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Judgment -
5/11, 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

Appellants

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

78711

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IN THE PRIVY COUNCILNo.15 of 1964ON APPEALFROM THE SUPREME COURT OF CEYLONB E T W E E N :

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RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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Court Notes	20th March 1959
Court Notes	10th July 1959

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
- Appellants

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

NO.1

REPORT BY INSPECTOR OF POLICE
OF BALANGODA TO MAGISTRATE.

In the Magistrates
Court of Balangoda

No.1

CEYLON POLICE

20 B. 1473/59 Dated at Balangoda.
20th February, 1959.

Report by
Inspector of
Police of
Balangoda to
Magistrate
20th February 1959

To the Magistrate, Balangoda.

30 I, S.G. Munasinghe, Inspector of Police of Balangoda hereby report that I have inquired into the complaint of A.S.Rasanayagam of Pettiagala Estate, Balangoda made on the 4th day of February, 1959 to the effect that Mr.A. Azeez and 8 others have committed criminal trespass by entering into Pettiagala Estate offence punishable under section 140 and 433 of the Penal Code.

Facts: The complainant is the Superintendent

In the Magistrates
Court of Balangoda

No.1

Report by
Inspector of
Police of
Balangoda to
Magistrate
20th February 1959
continued

of Pettiagala Estate, Balangoda where a strike by the labourers is going on since 24.12.58. On 4.2.59 at about 11.30 a.m. the complainant came to know from the conductor Karuppiyah that Dr. Azeez and about 10 others have entered Pettiagala estate and were proceeding towards the upper division and he strongly objected to the party entering the estate without his permission and lodged a complaint with the Inspector of Police, Balangoda. In his statement he added that it was an annoyance to him.

10

On receipt of this information I alerted the P.CC who were on duty at the time and called for reinforcement from the Police Station and on arrival of the reinforcement from the Police station moved up with the Police party in the Land Rover and whilst going along the estate road on Pettiagala estate I saw a crowd of about 10 people headed by Dr. Azeez proceeding along the Pettiagala estate road towards the tea factory. I then intercepted them and informed them of the complaint the Superintendent made and advised them from proceeding further and to turn back and go away. On my advice some of those who were with Mr. Azeez turned back and left the place. Mr. Azeez made a small discussion with those who remained and decided to proceed towards the Factory. He and 8 others who persisted in going up were arrested and later released on personal bail.

20

30

List of suspects attached.

A.S.Rasanayagam states as in facts above. At the time the Police intercepted he was nearby and the point at which Mr. Azeez and 8 others who were arrested were well inside the estate. There is no public road whatever through the estate.

V. Sellamuttu stated to the Police that he was in charge of the gate at the entrance to the estate. On 4.2.59 at about 11 a.m. he saw Mr. Azeez come in his car and halt outside the estate gate. He did not open the gate for the car. Little later he saw Mr. Azeez and about 10 others enter the estate and walk

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along the estate road leading towards the Factory division. He went and informed Karup-
piah Conductor of the Lower Division.

In the Magistrates
Court of Balangoda

No.1

Report by
Inspector of
Police of
Balangoda to
Magistrate
20th February 1959
continued

10 R.K.Karuppiyah: On 4.2.59 at about 11 or 11.30 a.m. Sellamuttu the gate keeper came and informed him that Mr.Azeez the D.W.O.President with about 10 others has entered the estate and were walking along the estate road towards the Factory. He conveyed this information to Mr. Rasanayagam over the telephone.

G.G.Munasinghe: On 4.2.59 Mr.Rasanayagam made a complaint that Mr.Azeez and about 10 others had entered into the Pettiagala estate without his permission and were alleged to be heading towards the Factory where the estate strikers were. He lodged his strong protest and annoyance at Mr. Azeez entering the estate along with his party and even feared a serious breach of the peace.

20 On this complaint I with the Police party met Mr.Azeez some others inside the estate heading towards the Factory. Having informed Mr. Azeez and his party of the complaint made by the Superintendent regarding his entering the estate without permission, he was advised to keep out of the estate. On his persisting to proceed he and 8 others were taken into custody.

30 Report have been forwarded for approval of plaint, a further report will be made on approval of the plaint. Bail bonds signed by the suspects attached.

Sgd. S.G.Munasinghe

I.P., Balangoda.

4.

In the Magistrates
Court of Balangoda

NO.2

LIST OF SUSPECTS

No.2

20.2.59

List of Suspects
20th February 1959

Suspects:

1. Abdul Azeez
2. M.A.Thangavelu
3. K.G.Sellapan
4. A.K.Kandasamy
5. A.Sinna Nadar
6. P.S.V.Naidu
7. K.R.Suppiah
8. V.Rasalingham
9. K.Periyasamy

10

Call on 6/3 accused present and warned to
appear.

Inltd. P.S.W.A.

Mag.

No.3

NO.3

Report by
Inspector of
Police
Balangoda to
Magistrate
6th March 1959

REPORT BY INSPECTOR OF POLICE
OF BALANGODA TO MAGISTRATE.

20

CEYLON POLICE

IN THE MAGISTRATE'S COURT OF BALANGODA,
CASE NO.69020.

This 6th day of March, 1959.

I, S.P.Munasingha, Inspector of Police,
Balangoda, in terms of Section 149(1)(b) of
the Criminal Procedure Code (Chapter 16)
hereby report to Court that (vide accused
List) did on the 4th day of February, 1959
at Pettiagala Estate, Balangoda within the
jurisdiction of this Court, the accused

30

abovenamed were members of an unlawful assembly, the common object of which was to commit criminal trespass, to the annoyance of S.A. Rasanayagam, the Superintendent of Pettiagala Estate, Balangoda, by entering into the said estate in the occupation of the said A.S. Rasanayagam and that accused above-named have hereby committed an offence punishable under Section 140 of the Penal Code.

In the Magistrates
Court of Balangoda

No.3

Report by
Inspector of
Police of
Balangoda to
Magistrate
6th March 1959
continued

10 2. That at the same time and place afore-
said and in the course of the same transac-
tion, the above-named accused did commit
criminal trespass by entering into the said
Pettiagala Estate, Balangoda 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 to be
likely to be committed in prosecution of the
20 said object and the accused abovenamed 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.

30 3. That at the same time and place afore-
said and in the course of the same transac-
tion, the abovesaid accused in furtherance of the
common intention of them all commit criminal
trespass by entering into the said Pettiagala
Estate, Balangoda, in the occupation of the
said A.S.Rasanayagam, with intent to cause
annoyance to the said A.S.Rasanayagam and
thereby committed an offence punishable under
Section 433 read with section 32 of the Penal
Code.

Witnesses:

1. A.S.Rasanayagam of Pettiagala Estate,
Balangoda.
- 40 2. S.A.Munasinghe, Inspector of Police,
Balangoda.
3. S.P.A.Perera, Sub-Inspector of Police,
Balangoda.
4. P.S.3019 J.A.Fernando of Balangoda.

6.

In the Magistrates
Court of Balangoda

No.3

Report by
Inspector of
Police of
Balangoda to
Magistrate
6th March 1959
continued

5. Sellamutthu, son of Weeramuthu of
Pettiagala Estate, Balangoda.
6. R.K.Karuppiah of Pettiagala Estate,
Balangoda.

Sgd. S.G.Munasinghe
I.P.Balangoda.

1. Abdul Azeez of 13, Layards Road, Colombo 5.
2. M.A.Thangavelu of Demodara Group, Ella.
3. K.G.Sellappan Nair of Parussella Road,
Yatiantota. 10
4. A.K.Kandasamy of 1/1 Station Road,
Badulla.
5. A.Sinna Nadar, 20/1, Old Road, Balangoda.
6. P.S.V.Naidu of 80/1 Parussella Road,
Yatiantota.
7. K.R.Suppiah 20/1, Old Road, Balangoda.
8. V.Rasalingam of Drimlenrig Division,
Balangoda Group.
9. K.Periyasamy of No.1 Division, Rye Estate,
Balangoda. 20

Sgd. S.G.Munasinghe
I.P.Balangoda.
6.3.59.

6.3.59: Suspects :

1. Abdul Azeez
2. M.A.Thangavelu
3. K.G.S.Naidu;
4. A.K.Kandasamy
5. A.Sinna Nadar
6. P.S.V.Naidu
7. K.R.Suppiah
8. V.Rasalingam
9. K.Periyasamy

30

Plaint filed. Call on 20.3.59.

Intld. O.M.L.P.
Mag.

NO.4
CHARGE SHEET

In the Magistrates
Court of Balangoda

SUMMARY FORM NO.1A

No.4

CHARGE SHEET

Charge Sheet
20th March 1959

(Ordinary Proceedings)

Sections 187, 188)

Date 20th March,1959.

- 10
1. Abdul Azeez,
 2. M.S.Thangavelu,
 3. K.G.S.Nair.
 4. A.K.Kandasamy
 5. P.S.Nadar
 6. K.R.Suppiah
 7. V.Rasalingam
 8. K.Periyasamy.

The accused are charged as follows:-

You are hereby charged, that you did, within the jurisdiction of this Court, at Pettiagala estate on 2.4.1959.

- 20
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 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
- 40
- the committing of the said offence, are thereby guilty of an offence punishable under

In the Magistrates Court of Balangoda Section 433 read with Section 146 of the Penal Code.

No.4

Charge Sheet
20th March 1959
continued

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.

10

The charge having been read, and the accused (or each accused) having been asked he has any cause to show why he should not be convicted he states as follows:

Each states I am not guilty.

Inltd. P.S.W.A.
Mag.
20.3.

20

Prosecution
Evidence.

No.5

S.G.Munasinghe
Examination

PROSECUTION EVIDENCE

NO.5

S.G.MUNASINGHE

20.3.59.

All accused present;

Mr.Attygalla for them.

Mr.Suntheralingam A.S.P.Ratnapura and Mr. Weerasekera for prosecution.

S.G.Munasinghe affirmed; 35; I.P.Balangoda.

The labourers on Pettiagala Estate was on strike from 24.12.58. During this strike I visited this estate as the Superintendent of the estate A.S.Rasanayagam complained to me that the 1st accused with a party had entered the estate and that he protested at it. He feared that the 1st accused would

30

incite the strikers create trouble and requested Police assistance to get the unauthorised persons out of the estate. On this complaint, when I was going along the estate road, I met Azeez the 1st accused with about ten others on the road inside the estate. I informed the 1st accused of the complaint and addressed all of them to please keep out of the estate. A few of them went away. The 1st accused and 8 others who persisted in going up towards the Factory were arrested by me. They were later released on bail. Those arrested by me are the accused. The Superintendent of the estate told me that permission had been sought by the 1st accused to enter the estate, and that it had been refused.

In the Magistrates Court of Balangoda

Prosecution Evidence

No.5

S.G.Munasinghe Examination continued

10

Inltd. P.S.W.A.
Mag.

