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54/1964

IN THE PRIVY COUNCIL

No. 15 of 1964

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

- 1. ABDUL AZEEZ (AZIZ)
- 2. M.A. THANGAVELU
- 3. A.K. KANDASAMY
- 4. A. SINNA NADAR
- 5. P.S.V. NAIDU
- 6. K.R. SUPPIAH
- 7. V. RASALINGAM
- 8. K. PERIYASAMY

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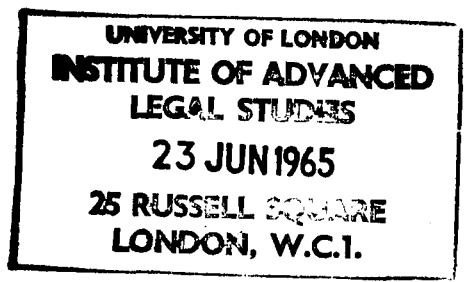
Appellants

78713

- and -

THE QUEEN

Respondent



CASE FOR THE RESPONDENT

Record

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1. This is an appeal by special leave from a judgment of the Supreme Court of Ceylon (Basnayake C.J., Abeyasundere and Silva JJ.) dated the 28th October 1963, which dismissed the Appellants' appeal from their conviction by the Magistrate at Balangoda on 24th July 1959 whereby each was found guilty of being members of an unlawful assembly, committing criminal trespass in the prosecution of the common object of an unlawful assembly, and committing criminal trespass and each was sentenced to one month, two months and one month imprisonment on each charge respectively, the sentences to run concurrently.

pp.58 - 60.

pp.24 - 32.

p.32.

2. The relevant statutory provisions are:-

PENAL CODE:

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32. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

140. Whoever is a member of an unlawful assembly

Record

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

146. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. 10

427. Whoever enters into or upon property in the occupation of another with intent to commit an offence, or to intimidate, insult or annoy any person in occupation of such property, or having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit criminal trespass. 20

433. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one hundred rupees or with both.

pp. 7-8. 3. The Appellants, together with another man who has since died, were charged on the 20th March 1959 with the following offences:

1. Being members of an unlawful assembly the common object of which was to commit criminal trespass to the annoyance of A.S. Rasanayagam, the Superintendent of Pettiagala Estate, Balangoda, by entering into the said estate in the occupation of the said A.S. Rasanayagam and that you have thereby committed an offence punishable under section 140 of the Penal Code. 30

2. That at the same time and place aforesaid and in the course of the same transaction, you did, commit Criminal Trespass by entering into the said Pettiagala Estate, in the occupation of the said A.S. Rasanayagam, which offence was committed in the prosecution of the common object of the unlawful assembly or was such as the members of the said assembly knew 40

to be likely to be committed in prosecution of the said object and you being the members of the said assembly at the time of the committing of the said offence, are thereby guilty of an offence punishable under Section 433 read with Section 146 of the Penal Code.

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3. That at the same time and place aforesaid and in the course of the same transaction, you did, in furtherance of the common intention of you all commit criminal trespass by entering into the said Pettiagala Estate in the occupation of the said A.S. Rasanayagam, with intent to cause annoyance to the said A.S. Rasanayagam and thereby you have committed an offence punishable under Section 433 read with Section 32 of the Penal Code.

4. The trial took place before the Magistrate at Balangoda on the 15th May and 10th July 1959. The prosecution evidence was to the following effect:-

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(a) A.S. Rasanayagam said that he was the Superintendent of the Pettiagala Estate, where the labourers had been on strike since December 1958: the sixth Appellant had been told that no union representatives would be allowed on the estate during the strike: on the 1st February the first Appellant had been refused permission to enter the estate: on the 4th February the witness was told that he and nine others had entered the estate through the main gate: the police were sent for and the witness saw the Inspector talking to the party on the estate road leading to the factory: the witness had been annoyed by the presence of the first Appellant and his party on the estate: he had also been worried that their presence on the estate in the circumstances would create trouble, particularly with the Sinhalese non-strikers. In cross-examination, the witness said that anyone not a relative or friend of a labourer who wished to come on the estate would have first to get permission.

pp. 11-14.

(b) Inspector Munasingha of the Balangoda Police Station said that since December 1958 there had been police patrols on the estate to prevent any possible breach of the peace: on the 4th February 1959 the previous witness had

pp. 15-17.

Record

complained about the presence of the Appellants on the estate: the witness met the Appellants on the estate road and told them that the Superintendent had complained to the police and had protested at their presence on the estate: some persons had then left but the Appellants remained: the witness told them that they were committing an offence, but after a short discussion with the others, the first Appellant said that they were going ahead along the road; in spite of a warning, the Appellants persisted in trying to enter the estate, and they were then arrested.

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- (c) R.K. Karupaiah, the conductor of the lower division of the estate, said that only persons authorised by the Superintendent were allowed through the main gate: on the 4th February 1959 the First Appellant and a party had entered the estate by an opening next to the main gate.

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pp. 22-24.

