "I believe the prosecution" under the heading *Finding*, which should have shewn that there was sufficient material before the Court to support the conviction.

Case law discussed.

Case reported by Mr. E. C. Marten, Additional Sessions Judge, Lahore, under Section 438, Criminal Procedure Code.

FEROZE-UD-DIN, for Petitioner.

Nemo, for Respondent.

The report of the Sessions Judge.

The facts of this case are as follows:—

The petitioner has been convicted under section 5 of the Indian Motor Vehicles Act and sentenced to Rs. 25 fine. He was tried by a Magistrate with sum-

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mary powers and the whole of the record of the proceedings in the lower Court consists merely of the following :—

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| (1) Serial No. | .. | .. | 149. |
| (2) Date of commission of offence.. | | | 23-5-1933. |
| (3) Date of trial | .. | .. | 23-5-1933. |
| (4) Name of complainant | .. | | Crown. |
| (5) Name and address of the accused | | | Abdul Rahman, son
of Allah Din, Bull
Road, Lahore. |
| (6) Description of the offence | .. | | 5, I. M. V. Act. |
| (7) Plea of the accused | .. | | Accused pleads not
guilty. |
| (8) Finding | .. | .. | I believe the prose-
cution. |
| (9) Judgment | .. | .. | Fined Rs. 25. |
| (10) Date of order | .. | .. | 23-5-1933. |

(Sd.) GHULAM HUSSAIN,
Magistrate, 1st Class, Lahore.

He has brought this petition for the revision of his conviction and sentence on a number of grounds of which I only propose to deal with one. It seems clear to me that the proceedings in the lower Court do not comply with the provisions of section 263 of the Criminal Procedure Code. Under para. (h) of the above section, the finding and, in the case of a conviction, a brief statement of the reasons therefor must be recorded. "I believe the prosecution" is a conclusion not a reason. From the record I am entirely unable to tell in what way the petitioner has offended against section 5 of the Indian Motor Vehicles Act and on what grounds the learned Magistrate has come to the conclusion that he has committed any offence. However brief the record, this should be apparent. There are a number of rulings cited on this point in the notes to section 263 of Sohoni's Code of Criminal

Procedure, thirteenth edition, 1931, to which I would merely add *Din Muhammad v. Emperor* (1). I, therefore, forward these proceedings to the High Court with the recommendation that the conviction and sentence be quashed.

As the offence is apparently not serious and in view of the trouble the petitioner has suffered in the prosecution of these proceedings, I would also recommend that no retrial be ordered.

Order of the High Court.

SHADI LAL C. J.—I agree with the learned Additional Sessions Judge that the trial Magistrate has entirely ignored the law enacted by section 263 of the Criminal Procedure Code, which prescribes the particulars which must be recorded in the case of a summary trial. As observed by a Division Bench of the Calcutta High Court in *Kash Mohammad v. The Empress* (2), “It has been repeatedly pointed out * * * that in the case of a summary trial, in which so little is recorded, and therefore there is so little protection from without to the person accused, against the risk of error, haste or inaccuracy, the scanty provisions of that section must be fully and strictly complied with, and complied with in this sense that the record must be sufficiently exact, and sufficiently full to enable the Judges of the Revisional Court to say whether the law has been complied with or not on the points to be recorded. Three particular things amongst others are required to be recorded, under the heading (f) the offence complained of, and the offence, if any, proved; and under the heading (h) in the case of a conviction, a brief statement of the reasons therefor must be recorded. These three things, the offence

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charged, the offence, if any, proved, and the reasons for convicting, must be recorded, and recorded in such a way as to enable the Court of Revision to say, aye or no, from within the four corners of the record itself, whether the offence charged is an offence in point of law, whether the offence proved is an offence in point of law, and whether the reasons for the conviction are good and sufficient reasons."

Now, in the column of the description of the offence the only thing mentioned in the present case is "5, I. M. V. Act," which presumably means section 5 of the Indian Motor Vehicles Act. But that section creates four distinct offences, namely, driving a motor vehicle in a public place (1) recklessly, or (2) negligently, or (3) at a speed, or (4) in a manner, which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place, and the amount of traffic which actually is at the time, or which might reasonably be expected to be, in the place. There is absolutely nothing to show the nature of the offence with which the petitioner Abdul Rahman was charged. The rule of law is firmly established that the accused has a right to be informed of the precise nature of the offence with which he is charged. A bare reference to the section of the statute is not sufficient.

Nor does the Magistrate give any reasons for the conviction, though the statute expressly lays down that the reasons for the conviction should be recorded. The Magistrate merely says, "I believe the prosecution." Now, as pointed by the learned Additional Sessions Judge, this is only a conclusion and not a reason. There are numerous authorities for the proposition that a Magistrate should, in recording his reasons for the conviction in a summary trial under

clause (h) of section 263 of the Criminal Procedure Code, show that there was sufficient material before him to support the conviction [*vide inter alia*, *Mehtab v. The Empress* (1) and *Sher Singh v. The Empress* (2)]; and his record, however brief, must state the necessary ingredients of the offence of which the accused has been found guilty, *Din Muhammad v. Emperor* (3).

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Moreover, the affidavit filed by the accused in the Court of the Additional Sessions Judge shows that he was arrested on the morning of the 23rd May, 1933, and immediately taken to the police station, and from there to the Court of the Magistrate where he was "fined within five minutes. He was not allowed to make any arrangements whatsoever for his defence." The learned counsel for the petitioner urges that his client desired to examine as defence witnesses certain respectable persons who were travelling at that time in his motor vehicle, and that the evidence of those witnesses would have shown that no offence was committed by him.

There can be no doubt that the Magistrate has violated the express provisions of the statute, and betrayed utter ignorance of the rudimentary principles of justice and fair play. I am, therefore, constrained to accept the recommendation made by the learned Additional Sessions Judge and set aside the conviction and the sentence. As suggested by the learned Judge, the petitioner has already suffered sufficiently, and no retrial should be held.

P. S.

Revision accepted.

(1) 7 P. R. (Cr.) 1887.

(2) 5 P. R. (Cr.) 1889.

(3) 1929 A. I. R. (Lah.) 378.