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NO.6

No.6

PLEA OF ACCUSED

Plea of Accused
20th March 1959

Accused charged from charge sheet each states "I am not guilty" Trial on 17.4.59 as Mr. Attygalla states that accused's Counsel will not be available on 3.4.59 the next sessions of this court.

Cite prosecution witnesses.

Accused same bail.

30

Inltd. P.S.W.A.
Mag.

NO.7

No.7

PROCEEDINGS

Proceedings
17th April and
15th May 1959

17.4.59:

1. Abdul Azeez
2. M.A.Thangavelu
3. K.G.S.Naidu

In the Magistrates
Court of Balangoda

No.7

Proceedings
17th April and
15th May 1959
continued

4. A.K.Kandasamy
5. A. Sinna Nadar
6. P.S.V.Naidu
7. K.A.Suppiah
8. V.Rasalingam
9. K.Periyasamy.

Mr.Nadesan instructed by Mr.Attygalla for accused states that the accused are not ready for trial. Trial refixed for 15.5.59.

Inltd. O.M.L.P.
Mag.

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15.5.59:

- Accused:
1. Abdul Azeez
 2. M.A.Thangavelu
 3. K.G.S.Naidu pt.
 4. A.K.Kandasamy
 5. A.Sinna Nadar
 6. P.S.V.Naidu
 7. K.R.Suppiah
 8. V.Rasalingam
 9. K.Periyasamy

20

Mr.Weerasekara and A.S.P.Suntheralingam with Balangoda Police for prosecution. Mr. Adv. Nadesan Q.C., with Mr.T.L.Curtis instructed by Mr.Attygalla for accused.

Prosecution
Evidence

No.8

Alfred Somapillai
Rasanayagam
Examination

PROSECUTION EVIDENCE (Contd.)

NO.8

ALFRED SOMAPILLAI RASANAYAGAM

15.5.59.

All accused present.

30

Mr.Adv.Nadesan Q.C. with Mr.T.K.Curtis instructed by Mr.Attygalla for all accused.

A.S.P.Mr.Suntheralingam for the prosecution.

In the Magistrates
Court of Balangoda

Alfred Somapillai Rasanayagam, Sworn 41 years,
Ceylon Tamil, Superintendent Pettiagala
Estate, Balangoda.

Prosecution
Evidence

No.8

Alfred Somapillai
Rasanayagam
Examination
continued

10 I am the Superintendent of Pettiagala
Estate Balangoda. The labourers on my estate
have been on strike from 24.12.58. Negotia-
tions into the matter were being made by the
Employer's Federation and the Democratic
Workers' Congress. I had specifically in-
formed Suppiah the 6th accused, the District
Representative of the Democratic Workers'
Congress, Balangoda, that till the negotia-
tions were completed no officials of the union
should enter this estate.

20 On 4.2.59 when I was in my estate bunga-
low I received information that the 1st accus-
ed and 9 others had entered the estate through
the main gate. Normally when any representa-
tive of the union wishes to enter this estate
they either write earlier to the Superinten-
dent of the estate 'that is myself' and ask
for permission to enter the estate. It is
only with the written permission of the Super-
intendent that they can enter the estate.

30 On 1.2.59 the 1st accused telephoned me
and asked me permission to enter the estate on
that day. But I did not give him permission
to enter the estate. At about 10.30 a.m. on
4.2.59 the day of the incident, Karuppiah my
lower division conductor informed me about the
entry of the 1st accused and nine others into
this estate. The main gate of the estate is
generally locked and there is a gate keeper
who is in charge of the key to this gate.
Once I have granted permission for an outsider
to enter this estate I inform the lower divi-
sion conductor about it and instruct him to
allow the person to enter the estate. There
40 is also a board attached to this gate which
states that "Trespassers on the estate will be
prosecuted". When Karuppiah conveyed me this
information I telephoned the Balangoda Police
Station and was informed that the Inspector in
charge was not in. Then I told them that I
would like to speak to the Inspector the

In the Magistrates Court of Balangoda moment he arrived. A few minutes later Inspector Munasinghe of the Balangoda Police, with a police party, came to my bungalow, in the course of a routine patrol. Then I complained to the inspector that Mr. Azeez the 1st accused and 9 or 10 others had entered the estate without my permission. I also told the Inspector that I apprehended trouble on the estate as a result of their entering the estate. At this particular time some of the strikers were performing sathyagraha in the bungalow premises and also going on for about two months prior to the date of this incident. Having recorded my complaint the Inspector left my bungalow in his jeep and I followed him on foot. The Inspector and police party stood on the road leading to the Factory. I too went to the spot where the Police party had taken up position and then I saw the 1st accused coming along the road with about ten others. Then the Inspector, spoke to the 1st accused. I could not hear what he said as I was some distance away. Nor did I hear the 1st accused say anything. I only saw them talk to each other. I was annoyed by the presence of the 1st accused and his party of men on the estate on this day. I also was worried that their presence on the estate, in these circumstances would create trouble. I also apprehended that the non strikers, some of whom were Sinhalese would have provoked against any demonstration.

Prosecution Evidence

No.8

Alfred Somapillai
Rasanayagam
Examination
continued

Cross-examination

XXD:

I have been in charge of this estate as Superintendent since June 1951. This estate belongs to a company. I am not aware whether Mr. Chelvanayakam is Chairman of the Board of Directors of this company. But I know that he and his son are in the Board of Directors. Before the strike the strikers had put forward six demands to me. There was an additional demand that correspondence with the estate committee be in the tamil language. Thereafter at a conference, we conceded that demand and made order that a school master translate the correspondence into Tamil. I am not sure whether the people who were performing Sathyagraha were fasting. They were doing it in shifts.

On 1.4.59 the 1st accused telephoned me saying that he wished to enter into the estate and go to the spot where the strikers were performing Sathyagraha in order to persuade them to give up the Sathyagraha and go back to their line rooms. I told him that I could not give him permission without consulting the estate Employers' Federation. I undertook to consult the District Convenor of the Federation and let him have a reply. The same day, a few minutes later, I contacted the 1st accused again over the telephone and told him that I was not able to contact the District Convenor, and that therefore I was sorry I could not grant his request.

10

Q. If the 1st accused succeeded in inducing the Sathyagrahees to give up the Sathyagraha it would have been more convenient in your point of view?

20

A. Sathyagraha is something that we cannot condone, and if we gave permission to the 1st accused to call off the Sathyagraha it might have meant that we approved of the Sathyagraha.

When the Sathyagraha was commenced on 20.1.59 there was official of the Union present and therefore I did not consider it necessary for them to come and have it called off. I was not sure what the reaction of the strikers would have been if the 1st accused had come there and asked them to call off the Sathyagraha. I thought that had the 1st accused come on the scene and tried to persuade the strikers to call off the Sathyagraha he may have been man-handled.

30

To Court The main entrance is the only entrance to the estate.

XXN. (contd.) Adjoining the main gate there is a foot path along which estate personnel are allowed to enter and leave the estate. The main gate is meant for vehicles entering the estate and also for pedestrians. Beyond this gate on the side of the estate are houses of Sinhalese villagers. The main gate is at the entrance to the lower division

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In the Magistrates Court of Balangoda

Prosecution Evidence

No.8

Alfred Somapillai
Rasanayagam
Cross-examination continued

In the Magistrates
Court of Balangoda

Prosecution
Evidence

No.8

Alfred Somapillai
Rasanayagam
Cross-examination
continued

and between the lower division and the upper division, are houses belonging to Sinhalese villagers. These Sinhalese villagers and those people who visit them enter by the footpath which is by the main entrance. I do not know whether the area where the Sinhalese villagers live is known as Masenna. I am not aware of a road passing my estate to the Masenna village. The road which comes past the gate does not continue past the Factory and go up to the village of Mesenna. Even a hawker who wishes to enter my estate and do business has to first obtain permission from the lower division conductor. A relative of a labourer working on the estate need not necessarily obtain permission from the conductor to enter the estate. Nor has the friends of a labourer on the estate. Money lenders also have to obtain permission to enter the estate. The strike commenced on 24.1.1959 and up to the date of this particular incident there had been no incident. The strike was ultimately called off on 20.2.59, the 1st accused entered the estate with permission along with a Labour Officer of Ratnapura and the Police. The purpose of this visit was to call off the strike. I was not annoyed by this particular visit of the 1st accused. When on 4.2.59 the day of this incident the 1st accused entered the estate I was annoyed for his doing so.

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Re-examination

RXD:

The road which runs from the main entrance to the Factory is a private road and belongs to the estate and is maintained by the estate. The second visit of the 1st accused was the permission of the management of the estate. Whereas the visit on the day of this incident was without permission.

40

Sgd. K.A.P.Ranasingha

Mag.

15.5.

NO.9SUDAMPALA GUNAWARDANA MUNASINGHAIn the Magistrates
Court of BalangodaProsecution
EvidenceSudampala Gunawardana Munasingha: Affirmed:
32 Sinhalese, Inspector of Police, Balangoda.

No.9

Sudampala Gunawar-
dana Munasingha
Examination

At the time of this incident I was the Officer in Charge of the Balangoda Police Station. A strike on Pettiagala division has been going on from 24.12.58. Ever since the workers on the estate went on strike there have been periodical police patrols on the estate in order to prevent any possible breach of the peace. On 4.2.59 last witness complained to me on one of my routine visits to the estate that the 1st accused Azeez, the President of the Democratic Workers' Congress and ten others had entered the estate at the time and were heading towards the Factory. He also complained that he anticipated a serious breach of the peace on account of the visit. He requested me to keep the 1st accused and his party away from the estate. He also told me that he had refused the 1st accused permission to enter the estate on this day. Thereupon I along with the Police party went, and I met the 1st accused and his party on the estate road within the estate, and they were at the time heading towards the estate Factory. I intercepted them and informed the 1st accused and the others in the party of the complaint I had received from the last witness and that he had protested at their entry into the estate. At my request some of the people who were with the 1st accused turned back and left. The 1st accused and all the other accused stayed back and the 1st accused requested me for a few minutes time to discuss the matter with his friends the other accused. I informed all these accused that they were committing an offence. After a short discussion the 1st accused told me that they were going ahead along the road. I thereupon told them that I could not allow them to proceed any further and that I would be compelled to take them into custody if they insisted on proceeding further. Then as the accused persisted in going into the estate I took all the accused into custody and took them to the Police Station.