5. The first Appellant was the only witness to give evidence on behalf of the Appellants. He said that he was President of the Democratic Workers Congress some of whose members were on strike on the estate: on the 1st February he had telephoned the Superintendent for permission to go on the estate to try and get the labourers to give up a hunger strike: the Superintendent had replied that he was unable to do anything until he had spoken to the District Convenor: on the 4th February the other accused and he had gone to the estate to try and end the hunger strike and return to their lines: he had not imagined that this action would embarrass the management: his intention in entering the estate was to persuade the workers to call off the hunger strike: he agreed that he did not have permission to enter the estate: the other Appellants, except the eighth, were officers of the union: the eighth Appellant had not gone with them, but had joined them on the estate.

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pp. 24-32.

6. The learned Magistrate gave a reserved judgment on the 24th July 1959. He set out the evidence of the Superintendent, which he accepted: he then detailed the evidence of Inspector Munasingha, which he also accepted: he then considered the evidence of the First Appellant and said:-

"After careful examination of the evidence given by the First accused and the circumstances of this case, I am of the view that the claim put forward by the First accused, was merely a pretext for the First accused, and the Second to Eighth accused, who are all office bearers of this labour organisation, to enter the estate against the wishes of the Superintendent of the estate who was in occupation."

10 The learned Magistrate found that the First
accused had not received permission to enter, which
he knew was required: that he did not tell the
police what he said at the trial was his reason for
entering the estate: and that in any event there
was no reason to take with him a band of union
officials, unless it was to cause embarrassment to
the person in occupation of the estate. This case,
he continued, was distinguishable from that in 52
20 N.L.R. p.449, since there was no immediate urgency
in the present case. There was direct evidence
that the Superintendent had been caused annoyance,
and he found that that was the real purpose of the
Appellants in entering the estate. On the evi-
dence before him all three charges were made out
against each of the Appellants, and each would be
sentenced to rigorous imprisonment for one month,
two months and one month respectively, the
sentences to run concurrently.

30 7. All the Appellants appealed against verdict
and sentence to the Supreme Court, where, by order
of Tambiah J. made on the 23rd June 1961, their
appeal was heard by a Bench of three Judges
(Basnayake C.J., Abeyasundere and Silva JJ.) on
the 31st January 1963, when the appeals were
dismissed.

p. 57.

8. The reasons for dismissing the appeals were
given by Basnayake C.J. on the 28th October 1963.

pp. 58-60.

40 The learned Chief Justice said that the charges
against the Appellants were that they were members
of an unlawful assembly the common object of which
was to commit criminal trespass, and that they had
committed criminal trespass. After setting out
the facts of the case and the positions held by
the Appellants in their union, the learned Chief
Justice continued:-

Record

"The entry of the accused after permission to enter had been asked for and not granted by the Superintendent in our opinion brings the accused within the ambit of Section 427 of the Penal Code"

"The intent of the accused is one that has to be inferred from the circumstances of the case. In the instant case the First accused asked for permission to enter the estate and was not granted permission. Despite that he and the others entered the estate clearly in defiance of the Superintendent whose permission they had sought.

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"Having entered without permission, they disobeyed the lawful directions of the Inspector not to proceed further. The question is whether the learned Magistrate was wrong in inferring from those circumstances an intent to annoy the person in occupation as alleged in the charges. In our opinion he committed no error in doing so."

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pp. 61-62.

9. Special leave to appeal was given by the Judicial Committee on the 2nd March 1964.

10. The Respondent respectfully submits that the convictions of the Appellants were properly upheld by the Supreme Court, whose judgment should be affirmed. It is submitted that there was sufficient evidence against each of the Appellants to justify the convictions on each of the charges against them, and that in particular there was sufficient evidence of the Appellants' intent to annoy the occupier of the estate. The findings of the Magistrate were on the facts proper and ought not to be disturbed. It is submitted that the Magistrate and the Supreme Court properly directed themselves upon the law, and in particular correctly applied the law as laid down in R. v. Selvanayagam (1950) 51 N.L.R. 470 and Abraham v. Hume (1951) 52 N.L.R. 449.

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11. The Respondent respectfully submits that there was no wrongful misjoinder of charges and will rely upon the submissions made by the Respondent in the appeal of M.B. Ibralebbe alies Rasa Wattan and I.L. Mohideen alias Mankutty against the Queen.

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12. The Respondent respectfully submits that each

charge made against the Appellants was valid and charged a separate offence in respect of which the Appellants could be found guilty. If contrary to the Respondent's contentions, any of the charges was not valid, it is submitted that the convictions under the remaining charges should be upheld, and that wrongful conviction on one charge does not affect the validity of a conviction on any other charge.

10 13. The Respondent therefore respectfully submits that this appeal should be dismissed, for the following among other

R E A S O N S

1. BECAUSE all the Appellants were rightly convicted of the charges made against them.
2. BECAUSE the learned Magistrate and the Supreme Court correctly directed themselves upon the relevant provisions of the law.
3. BECAUSE there was sufficient evidence upon which the Appellants could be convicted.
- 20 4. BECAUSE there was no misjoinder of charges.
5. BECAUSE of the other reasons given by the Supreme Court.
6. BECAUSE none of the Appellants has suffered any miscarriage of justice.

MERVYN HEALD.

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CASE FOR THE RESPONDENT

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