In the Magistrates
Court of Balangoda

Prosecution
Evidence

No.9

Sudampala Gunawar-
dana Munasingha
Cross-examination
continued

XXD:

I know that at time Sathyagraha was being performed by some of the strikers in the Factory premises. Even though the strike had been peaceful up to that time I had information that there might be trouble at any moment as the strike had been going on for about two months. At the Police Station I recorded the statements of all the accused and bailed them out. At the scene I informed the accused that they were being members of an unlawful assembly and were committing an offence of criminal trespass, before I arrested them. 10

On 21.2.59 a police officer from my Police station accompanied the 1st accused and a Labour Official to the estate. The Police Officer was provided to see that there was no trouble and as the 1st accused himself was going to the estate. When I first saw the 1st accused on the estate road I saw about 2 or 3 people abreast of him while the others were behind him. When I first spoke to the 1st accused he said that he wanted to meet the strikers. I cannot remember whether he told me that he wanted to see the strikers in order to persuade them to give up the hunger strike. After asking me time for a few minutes to consult his friends the 1st accused may have spoken to one of these accused or all of them. But I saw all of them around the 1st accused. At this time I may have been about 6 or 7 yards from him. I cannot say anything about the subject matter of the discussion they had. All these accused spoke to the 1st accused. 20 30

Q. Was the 8th accused speaking to the 1st accused?

A. No Yes.

I cannot remember specifically whether the 9th accused spoke to the 1st accused I also do not remember specifically the 2nd, 3rd, 4th, 5th and the 6th accused speaking to the 1st accused at the time of this conversation. I have recorded the fact that I had given the 1st accused five minutes time 40

to discuss it with his party. I did not note down the number of the people who were present at the time. I have not specifically noted the names of the persons to whom the 1st accused spoke.

In the Magistrates Court of Balangoda

Prosecution Evidence

No.9

RXD: Nil.

Sgd. K.A.P.Ranasingha
Mag.

Sudampala Gunawardana Munasingha
Cross-examination continued

Trial adjourned for 12.6.59.

10

Sgd. K.A.P.Ranasingha
Mag.
15.5.59.

Vide proceedings)

It is 12.10 p.m. now. I have to record evidence in two more summary cases and also leave for an inquiry into a case of alleged murder at Embilipitiya. Further trial 12.6.59.

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Inltd. K.A.P.R.
Mag.

NO.10

No.10

PROCEEDINGS

Proceedings
12th, 24th, 26th,
June 1959.

12.6.59: Accused

1. Abdul Azeez
2. M.A.Thangavelu
3. K.G.S.Naidu
4. A.K.Kandasamy
5. A.Sinna Nadar
6. P.S.V.Naidu
7. K.R.Suppiah
8. V.Rasalingam
9. K.Periyasamy.

30

Mr.Adv.Curtis on behalf of the accused states that since Counsel who appeared on the last date, Mr.Adv.Nadesan is ill and moves for a postponement. Further trial refixed for 26.6.59. Prosecution witnesses warned. Defence witness V.H.Masenna, Poovan and

In the Magistrates
Court of Balangoda

No.10

Proceedings
12th, 24th, 26th,
June 1959
continued

Sowikandu warned. Accused warned.

Inltd. K.A.P.R.
Mag.

24.6.59: As the 26th instant which is the date for trial in this case does not suit Mr.Nadesan Q.C. who is engaged in a Court Martial case fixed for this date, Mr.Attygala Proctor for accused moves that the court be pleased to postpone this case for the 10th July, 1959. He has informed the A.S.P. Mr. Suntheralingam who is prosecuting in this case that this case will not be taken up for trial on the 26th instant and that he has consented to a postponement. Mr. Curtis who is the Junior to Mr. Nadesan Q.C. accepted 26th instant in error. Mention on 26.6.59 to fix new date for trial. 10 20

Inltd. K.A.P.R.
Mag.

26.6.59 Accused:

- 1. Abdul Azeez
- 2. M.A.Thangavelu
- 3. K.G.S.Naidu
- 4. A.K.Kandasamy
- 5. A. Sinna Nadar pt.
- 6. P.S.V.Naidu
- 7. K.R.Suppiah 30
- 8. V.Rasalingam
- 9. K.Periyasamy.

Vide J.L. dated 24.6.59

Further trial refixed for 10.7.59.

Accused same bail.

Inltd. K.A.P.R.
Mag.
26.6.

PROSECUTION EVIDENCENO.11R.K. KARUPAIAHIn the Magistrates
Court of BalangodaProsecution
Evidence

No.11

10.7.59

All accused present.

Appearances as before.

Ramasamy Kadiravel
Karupaiah
Examination

Ramasamy Kadiravel Karupaiah: 34, Ceylon
Tamil Conductor Pettigala Estate, Lower
Division, Balangoda.

10 I have been employed as conductor of the
Lower division of Pettigala estate for the
last 17 years. I am aware of the gate to
the main entrance to the estate. This gate
is normally kept locked and there is a gate
keeper in charge of it. Only persons
authorised by the Superintendent are allowed
to enter this estate through this gate. My
bungalow is situated in the Lower Division,
about 25 yards from the gate. Whenever a
20 person come by car, the vehicle is halted
outside the gate, and the gate keeper, after
questioning the occupants, allow them to
enter. If he is in doubt he contacts me and
ask for directions. Whenever I am also not
sure I contact the Superintendent by tele-
phone, and on his instructions any person is
permitted to enter the estate. Ever since
the communal troubles in 1958 I have been
asked to be more careful about people enter-
30 ing the estate. There are about 70 resident
labourers in my division. They are all
Tamil labourers. There are also about 50
non resident labourers who live in the vill-
age. There are in all about 125 Sinhalese
labourers working on the entire estate. I
am aware of the strike on the estate called
by the Democratic Workers' Congress in
December, 1958. There were about 650
labourers on strike at this time. Of this
40 number there were 2 Sinhalese labourers on
strike in my division, the rest are all
Indian labourers. A few of the Sinhalese

In the Magistrates
Court of Balangoda

Prosecution
Evidence

No.11

Ramasamy Kadiravel
Karupaiah
Examination
continued

labourers turned up for work during this time, but I did not give them any work. On 4.2.59 the day of this incident at about 10.30 a.m. the gate keeper Sellamuttu came to my bungalow and informed me that some gentlemen had come in two cars and whom he believed to be Azeez and party, and that they were going towards the Factory Division. Then I walked up a few yards towards the main gate and saw some gentlemen going along the road leading to the Factory. When I saw them they had entered the estate and continued some distance along the estate road. I saw one car parked outside the main entrance. I immediately telephoned Mr. Rasanayagam the Superintendent of the estate. I am sure that some of the strikers were performing Sathyagraha on the Superintendent's bungalow premises at this time. During my stay on this estate, I have known that the road leading from the main entrance to the estate Factory belongs to the estate. There is V.C.foot path running through the estate.

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Cross-examination

XXD:

This gate is opened to let in or out any vehicular traffic. For the labourers on the estate who want to enter or leave the estate, this gate is not open. In the gate there is an opening about two feet high and which is meant for labourers to go in or out of the estate. Relatives and friends of labourers on the estate can enter the estate through this opening. At times friends and relatives of labourers on this estate visit them without my permission. The opening I referred to is a side opening by the main gate for pedestrians.

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REXD: Nil.

To Court: Even pedestrians who enter the estate through this side entrance have to walk through the road leading to the Factory. There is no foot path.

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Sgd. K.A.P.Ranasingha
Mag.
10.7.59.

NO.12SELLAMUTTU s/MUTHUIn the Magistrates
Court of BalangodaProsecution
Evidence

No.12

Sellamuttu s/Muthu: affd. 50 Indian Tamil,
Labourer, Pettiagala Estate, Balangoda.Sellamuttu s/Muthu
Examination

10 I have been working on Pettiagala estate
for about eight years and I have been the
gate keeper for the main gate for this estate
for 7 years. The main gate is normally kept
locked, by me the keys to it are kept by me.
My house is close to this gate and I come up
running to this gate whenever any person coming
by car wants to enter the estate. I
then check up on the person who has come and
open the gate and allow that person to enter.
There is a two foot wide side opening by the
main gate. I have not had occasion to consult
the conductor regarding the entry of
pedestrians. I consult him only in the case
20 of people coming in vehicles. On the day of
this incident some people in two cars came
and stopped near the gate and about 10 people
got down from the car and entered the estate
through this side entrance. None of them
asked me to open the main gate to allow the
car to be taken in. I then ran to last
witness and told him that two cars came, and
about 10 people had got down and were going
along the estate road.

30 XXD: Nil.

Sgd. K.A.P. Ranasingha

Mag.

10.7.59.

In the Magistrates
Court of Balangoda

DEFENCE EVIDENCE

Defence Evidence

NO. 13

ABDUL AZEEZ

No.13

Abdul Azeez
Examination

Prosecution closed:

I call upon the accused for their defence.

Mr.Nadesan calls:-

Abdul Azeez: affd. 47, Muslim, President,
Democratic Workers' Congress, Colombo.

I am the 1st accused. The Democratic Workers' Congress of which I am President is a Trade Union. The members consist of both Sinhalese and Tamil labourers. The Head Office of this Union is in Colombo. In the Union there are also what are known as District Committees. There is a District Committee at Balangoda. This committee looks after the Trade Union workers in this district. Apart from that this Committee there is an estate committee which is elected by the labourers on the estate. As a result of trade disputes with the Management of this estate the estate labour force of this estate was called out on strike by the District Committee with the acquiescence of the Union on 24.12.1958. The strike continued for a considerable period. The strike was a peaceful one. There were no incidents whatsoever. There were no clashes. On 20.1.59 the labourers on strike on this estate started what is called a hunger strike without it being authorised by the District Committee or by the Union. I learnt that they were fasting around the Factory. I believed that if there had been a mishap as a result of this fast there would have been tension and violence among the labourers. The Action Committee of our Union dealing with this particular strike met on 1.2.59 at Balangoda. I was present at this meeting. I decided that the workers be persuaded to call off the hunger strike. I also learnt that their

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children were neglected due to this hunger strike. Thereafter I contacted the Superintendent of the estate by telephone and express my desire to go to the estate and persuade the workers to give up the hunger strike and leave the Factory premises and go to their lines. I contacted him on 1.2.59. Then the Superintendent replied that he would contact the District Convenor and let me have an answer. Shortly afterwards he telephoned and informed me that he was unable to contact the District Convenor and as such he was not in a position to do anything in the matter, and that the moment he contacted the District Convenor he would let me know. Therefore on 1.2.59 I did not go to the estate. I however sent word to the labourers on hunger strike asking them to give up the hunger strike saying that they were doing something foolish. In spite of that they did not give up the hunger strike. Then on 4.2.59 the other accused and I went to this estate in order to persuade the strikers to give up the fast and leave the Factory premises and return to their lines. I did not for a moment imagine that such action on my part would cause any embarrassment to the estate management, but on the contrary I believed that the management would be relieved. My intention in entering the estate was to persuade these persons to call off the hunger strike.

XXD:

Prior to 4.2.59 I did not ask the Employers' Federation permission to enter estate. I did not have the express permission of the Superintendent to enter the estate.

RXD: (with permission) The second accused is a joint Secretary of the Democratic Workers' Congress, the 3rd accused is the Ex-General Secretary and presently a member of the Executive Committee, the 5th accused is the Treasurer of the D.W.C. The 6th accused is the District Representative of the Democratic Workers' Congress,

In the Magistrates
Court of Balangoda

Defence Evidence

No.13

Abdul Azeez
Examination
continued

Cross-examination

Re-examination

In the Magistrates
Court of Balangoda

Defence Evidence

No.13

Abdul Azeez
Re-examination
continued

Balangoda, the 7th accused is the District Secretary, and the 8th accused is a member of the District Executive Committee, Balangoda. The 9th accused did not go to the estate with us. He joined us on the estate.

Sgd. K.A.P. Ranasinghe

Mag.

10.7.59.

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Defence closed.

Mr. Nadesan addresses Court.

No.14

Judgment
24th July 1959

NO. 14

JUDGMENT

In this case the accused are charged with having on 4.2.59 being members of an unlawful assembly the common object of which was to commit criminal trespass by entering Pettiagala estate with the intention of causing annoyance to A.S.Rasanayagam who was in the occupation of the said estate, and that in prosecution of the common object of the said unlawful assembly, they did commit criminal trespass by entering the said estate, and thereby committed an offence punishable under 140 and 433 read with Section 146 of the Penal Code, respectively. On count 3 the accused are charged under Section 433 read with Section 32 of the Penal Code.

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The case for the prosecution is that the Labourers on Pettiagala estate of which witness Rasanayagam was the Superintendent had struck work on 24.12.58, and had still been out on strike at the time of this incident on 4.2.59. On 1.2.59 the 1st accused, who is the President of the Democratic Workers' Congress (hereinafter called the D.W.C.) to which the labourers on strike on this estate belonged, telephoned Rasanayagam

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and asked for permission to enter the estate in order to meet the strikers who were performing sathyagraha and persuade them to call off the sathyagraha and to go back to their line rooms. Rasanayagam had told the 1st accused that he could not give the 1st accused such permission without consulting the Estate Employers' Federation and had undertaken to contact the District Convenor of the Federation and let the 1st accused have a reply. A few minutes later the same day Rasanayagam had contacted the 1st accused over the telephone and informed the 1st accused that he could not contact the District Convenor and as such he was not in a position to grant the 1st accused permission to enter the estate. Rasanayagam stated that he had also specifically informed the 6th accused, who is the District Representative of the D.W.C. at Balangoda, that no officials of the union should enter the estate until the negotiations, which were going on between the Employers' Federation and the D.W.C. relating to this strike, was completed. He also stated that as a matter of practise whenever any official of the Union wants to enter the estate such official contacts him; and that it is only with his permission that such official thereafter enters the estate. Rasanayagam stated that on 4.2.59, the day of this incident, witness Karupaiah who was the conductor of the lower division of the estate, informed him that the 1st accused and nine others had entered the estate. Thereupon Rasanayagam had telephoned the Balangoda Police Station and on being told that the Inspector in charge was not in the station he had left word asking the Inspector to contact him the moment the Inspector came into the station. A few minutes later however Inspector Munasingha of the Balangoda Police had arrived at Rasanayagam's bungalow in the course of a routine patrol, which according to the evidence the Police had been in the habit of doing ever since the labourers went on strike. Rasanayagam had promptly complained to Inspector Munasingha that the 1st accused and about 9 or 10 others had entered the estate without his permission and that he apprehended

In the Magistrates
Court of Balangoda

No.14

Judgment
24th July 1959
continued

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In the Magistrates
Court of Balangoda

No.14

Judgment
24th July 1959
continued

trouble on the estate as a result of this entry. Rasanayagam also stated that at this time some of the strikers were performing Sathyagraha around the Factory and that he feared that the non-strikers, some of whom were Sinhalese, would protest against any demonstrations on the part of the accused and the labourers on strike. Having recorded Rasanayagam's complaint Inspector Munasingha had left the bungalow with the Police party in the jeep. 10

Rasanayagam too had followed on foot and he states that he saw the 1st accused coming with about 10 others along the estate road leading to the estate Factory. Inspector Munasingha and the Police party had intercepted the 1st accused and the others and Rasanayagam had seen the Inspector speak to the 1st accused, although he himself had not heard what they said. Rasanayagam quite clearly states that he was not only annoyed by the presence of the accused on the estate on the day in question, but also feared that there would be trouble on the estate as a result of the entry of the 1st accused and the others. Rasanayagam gave his evidence clearly and convincingly and I was impressed by the manner in which he gave his evidence. I have no hesitation in acting upon his evidence. 20

The prosecution called Inspector Munasingha who stated that even since the strike on the estate began the Police had been periodically patrolling the estate to prevent any possible breach of the peace. He states that on 4.2.59 when he had gone to the estate on patrol he met the last witness who complained to him that the 1st accused and 10 others had entered the estate about that time and were heading towards the estate Factory and had requested him to keep the 1st accused and the party away from the estate not only because the last witness had refused the accused permission to enter the estate but also because the last witness feared a breach of the peace on account of the accused's visit. The Inspector had thereupon proceeded with the Police party and intercepted the 1st accused and others in the party on the 40

estate road leading to the Factory and conveyed to them the complaint which had been made to him by Rasanayagam. Some of the people who were in the party had thereupon turned back and gone away whilst the 1st accused and all the other eight accused remained behind. The 1st accused had thereupon requested the Inspector for a few minutes time to discuss the matter with his friends the other accused.

In the Magistrates
Court of Balangoda

No.14

Judgment
24th July 1959
continued

10 The Inspector had also informed all these
accused that they were committing an offence.
After a short discussion among themselves at
which the Inspector had seen all the other
eight accused surrounding the 1st accused, the
1st accused had told the Inspector that they,
the accused would go ahead along the road.
The Inspector had informed the accused that he
could not allow the accused to proceed any
further into the estate and that if they in-
20 sisted on going ahead he would have no alter-
native but to arrest the accused. Thereafter
the Inspector says that as the accused per-
sisted in going into the estate he had inform-
ed the accused of the offence they were com-
mitting and arrested all these nine accused
and taken them to the Balangoda Police Station.
The Inspector also said in cross examination
that he was aware that there might be trouble
on the estate at any moment as the strike had
30 been going on for about two months. Inspec-
tor Munasingha is a disinterested witness and
no allegations were made against him. Apart
from a slip he made in cross-examination,
which lapse was due, in my opinion, to the
fact that there was some confusion about order
in which the accused were standing at the time,
he gave his evidence well, and I accept his
evidence.

40 The prosecution also led the evidence of
Karuppaiah, the conductor, and Sellamuttu,
the gate keeper. Karuppaiah referred to the
usual practise adopted in allowing persons
coming in motor vehicles to enter the estate.
This witness stated that on the day in ques-
tion at about 10.30 a.m. he was informed by
Sellamuttu the gate keeper about the entry
of the 1st accused and the party into the
estate; and that thereafter he himself saw

In the Magistrates
Court of Balangoda

No.14

Judgment
24th July 1959
continued

the accused going along the road leading to the Factory. He had thereafter conveyed this information to Rasanayagam over the telephone. Sellamuttu stated that on the day in question two cars came up and halted at the main gate and that about 10 persons got down from these cars and entered the estate through the side entrance adjoining the main gate and proceeded to go along the estate road.

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He had thereupon run to Karuppaiah and informed Karuppaiah about what he had seen. The evidence of these two witnesses was not seriously challenged and I have no reason why I should not accept the same.

The 1st accused gave evidence and stated that he was the President of the D.W.C. which is a trade union and that the 2nd accused to the 8th accused were all office bearers either of the D.W.C. itself or of the District Committee in Balangoda which looks after all the labourers belonging to the D.W.C. in this district. He admitted that the labourers on this estate had been called out on strike by the District Committee with the approval of the D.W.C. Union in Colombo on 24.12.58. He further stated that this strike had been a peaceful one and on 20.1.59 the labourers on strike had started a hunger strike around the estate factory without the approval of either the District Committee or the Union. This accused states that he believed that if there has been a mishap as a result of the fast "there would have been tension and violence among the labourers", and that therefore on 1.2.59 at a meeting of the Action Committee of the Union which was dealing with this particular strike, he decided that the labourers should be persuaded to call off the hunger strike. He had thereafter telephoned Rasanayagam and had expressed his desire to visit the strikers and had asked for permission to enter the estate. He states that as he did not get permission from Rasanayagam he did not go to the estate on 1.2.59. He had however sent word to the labourers who were fasting to give up their fast; but as these labourers

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In the Magistrates
Court of Balangoda

No.14

Judgment
24th July 1959
continued

had not called off their fast he (the 1st
accused) and the 2nd to 8th accused entered
the estate in order to persuade the strikers
to give up their fast and return to their
lines. The 1st accused also stated that he
did not for a moment imagine that such action
on his part would cause any embarrassment to
the estate management; but that on the con-
trary he believed that the management would be
relieved and his only intention entering to
estate was to persuade the strikers to give up
their fast. After careful examination of the
evidence given by the 1st accused and the cir-
cumstances of this case, I am of the view that
the claim put forward by the 1st accused was
merely a pretext for the 1st accused and the
2nd to 8th accused, who are all office bearers
of this labour organization, to enter the
estate against the wishes of the Superintend-
ent of the estate who was in occupation.
The 1st accused stated that he did not go to
the estate on 1.2.59 as he did not receive
permission from Rasanayagam. Thereafter he
made no further attempts to obtain permission
from, or even to contact either Rasanayagam or
the estate Employers' Federation, but took
upon himself to enter an estate which was priv-
ate property and which he knew fully well he
could not enter without the express permission
of the owner or their agents. The 1st accus-
ed could even have informed the Balangoda
Police before he entered the estate that the
entry was entirely of a peaceful nature and
was motivated only by his concern for the
lives of the labourers who were intercepted by
Inspector Munasingha the 1st accused does not
appear to have impressed upon the Inspector
the well-intentioned nature of his trip and
also of the situation which demanded his immedi-
ate presence. All that Inspector Munasinghe
stated in this connection was 'I cannot remem-
ber whether he told me that he (1st accused)
wanted to see the strikers in order to per-
suade them to give up the hunger strike".
The 1st accused himself does not refer at all
in his evidence on his meeting with the Inspec-
tor and the Police party. In any event there
is no reason why the 1st accused should have
taken with him on this trip a band of Union
officials who had been expressly asked by the

In the Magistrates
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No.14

Judgment
24th July 1959
continued

estate Superintendent not to enter the estate during the pendency of the negotiations, unless it be to cause embarrassment to the person in occupation of the estate.

Learned Queen's Counsel appearing for the accused sought to draw a distinction between the facts in the case reported in 22 N.L.R. page 449 and the facts of this case on the ground that whilst the meeting referred to in that case could have been held elsewhere other than on the estate, in this case the urgent situation had arisen in the estate as a result of the hunger strike which necessitated the presence of the 1st accused in the estate. There is however no evidence that such a desperate situation had arisen. The evidence of Rasanayagam on this point is "I am not sure whether the people who were performing Sathyagraha were fasting" They were doing it in shifts." 10

I am satisfied on the evidence led at the trial that Rasanayagam in his capacity as Superintendent was in occupation of the entirety of Pettiagala estate on the day in question and that the accused did enter the estate and the road along which the accused were going at the time they were intercepted by Inspector Munasingha and the Police party of and belonged to Pettiagala estate. 20

The fact that the 1st accused asked for permission to enter the estate indicates that he realised fully well that he could not lawfully enter the estate without the permission of the owners of their agents. There is not the slightest doubt that the 6th accused who is the District Representative of the D.W.C. in Balangoda, and who had also been informed by Rasanayagam that no officials of the Union were to enter the estate until the completion of the negotiations, knew, and that it was also well within the knowledge of the 2nd to the 6th accused, and the 7th and 8th accused, who are all office bearers of either the D.W.C. or its District Committee at Balangoda, that they could not enter the estate without express permission. None of these accused gave evidence. Quite 30 40

apart from the fact that there is direct evidence that the entry of these accused into the estate on the day in question did cause annoyance to Rasanayagam; it is also quite clear that the natural consequences of the accuseds' act would be to cause annoyance to Rasanayagam. I am therefore satisfied that the real intention of the 1st to the 8th accused at the time they entered this estate was to cause annoyance to Rasanayagam, the person in occupation, and that they thereby committed the offence of criminal trespass. On the evidence before me I am also satisfied that the 1st accused to 8th accused were also members of an unlawful assembly the common object of which was to commit criminal trespass by entering to the estate and that they did, in pursuance of the common object of the unlawful assembly, commit criminal trespass.

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No.14

Judgment
24th July 1959
continued

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In any event there is not the slightest doubt that, when all these nine accused, after consultation among themselves, deliberately defied Inspector Munasingha and the Police party and persisted in going into the estate, they not only contributed themselves into an unlawful assembly, the common object of which was to commit criminal trespass, but also did, in pursuance of the common object of the said unlawful assembly, commit criminal trespass again.

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I am therefore satisfied that the prosecution has proved its case beyond reasonable doubt and I find all the accused guilty of counts 1 and 2. I also find all the accused guilty on the third count.

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It is a matter for deep regret that the 1st accused who is the President of the vast labour organisation and to whom innumerable labourers look up for guidance and Leadership should have figured in incident of this nature. In my opinion the conduct of these accused on the day in question amounted to a calculated challenge to constituted authority. Courts of law will not tolerate such flagrant and deliberate breach of the law committed by whomsoever with scant respect for law and order, and in open defiance of the guidance

In the Magistrates
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Judgment
24th July 1959
continued

of the law. I am not unmindful of the fact that it is the policy of the law that first offenders should not be sent to jail, but the gravity of the offences of which these accused have been found guilty, and the circumstances in which the offences were committed to, in my opinion, call for sentence of imprisonment.

I sentence all the accused to a term of rigorous imprisonment for one month on the 1st count, and on the 2nd count to a term of two months' rigorous imprisonment. I also sentence all the accused to a term of one month's rigorous imprisonment on the 3rd count. I also direct that all the sentences are to run concurrently.

10

Sgd. K.A.P.Ranasingha
Mag.

24.7.1959.

In the event of appeal bail all accused in Rs.250/250.

20

Sgd. K.A.P.Ranasingha
Mag.

No.15

Court Notes
24th July 1959

NO.15

COURT NOTES

24.7.59: Accused:

1. Abdul Azeez
2. M.A.Thangavelu
3. K.G.S.Naidu
4. A.K.Kandasamy
5. A.Sinna Nadar
6. P.S.V.Naidu
7. K.R.Suppiah
8. V.Rasalingam
9. K.Periyasamy

30

Judgment. Order delivered in Open Court in the presence of A.S.P.Suntharalingam for prosecution and in the presence

of all the accused and Mr. Attygalla for the accused.

In the Magistrates Court of Balangoda

Vide Order: I sentence all the accused:

No.15

to one month r.i. on count No.1
Two months' r.i. on count No.2
One month r.i. on count No.3
all sentences to run concurrently. In the event of appeal bail accused in 250/250.

Court Notes
24th July 1959
continued

10

Inltd. K.A.P.R.
Mag.

24.7.59 All accused tender petition of appeal against the convictions.

1. Accept.
2. Bail in Rs.250/250 as already ordered.
3. Issue notice of appeal for 7.8.59.

20

Inltd. K.A.P.R.
Mag.

NO.16

PETITION OF APPEAL OF ABDUL AZEEZ

In the Supreme Court of Ceylon

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

No.16

M.C.Balangoda
No.69020

Petition of Appeal
of Abdul Azeez
24th July 1959

S.G.Munasinghe
Inspector of Police,
Balangoda.

Complainant.

30

Vs.

1. Abdul Azeez of Layards Road,
Colombo and eight others.
Accused.

Between

1. Abdul Azeez of Layards Road,
Colombo 5.
1st Accused-Appellant
and

In the Supreme
Court of Ceylon

S.G.Munasinghe, Inspector of
Police, Balangoda.
Complainant-Respondent.

No.16

Petition of Appeal
of Abdul Azeez
24th July 1959
continued

TO THE HONOURABLE THE CHIEF JUSTICE AND OTHER
JUSTICES OF THE HONOURABLE THE SUPREME
COURT OF THE ISLAND OF CEYLON.

On this 24th day of July, 1959.

THE PETITION OF APPEAL OF 1ST ACCUSED-
APPELLANT.

Accused-Appellant in the above case humbly
showeth as follows:- 10

Your Lordship's humble the 1st accused-
appellant was charged in the Magistrate's
Court of Balangoda with having on the 4th day
of February, 1959 at Pettiagala Estate, Balan-
goda, within the jurisdiction of this Court,
with eight others, with being the members of
an unlawful assembly the common object of
which was to commit criminal trespass to the
annoyance of A.S.Rasanayagam the Superinten- 20
dent of Pettiagala Estate, Balangoda, by
entering into the said estate in the possess-
ion of the said A.S.Rasanayagam and that they
have thereby committed an offence punishable
under section 140 of the Penal Code.

2. That at the same time and place afore-
said and in the course of the same transac-
tion the accused appellant and eight others
did commit criminal trespass by entering into
the said estate in the occupation of the said 30
A.S.Rasanayagam, which offence was committed
in prosecution of the common object of the
unlawful assembly, or was such as the members
of the said assembly know to be likely to be
committed in the prosecution of the said
object, and the accused appellant and eight
others being 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 Sec- 40
tion 146 of the Penal Code.

3. That at the time and place aforesaid
and in the course of the same transaction the

accused appellant and eight others in furtherance of the common intention of them all commit criminal trespass by entering into the said estate in the occupation of the said A. S. Rasanayagam with intent to cause annoyance to the said A. S. Rasanayagam and thereby committed an offence punishable under Section 433 read with Section 32 of the Penal Code.

In the Supreme
Court of Ceylon

No.16

Petition of Appeal
of Abdul Azeez
24th July 1959
continued

10 The case proceeded to trial on the 15th day of May, 1959 and on the 10th day of July, 1959 at Balangoda Magistrate's Court and at the conclusion thereof the learned Magistrate found the 1st accused-appellant and all the other accused guilty of all the three charges and the 1st accused-appellant and all the other accused were sentenced on 24th day of July 1959 to a term of one month's rigorous imprisonment on count 1 to a term of two months' sic imprisonment on count 2, and to a term of one month's rigorous imprisonment on count 3; and all sentences to run concurrently.

20

Your Lordship's humble 1st accused-appellant is dissatisfied with the said judgment and sentence of the learned Magistrate and the following grounds among other grounds that may be urged by learned Counsel at the hearing of this appeal.

- 30
1. The said judgment and order are contrary to law and against the weight of evidence led in this case.
 2. That the sentence is severe and excessive.
 3. WHEREFORE your Lordship's 1st accused-appellant humbly prays:
 - (a) That the said judgment and order of the learned Magistrate be set aside or reversed, reduced;
 - (b) For such other and further order as to Your Lordship's Court may consider.
- 40

Sgd. Abdul Azeez
1st Accused-Appellant.

In the Supreme
Court of Ceylon

NO.17

No.17

Petition of Appeal
of M.A.Thangavelu
24th July 1959

PETITION OF APPEAL OF M.A.THANGAVELU

IN THE SUPREME COURT OF THE ISLAND OF
CEYLON

M.C.Balangoda
No.69020

S.G.Munasinghe
Inspector of Police, Balangoda.
Complainant.

Vs.

10

2. M.A.Thangavelu of Ella and
eight others
Accused

Between

2. M.A.Thangavelu of Ella
2nd Accused-Appellant

and

S.G.Munasinghe, Inspector of
Police, Balangoda.
Complainant-Respondent.

20

TO THE HONOURABLE THE CHIEF JUSTICE AND OTHER
JUSTICES OF THE HONOURABLE THE SUPREME
COURT OF THE ISLAND OF CEYLON.

On this 24th day of July, 1959.

THE PETITION OF APPEAL OF 2nd accused-
appellant.

Accused-Appellant in the above case humbly
sheweth as follows:

Your Lordship's humble the 2nd accused-
appellant was charged in the Magistrate's
Court of Balangoda with having on the 4th day
of February 1959, at Pettiagala Estate, Balan-
goda, within the jurisdiction of this Court,

30

with eight others with being the members of an unlawful assembly the common object of which was to commit trespass to the annoyance of A. S. Rasanayagam the Superintendent of Pettigala Estate, Balangoda by entering into the said estate in the possession of the said A. S. Rasanayagam and that they have thereby committed an offence punishable under Section 140 of the Penal Code.

In the Supreme
Court of Ceylon

No.17

Petition of Appeal
of M.A.Thangavelu
24th July 1959
continued

10 2. That at the same time and place afore-
said and in the course of the same transaction
the accused appellant and eight others did com-
mit criminal trespass by entering into the said
estate in the occupation of the said A.S. Ras-
anayagam, which offence was committed in prose-
cution of the common object of the unlawful
assembly, or was such as the members of the
said assembly knew to be likely to be committ-
ed in the prosecution of the said object, and
20 the accused-appellant and eight others being
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.

30 3. That at the same time and place afore-
said and in the course of the same transaction
the accused appellant and eight others in fur-
therance of the common intention of them all
commit criminal trespass by entering into the
said estate in the occupation of the said A.S.
Rasanayagam with intent to cause annoyance to
the said A.S. Rasanayagam and thereby committed
an offence punishable under Section 433 read
with section 32 of the Penal Code.

40 The case proceeded to trial on the 15th
day of May, 1959 and on the 10th day of July
1959 at Balangoda Magistrate's Court and at
the conclusion thereof the learned Magistrate
found the 2nd accused-appellant and all the
other accused guilty of all the three charges
and the 2nd accused-appellant and all the
other accused were sentenced on 24th day of
July 1959 to a term of one month's rigorous
imprisonment on count 1, to a term of two
months' rigorous imprisonment on count 2, and
to a term of one month's rigorous imprisonment
on count 3; and all sentences to run con-
currently.

In the Supreme
Court of Ceylon

No.17

Petition of Appeal
of M.A.Thangavelu
24th July 1959
continued

Your Lordship's humble 2nd accused-appellant is dissatisfied with the said judgment and sentence of the learned Magistrate and the following grounds among other grounds that may be urged by learned Counsel at the hearing of this appeal.

1. The said judgment and order are contrary to law and against the weight of evidence led in this case.

2. That the sentence is severe and excessive. 10

3. WHEREFORE Your Lordship's 2nd accused appellant humbly prays:

(A) That the said judgment and order of the learned Magistrate be set aside or reversed or reduced;

(B) For such other and further order as to Your Lordship's Court may consider.

Sgd. M.A.Thangavelu 20
Accused-Appellant.

No.18

Petition of Appeal
of K.G.S.Nair
24th July 1959

NO.18

PETITION OF APPEAL OF K.G.S.NAIR

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

M.C.BALANGODA

No.69020

S.G.Munasinghe
Inspector of Police, Balangoda.
Complainant

Vs.

3. K.G.S.Nair of Yatiyantota
and eight others. 30
Accused.

BETWEEN

3. K.G.S.Nair of Yatiyantota
3rd Accused-Appellant

and

S.G.Munasinghe, Inspector of Police,
Balangoda.

Complainant-Respondent.

In the Supreme
Court of Ceylon

No.18

TO THE HONOURABLE THE CHIEF JUSTICE AND OTHER
JUSTICES OF THE HONOURABLE THE SUPREME
COURT OF THE ISLAND OF CEYLON.

Petition of Appeal
of K.G.S.Nair
24th July 1959
continued

On this 24th day of July, 1959.

THE PETITION OF APPEAL OF 3rd Accused-
Appellant.

10 Accused-Appellant in the above case humbly
showeth as follows:

Your Lordship's humble the 3rd accused-
appellant was charged in the Magistrate's
Court of Balangoda with having on the 4th day
of February, 1959, at Pettigala Estate, Bal-
angoda, within the jurisdiction of this Court,
with eight others, with being the members of
an unlawful assembly the common object of
which was to commit criminal trespass to the
annoyance of A.S.Rasanayagam the Superinten-
dent of Pettigala Estate, Balangoda, by
entering into the said estate in the posses-
sion of the said A.S.Rasanayagam and that they
have thereby committed an offence punishable
under Section 140 of the Penal Code.

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30
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2. That at the same time and place afore-
said and in the course of the same transac-
tion the accused appellant and eight others
did commit criminal trespass by entering into
the said estate in the occupation of the said
A.S.Rasanayagam, which offence was committed
in prosecution of the common object of the un-
lawful assembly, or was such as the members of
the said assembly knew to be likely to be com-
mitted in the prosecution of the said object,
and the accused appellant and eight others
being 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.

3. That at the same time and place afore-
said and in the course of the same transaction

In the Supreme
Court of Ceylon

No.18

Petition of Appeal
of K.G.S.Nair
24th July 1959
continued

the accused appellant and eight others in furtherance of the common intention of them all commit criminal trespass by entering into the said estate in the occupation of the said A.S.Rasanayagam with intent to cause annoyance to the said A.S.Rasanayagam and thereby committed an offence punishable under Section 433 read with Section 32 of the Penal Code.

The case proceeded to trial on the 15th day of May, 1959 and on the 10th day of July 1959 at Balangoda Magistrate's Court and at the conclusion thereof the learned Magistrate found the 3rd accused-appellant and all the other accused guilty of all the three charges and the 3rd accused-appellant and all the other accused were sentenced on 24th day of July 1959 to a term of one month's rigorous imprisonment on count 1; to a term of two months' rigorous imprisonment on count 2; and to a term of one month's imprisonment on count 3; and all sentences to run concurrently. 10 20

Your Lordship's humble 3rd accused-appellant is dissatisfied with the said judgment and sentence of the learned Magistrate and the following grounds among other grounds that may be urged by learned Counsel at the hearing of this appeal.

1. The said judgment and order are contrary to law and against the weight of evidence led in this case. 30
2. That the sentence is severe and excessive.
3. WHEREFORE Your Lordship's 3rd accused-appellant humbly prays -
 - (a) That the said judgment and order of the learned Magistrate be set aside or reversed or reduced.
 - (b) For such other and further order as to Your Lordship's Court may consider. 40

Sgd. K.G.S.Nair
3RD ACCUSED-APPELLANT.

NO.19

PETITION OF APPEAL OF A.K.KANDASAMY

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

M.C.Balangoda
No.69020

S.G.Munasingha
Inspector of Police, Balangoda.
Complainant.

Vs.

10 4. A.K.Kandasamy of Station Road,
Badulla & eight others.
Accused.

BETWEEN

4. A.K.Kandasamy
4th Accused-Appellant.

and

S.G.Munasinghe, Inspector of
Police Balangoda.
Complainant-Respondent.

20 TO THE HONOURABLE THE CHIEF JUSTICE AND OTHER
JUSTICES OF THE HONOURABLE THE SUPREME COURT
OF THE ISLAND OF CEYLON.

On this 24th day of July, 1959.

THE PETITION OF APPEAL of 4th Accused-
Appellant.

Accused-Appellant in the above case humbly
showeth as follows:-

30 Your Lordships' humble the 4th accused
appellant was charged in the Magistrate's
Court of Balangoda with having on the 4th day
of February, 1959 at Pettiagala Estate, Bal-
angoda within the jurisdiction of this Court,
with eight others, with being the members of
an unlawful assembly the common object of
which was to commit criminal trespass to the

In the Supreme
Court of Ceylon

No.19

Petition of Appeal
of A.K.Kandasamy
24th July 1959

In the Supreme
Court of Ceylon

No.19

Petition of Appeal
of A.K.Kandasamy
24th July 1959
continued

annoyance of A.S.Rasanayagam the Superintendent of Pettiagala Estate, Balangoda, by entering into the said estate in the possession of the said A.S.Rasanayagam and that they have thereby committed an offence punishable under Section 140 of the Penal Code.

2. That at the same time and place aforesaid and in the course of the same transaction the accused appellant and eight others did commit criminal trespass by entering into the said estate in the occupation of the said A.S.Rasanayagam, which offence was committed in prosecution of the common object of the unlawful assembly, or was such as the members of the said assembly knew to be likely to be committed in the prosecution of the said object, and the accused appellant and eight others being members of the said assembly at the time of the committing of the said offence and 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 the accused appellant and eight others in furtherance of the common intention of them all commit criminal trespass by entering into the said estate in the occupation of the said A.S.Rasanayagam with intent to cause annoyance to the said A.S.Rasanayagam and thereby committed an offence punishable under Section 433 read with Section 32 of the Penal Code.

30

The case proceeded to trial on the 15th of May 1959 and on the 10th day of July 1959 at Balangoda Magistrate's Court and at the conclusion thereof the learned Magistrate found the 4th accused-appellant and all the other accused guilty of all the three charges and the 4th accused-appellant and all the other accused were sentenced on 24th day of July, 1959 to a term of one month's rigorous imprisonment on count 1; to a term of two months' rigorous imprisonment on count 2; and to a term of one month's rigorous imprisonment on count 3; and all sentences to run concurrently.

40

In the Supreme
Court of Ceylon

S.G.Munasingha
Inspector of Police, Balangoda.
Complainant-Respondent.

No.20

Petition of Appeal
of A.Sinna Nadar
24th July 1959
continued

TO THE HONOURABLE THE CHIEF JUSTICE AND OTHER
JUSTICES OF THE HONOURABLE THE SUPREME
COURT OF THE ISLAND OF CEYLON:

On this 24th day of July, 1959.

THE PETITION OF APPEAL of 5th Accused-
Appellant:

Accused Appellant in the above case humbly
showeth as follows:

10

Your Lordship's humble 5th accused-
appellant was charged in the Magistrate's
Court of Balangoda with having on the 4th day
of February 1959 at Pettigala Estate, Bal-
angoda, within the jurisdiction of this Court,
with eight others, with being members of an
unlawful assembly the common object of which
was to commit criminal trespass to the annoy-
ance of A.S.Rasanayagam the Superintendent
of Pettigala Estate, Balangoda, by
entering into the said estate in the possess-
ion of the said A.S.Rasanayagam and that they
have thereby committed an offence punishable
under Section 140 of the Penal Code.

20

2. That at the same time and place afore-
said and in the course of the same transac-
tion the accused-appellant and eight others
did commit criminal trespass by entering into
the said estate in the possession 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 to be likely
to be committed in the prosecution of the said
object, and the accused-appellant and eight
others being members of the said assembly and
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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40

3. That at the same time and place afore-
said and in the course of the same transaction

the accused appellant and eight others in furtherance of the common intention of them all commit criminal trespass by entering into the said estate in the possession of the said A.S. Rasanayagam with intent to cause annoyance to the said A.S. Rasanayagam and thereby committed an offence punishable under Section 433 read with Section 32 of the Penal Code.

In the Supreme
Court of Ceylon

No.20

Petition of Appeal
of A. Sinna Nadar
24th July 1959
continued

10 The case proceeded to trial on the 15th day of May, 1959 and on the 10th day of July 1959 at Balangoda Magistrate's Court and at the conclusion thereof the learned Magistrate found the 5th accused appellant and all the other accused guilty of all the three charges and the 5th accused-appellant and all the other accused were sentenced on the 24th day of July 1959 to a term of one month's rigorous imprisonment on count 1; to a term of two month's rigorous imprisonment on count 2; and to a
20 term of one month's rigorous imprisonment on count 3; and all sentences to run concurrently.

Your Lordship's humble 5th accused-appellant is dissatisfied with the said judgment and sentence of the learned Magistrate on the following among other grounds that may be urged by learned Counsel at the hearing of this appeal.

- 30 1. The said judgment and order are contrary to law and against the weight of the evidence led in this case.
2. That the sentence is severe and excessive.

WHEREFORE YOUR Lordship's humble 5th accused-appellant humbly prays:-

- (a) That the said judgment and order of the learned Magistrate be set aside or reversed or reduced.
- (b) For such other and further order as to Your Lordship's Court may
40 consider.

Sgd. A. Sinna Nadar
Accused-Appellant.

In the Supreme
Court of Ceylon

NO.21

PETITION OF APPEAL OF P.S.V. NAIDU

No.21

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Petition of Appeal
of P.S.V. Naidu
24th July 1959

M.C.BALANGODA
Case 69020

S.G.Munasinghe
Inspector of Police, Balangoda.
Complainant.

Vs.

6. P.S.V.Naidu of Yatiyantota 10
and 8 others.
Accused

BETWEEN

6. P.S.V.Naidu of Yatiyantota.
6th Accused-Appellant.
and

S.G.Munasingha,
Inspector of Police, Balangoda.
Complainant-Respondent.

TO THE HONOURABLE THE CHIEF JUSTICE AND OTHER 20
JUSTICES OF THE HONOURABLE THE SUPREME
COURT OF THE ISLAND OF CEYLON.

On this 24th day of July, 1959.

THE PETITION OF APPEAL of 6th Accused-
Appellant.

Accused-Appellant in the above case humbly
showeth as follows:-

Your Lordship's humble the 6th accused-
appellant was charged in the Magistrate's
Court of Balangoda, with having on the 4th 30
day of February, 1959, at Pettiagala Estate,
Balangoda, within the jurisdiction of this
Court, with eight others, with being members
of an unlawful assembly the common object of
which was to commit criminal trespass to the
annoyance of A.S.Rasanayagam the Superinten-
dent of Pettiagala Estate, Balangoda, by

entering into the said estate in the possession of the said A.S.Rasanayagam and that they have thereby committed an offence punishable under Section 140 of the Penal Code.

In the Supreme
Court of Ceylon

No.21

Petition of Appeal
of P.S.V. Naidu
24th July 1959
continued

2. That at the same time and place afore-
said and in the course of the same transac-
tion the accused-appellant and eight others
did commit criminal trespass by entering into
(sic) the said estate in the (prosecution) of the
10 said A.S.Rasanayagam which offence was committ-
ed in the prosecution of the common object of
the unlawful assembly or was such as the
members of the said assembly knew to be likely
to be committed in the prosecution of the said
object, and the accused-appellant and eight
others being members of the said assembly and
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
20 Code.

3. That at the same time and place afore-
said and in the course of the same transac-
tion the accused-appellant and eight others in
furtherance of the common intention of them
all commit criminal trespass by entering into
the said estate in the possession of the said
A.S.Rasanayagam with intent to cause annoyance
to the said A.S.Rasanayagam and thereby com-
mitted an offence punishable under Section 433
30 read with section 32 of the Penal Code.

The case proceeded to trial on the 15th
of May, 1959 and on the 10th day of July at
Balangoda Magistrate's Court and at the con-
clusion thereof the learned Magistrate found
the 6th accused appellant and all the other
accused guilty of all the three charges and the
6th accused-appellant and all the other
accused were sentenced on the 24th day of July
40 1959 to a term of one month's rigorous impris-
onment on count 1, to a term of two months'
rigorous imprisonment on count 2, and to a
term of one month's rigorous imprisonment on
count 3 and all sentences to run concurrently.

Your Lordship's humble 6th accused-
appellant is dissatisfied with the said judg-
ment and sentence of the learned Magistrate
on the following grounds among other grounds

In the Supreme
Court of Ceylon

No.21

Petition of Appeal
of P.S.V. Naidu
24th July 1959
continued

that may be urged by learned Counsel at the hearing of this appeal.

1. The said judgment and order are contrary to law and against the weight of the evidence led in this case.
2. That sentence is severe and excessive.

WHEREFORE YOUR Lordship's humble 6th accused-appellant humbly prays:

- (a) That the said judgment and order of the learned Magistrate be set aside or reversed or reduced.
- (b) For such other and further order as to Your Lordship's Court may consider.

10

Sgd. P.S.V. Naidu
6th Accused-Appellant.

No.22

Petition of Appeal
of K.R. Suppiah
24th July 1959

NO.22

PETITION OF APPEAL OF K.R.SUPPIAH

M.C.BALANGODA
Case 69020

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S.G.Munasinghe,
Inspector of Police, Balangoda.
Complainant.

Vs.

7. K.R.Suppiah of Old Road,
Balangoda and 8 others.
Accused

BETWEEN

7. K.R.Suppiah of Balangoda.
7th Accused-Appellant.

30

and

S.G.Munasinghe,
Inspector of Police, Balangoda.
Complainant-Respondent.

In the Supreme
Court of Ceylon

No.22

TO THE HONOURABLE THE CHIEF JUSTICE AND OTHER
JUSTICES OF THE HONOURABLE THE SUPREME
COURT OF THE ISLAND OF CEYLON.

Petition of Appeal
of K.R. Suppiah
24th July 1959
continued

On this 24th day of July, 1959.

THE PETITION OF APPEAL of 7th Accused-
Appellant.

10 Accused-Appellant in the above case humbly
showeth as follows:

Your Lordship's humble the 7th accused-
appellant was charged in the Magistrate's
Court of Balangoda with having on the 4th
day of February, 1959 at Pettiagala Estate,
Balangoda, within the jurisdiction of this
Court, with eight others, with being members
of an unlawful assembly the common object of
which was to commit criminal trespass to the
annoyance of A.S.Rasanayagam the Superinten-
dent of Pettiagala estate, Balangoda by
20 entering into the said estate in the posses-
sion of the said A.S.Rasanayagam and that
they have thereby committed an offence pun-
ishable under Section 140 of the Penal Code.

2. That at the same time and place afore-
said and in the course of the same transac-
tion the accused-appellant and eight others
did commit criminal trespass by entering
30 into the said estate in the possession of the
said A.S.Rasanayagam which offence was com-
mitted in the prosecution of the common
object of the unlawful assembly, or was such
as the members of the said assembly knew to
be likely to be committed in the prosecution
of the said object, and the accused-appell-
ant and eight others being members of the
said assembly and time of the committing of
40 the said offence are thereby guilty of an
offence punishable under Section 433 read
with Section 146 of the Penal Code.

3. That at the same time and place afore-
said and in the course of the same transaction

In the Supreme
Court of Ceylon

No.22

Petition of Appeal
of K.R. Suppiah
24th July 1959
continued

the accused appellant and eight others in furtherance of the common intention of them all commit criminal trespass by entering into the said estate in the possession of the said A.S.Rasanayagam with intent to cause annoyance to the said A.S.Rasanayagam and thereby committed an offence punishable under Section 433 read with Section 32 of the Penal Code.

The case proceeded to trial on the 15th day of May 1959 and on the 10th day of July, 1959 at Balangoda Magistrate's Court and at the conclusion thereof the learned Magistrate found the 7th accused appellant and all the other accused guilty of all the three charges and the 7th accused-appellant and all the other accused were sentenced on the 24th day of July, 1959 to a term of one month's rigorous imprisonment on count 1; to a term of two months rigorous imprisonment on count 2; and to a term of one month's rigorous imprisonment on count 3; and all sentences to run concurrently. 10

Your Lordship's humble 7th accused-appellant is dissatisfied with the said judgment and sentence of the learned Magistrate on the following grounds among other grounds that may be urged by learned Counsel at the hearing of this appeal.

1. The said judgment and order are contrary to law and against the weight of the evidence led in this case. 30
2. That the sentence is severe and excessive.

WHEREFORE YOUR Lordship's humble 7th accused-appellant humbly prays:-

- (a) That the said judgment and order of the learned Magistrate be set aside or reversed or reduced.
- (b) For such other and further order as to Your Lordship's Court may consider. 40

Sgd. K.R.Suppiah

7th Accused-Appellant.

NO.23

In the Supreme
Court of Ceylon

PETITION OF APPEAL OF V. RASALINGAM

No.23

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

M.C.BALANGODA

Case 69020

Petition or Appeal
of V. Rasalingam
24th July 1959

S.G.Munasinghe,
Inspector of Police, Balangoda.
Complainant.

Vs.

10 8. V.Rasalingam of Balangoda
 Group and eight others Accused.

BETWEEN

8. V.Rasalingam of Balangoda
 8th Accused-Appellant
 and

S.G. Munasinghe,
Inspector of Police, Balangoda.
Complainant-Respondent.

20 TO THE HONOURABLE THE CHIEF JUSTICE AND THE
 OTHER JUSTICES OF THE HONOURABLE THE
 SUPREME COURT OF THE ISLAND OF CEYLON.

On this 24th day of July, 1959.

The Petition of Appeal of 8th Accused-
Appellant.

Accused-Appellant in the above case humbly
showeth as follows:

30 Your Lordship's humble the 8th Accused-
Appellant was charged in the Magistrate's
Court of Balangoda, with having on the 4th
day of February, 1959, at Pettiagala Estate,
Balangoda, within the jurisdiction of this
Court, with eight others, with being members
of an unlawful assembly the common object of
which was to commit criminal trespass to the

In the Supreme
Court of Ceylon

No.23

Petition of Appeal
of V. Rasalingam
24th July 1959
continued

annoyance of A.S.Rasanayagam the Superintendent of Pettiagala Estate, Balangoda, by entering into the said estate in the possession of the said A.S.Rasanayagam and that they have thereby committed an offence punishable under Section 140 of the Penal Code.

2. That at the same time and place aforesaid and in the course of the same transaction the accused-appellant and eight others did commit criminal trespass by entering into the said estate in the possession 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 to be likely to be committed in the prosecution of the said object, and the accused-appellant and eight others being members of the said assembly and 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 the accused-appellant and eight others in furtherance of the common intention of them all commit criminal trespass by entering into the said estate in the possession of the said A.S.Rasanayagam with intent to cause annoyance to the said A.S.Rasanayagam and thereby committed an offence punishable under Section 433 read with Section 32 of the Penal Code.

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The case proceeded to trial on the 15th day of May 1959 and on the 10th day of July, 1959 at Balangoda Magistrate's Court and at the conclusion thereof the learned Magistrate found the 8th accused-appellant and all the other accused guilty of all the three charges and the 8th accused-appellant and all the other accused were sentenced on the 24th day of July, 1959 to a sic term of one month's rigorous imprisonment on count 2; and to a term of one month's rigorous imprisonment on Count 3; and all sentences to run concurrently.

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Your Lordship's humble 8th accused-appellant is dissatisfied with the said judgment and sentence of the learned Magistrate on the following grounds among other grounds that may be urged by learned Counsel at the hearing of this appeal.

In the Supreme Court of Ceylon

No.23

Petition of Appeal of V. Rasalingam 24th July 1959 continued

1. That said judgment and order are contrary to law and against the weight of the evidence led in this case.

10 2. That the sentence is severe and excessive

WHEREFORE YOUR Lordship's humble 8th accused-appellant humbly prays :

(a) That the said judgment and order of the learned Magistrate be set aside or reversed or reduced.

(b) For such other and further order as to Your Lordship's Court may consider.

20 Sgd. V. Rasalingam Accused-Appellant.

NO.24

No.24

PETITION OF APPEAL OF K.PERIYASAMY
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Petition of Appeal of K. Periyasamy 24th July 1959

M.C.BALANGODA
Case No.69020.

S.G.Munasinghe
Inspector of Police, Balangoda.
Complainant.

30 Vs.

9. K.Periyasamy of Rye Estate and eight others.
Accused.

BETWEEN

9. K. Periyasamy of Rye Estate.
9th Accused-Appellant.

and

In the Supreme
Court of Ceylon

S.G.Munasinghe
Inspector of Police, Balangoda.
Complainant-Respondent.

No.24

Petition of Appeal
of K. Periyasamy
24th July 1959
continued

TO THE HONOURABLE THE CHIEF JUSTICE AND OTHER
JUSTICES OF THE HONOURABLE SUPREME COURT
OF THE ISLAND OF CEYLON.

On this 24th day of July, 1959.

THE PETITION OF APPEAL of 9th accused-
Appellant.

Accused-Appellant in the above case humbly
showeth as follows: 10

Your Lordship's humble the 9th accused-
appellant was charged in the Magistrate's
Court of Balangoda with having on the 4th day
of February 1959 at Pettiagala Estate, Bal-
angoda, within the jurisdiction of this Court,
with eight others, with being members of an
unlawful assembly the common object of which
was to commit criminal trespass to the annoy-
ance of A.S.Rasanayagam the Superintendent of 20
Pettiagala Estate by entering into the said
estate in the occupation of the said A.S.
Rasanayagam and that they have thereby com-
mitted an offence punishable under Section 140
of the Penal Code.

2. That at the same time and place afore-
said and in the course of the same transac-
tion the accused-appellant and eight others
did commit criminal trespass by entering into 30
the said 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 to be likely to be
committed in the prosecution of the said
object, the accused-appellant and eight others
being 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 40
Code.

3. That at the same time and place afore-
said and in the course of the same transaction

the accused-appellant and eight others in furtherance of the common intention of them all commit criminal trespass by entering into the said estate in the occupation of the said A.S. Rasanayagam with intent to cause annoyance to the said A.S. Rasanayagam and thereby committed an offence punishable under Section 433 read with Section 32 of the Penal Code.

In the Supreme
Court of Ceylon

No.24

Petition of Appeal
of K. Periyasamy
24th July 1959
continued

10 The case proceeded to trial on the 15th day of May, 1959 and on the 10th day of July 1959 at Balangoda Magistrate's Court and at the conclusion thereof the learned Magistrate found the 9th accused-appellant and all the other accused guilty of all the three charges and the 9th accused-appellant and all the other accused were sentenced on 10th day of July 1959 to a term of one month's rigorous imprisonment on count 2; and to a term of one month's rigorous imprisonment on count 3; and
20 all sentences to run concurrently.

Your Lordship's humble 9th Accused-Appellant is dissatisfied with the said judgment and sentence of the learned Magistrate on the following grounds among other grounds that may be urged by learned Counsel at the hearing of this appeal:

1. That said judgment and order are contrary to law and against the weight of evidence led in this case.
- 30 2. That the sentence is severe and excessive.

WHEREFORE YOUR Lordship's humble 9th accused appellant humbly prays:-

- (a) That the said judgment and order of the learned Magistrate be set aside or reversed or, reduced.
- (b) For such other and further order as to Your Lordship's Court may consider.

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Sgd. K. Periyasamy
Accused-Appellant.

In the Supreme
Court of Ceylon

NO.25

DECISION OF H.W. TAMBIAH, J.

No.25

S.C. 799-807/1959

M.C.Balangoda 69020

Decision of
H.W.Tambiah, J.
23rd June 1961

Present: H.W.Tambiah, J.

Counsel: H.V.Perera Q.C., with Miss Maureen
Seneviratne for accused -
appellants

V.S.A.Pullenayagam Crown Counsel
with M.Hussain, Crown Counsel
for the Attorney-General.

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Argued on: 20th and 23rd June, 1961.

Decided on: 23.6.61.

Tambiah, J.

In this case the accused were charged on three counts namely (1) that they were members of an unlawful assembly on the 4th February, 1959 at Pettiagala Estate, Balangoda with the common object of committing criminal trespass to the annoyance of S.A.Rasanayagam, Superintendent of the said estate, by entering into the said estate and thereby committed an offence punishable under Section 140 of the Penal Code, (2) that at the time and place aforesaid and in the course of the same transaction they did commit criminal trespass by entering into the said estate which was in the occupation of the said A.S.Rasanayagam and 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 to be likely to be committed in prosecution of the said common object and thereby committed an offence punishable under Section 433 read with Section 146 of the Penal Code and (3) that at the time and place aforesaid and in the course of the same transaction they in further of the common intention of them all commit criminal trespass by entering into the said estate in the occupation of the

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said A.S.Rasanayagam with intent to cause annoyance to the said Rasanayagam and thereby committed an offence punishable under Section 433 read with Section 32 of the Penal Code.

In the Supreme
Court of Ceylon

No.25

10 The learned Magistrate after trial convicted all the accused and sentenced them to various terms of imprisonment and the accused have appealed from this order. This case was argued before me on the 20th June 1961, on which date Mr. H.V. Perera, Q.C., appeared for the Appellant. Attorney-General was not represented. After I reserved judgment Mr. Pullenayagam on behalf of the Attorney General saw me in chambers and the case was thereafter listed for further argument today. Even if Mr. Pullenayagam had not seen me in chambers I would have wished to hear further argument in this case and I would have listed the case for further argument.

Decision of
H.W.Tambiah, J.
23rd June 1961
continued

20 It is not disputed that these accused entered Pettiagala Estate on 4.2.59. The question now for decision is whether they entered into the estate with the dominant intention of causing annoyance to Mr.Rasanayagam, who is also sometimes referred to as Rasalingam, Superintendent of Pettiagala Estate. The more one goes into the law and facts of this case the more one feels that questions of great nicety doubts and difficulty arise. There-
30 fore acting on the powers conferred on me under Section 48 (a) of the Courts Ordinance I refer this case to a bench of three judges. Such a course was followed in Abraham Vs. Hume (1951) 52 N.L.R. page 449. In that case too the question that created difficulty was to decide whether the accused persons had the intention to annoy the Superintendent of the tea estate. Questions of greater nicety and difficulty arise in the present case than the case of Abraham vs. Hume. In view of the importance
40 of the questions of law and the proper inferences to be drawn on the question whether the accused had the dominant intention to annoy the Superintendent of the estate, I direct that this case be heard by a bench of three judges. It is not necessary that I should be a member of this Bench.

Sgd. H.W.Tambiah
PUISNE JUSTICE.

In the Supreme
Court of Ceylon

NO. 26

JUDGMENT

No.26

S.C.No.799-807/'59 M.C.Balangoda No.69020.

Judgment
28th October
1963

ABDUL AZEEZ & OTHERS Vs. ATTORNEY-GENERAL.

Present: Basnayake, C.J., Abeyasundere, J.,
and G.P.A.Silva, J.

Counsel: H.V.Perera, Q.C., with (Miss)
Maureen Seneviratne for
Accused-Appellants.

H.B.White, Crown Counsel, for
Attorney-General.

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Argued & Decided on: January 31, 1963.

Reasons delivered on: October 28, 1963.

Basnayake, C.J.

These appeals were heard by a Bench of three Judges in accordance with an Order in that behalf made by me under Section 48A of the Courts Ordinance.

At the conclusion of the hearing we dismissed the appeals and stated that our reasons would be delivered on a later date. We accordingly deliver our reasons now.

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The charges against the accused alleged that they were members of an unlawful assembly the common object of which was to commit criminal trespass, and that in prosecution of the common object they did commit criminal trespass by entering Pettigala Estate. They were found guilty and sentenced to a term of one month's rigorous imprisonment on the 1st charge, a term of two months' rigorous imprisonment on the 2nd charge, and a term of one month's rigorous imprisonment on the 3rd charge, the sentences to run concurrently.

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Briefly the facts are as follows:-

The acts alleged in the three charges occurred on Pettiagala Estate in Balangoda on 4th February 1959. A strike among the Tamil labourers of the estate had at the material date been going on for two months. Some of the strikers were also performing "satyagraha" in the premises of the Superintendent's bungalow. The 1st accused was at the material date the President and the 2nd accused was a Joint Secretary of the Democratic Workers' Congress, the 3rd and 4th accused were members of its Executive Committee, the 5th accused was its Treasurer, the 6th accused was the Balangoda District Representative of that body, the 7th accused was the District Secretary, and the 8th accused was a member of the District Executive Committee. The 9th accused was not an office-bearer of the Congress. He joined the others on the estate.

In the Supreme
Court of Ceylon

No.26

Judgment
28th October
1963
continued

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It would appear that on 1st February 1959 the 1st accused telephoned the Superintendent and asked for permission to enter the estate, but was refused permission. Despite that he and the others entered the estate. When the Superintendent was informed of their entry he informed the Balangoda Police Station. The Inspector of Police was out at the time; but he arrived on the estate a little while later in the course of a routine patrol and was informed of the forcible entry of the accused. He immediately went in the direction of the estate factory to which point the accused were proceeding and intercepted them and ordered them to stop. After a brief consultation with the others the 1st accused told the Inspector that they meant to go ahead. They were then informed that they would be arrested if they did so. But as they persisted they were all arrested and charged. The 1st accused gave evidence. He admitted the entry without permission and pleaded that he did so in order to persuade those who were engaged in "satyagraha" to give it up as he thought that there would be violence if anything happened to the "satyagrahis" in consequence of their fasting.

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The entry of the accused after permission

In the Supreme Court of Ceylon

No.26

Judgment
28th October
1963
continued

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. That section reads -

"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."

The intent of the accused is one that has to be inferred from the circumstances of the case. In the instant case the 1st 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.

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.

Sgd. Hema H. Basnayake
Chief Justice.

Abeyesundere, J.

I agree.

Sgd. A.W.H. Abeyesundere
Puisne Justice.

G.P.A. Silva, J.

I agree.

Sgd. G.P.A. Silva
Puisne Justice.

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NO.27

In the
Privy Council

ORDER IN COUNCIL GRANTING SPECIAL
LEAVE TO APPEAL TO HER MAJESTY IN
COUNCIL.

No.27

AT THE COURT AT BUCKINGHAM PALACE

The 26th day of March, 1964.

Order-in-
Council grant-
ing special
leave to
Appeal to
Her Majesty
in Council
26th March 1964

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

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LORD PRESIDENT

MR. SECRETARY
THORNEYCROFT.

EARL MOUNTBATTEN OF BURMA

MR. AMERY.

VISCOUNT BLAKENHAM

SIR JOHN HOBSON

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 2nd day of March 1964, in the words following, viz. :-

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"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of (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 and (8) K.Periyasamy in the matter of an Appeal from the Supreme Court of Ceylon between the Petitioners and Your Majesty Respondent setting forth that the Petitioners desire to obtain special leave to appeal to Your Majesty in Council against the Judgment of the Supreme Court of Ceylon dated 31st January 1963 whereby the said Court dismissed the Appeals of the Petitioners against their convictions by the Magistrates Court sitting at Balangoda on the 24th July 1959 on charges of being members of an unlawful assembly the common object of which was to commit criminal trespass an offence punishable under

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In the
Privy Council

No.27

Order-in-
Council grant-
ing special
leave to
Appeal to
Her Majesty
in Council
26th March 1964
continued

Section 140 of the Penal Code and of committing criminal trespass in the prosecution of the common object of the unlawful assembly an offence punishable under Section 433 read with Section 146 of the Penal Code and of committing criminal trespass in furtherance of their common intent an offence punishable under Section 433 read with Section 32 of the Penal Code: And humbly praying Your Majesty in Council to grant them special leave to appeal against the Judgment of the Supreme Court of Ceylon dated the 31st January 1963 or for further or other relief :

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Ceylon dated 31st day of January 1963 together with the reasons therefor delivered on 28th day of October 1963:

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"AND Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW.

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

Appellants

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,
90 Fenchurch Street,
London, E.C.3.
Solicitors for the Appellant.

T.L.WILSON & CO.,
6 Westminster Palace Gardens,
London S.W.1.
Solicitors for the Respondent.