

Judgment
16, 1965

IN THE PRIVY COUNCIL

No. 46 of 1963

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N:-

ABDUL KHALID ABDUL
MOOHIN KHAN Appellant

- and -

MAHANTI MULLA GAMAGE
ARIYADASA Respondent

THE ATTORNEY GENERAL
OF CEYLON Amicus Curiae

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SUBMISSIONS FOR THE AMICUS CURIAE

1. This is an appeal from the Judgment of the Supreme Court of Ceylon, dated 6th May 1963, dismissing the Appellant's Appeal from his conviction and sentence by the Magistrates' Court at Matara on the 12th July 1962.

20 2. The Appellant (who was Accused No.2) was jointly convicted, together with other accused on the following charges:-

1. That they were the members of an unlawful assembly the common object of which was to commit house trespass by entering the house of the complainant with intent to cause hurt to him and to voluntarily cause hurt to the complainant an offence punishable under Section 140 of the Penal Code.

30 2. That they committed house trespass in furtherance of the common object of the unlawful assembly and thereby committed an offence punishable under Section 434 read with Section 146 of the Penal Code.

3. That in the course of the same transaction they committed rioting by using force and

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violence on M. Ariyadasa, M. Gomis and Daisy Wickramasinghe an offence punishable under Section 144 of the Penal Code.

4. That one or more members of the unlawful assembly in furtherance of their common object caused hurt to M. Ariyadasa, M. Gomis and Daisy Wickramasinghe an offence punishable under Section 314 read with Section 146 of the Penal Code.

5. That they committed house trespass by entering the house of M. Ariyadasa with intent to cause hurt to him an offence punishable under Section 434 of the Penal Code. 10

6. That they wrongfully confined M. Ariyadasa at Wewahamanduwa and other places an offence punishable under Section 333 of the Penal Code.

7. That they wrongfully confined M. Gomis at Wewahamanduwa and other places an offence under Section 333 of the Penal Code.

8. That they voluntarily caused hurt to M. Ariyadasa an offence under Section 314 of the Penal Code. 20

9. That the 2nd, 3rd and 4th accused voluntarily caused hurt to M. Gomis an offence under Section 314 of the Penal Code.

3. The Appellant and four other accused appealed against their convictions and sentence to the Supreme Court of Ceylon. The major issue argued in this Appeal was that there had been a misjoinder of charges in that charges based on the existence of an unlawful assembly had been joined with charges relying on Section 32 of the Penal Code and that accordingly the same offences had been charged jointly under different names, contrary to Chapter XVII of the Criminal Procedure Code. 30

4. The Supreme Court of Ceylon dismissed the Appellant's Appeal on the 6th May 1963. T.S. Fernando J., held in his Judgment that there was no misjoinder of charges, since the joinder of the various charges was justified by Section 180 of the Criminal Procedure Code. He referred to the cases of Ghosh v. Emperor (1925) A.I.R.1 and 40

The King v. Heen Baba (1950) 51 N.L.R. 265 as authorities for the proposition that Section 146 of the Penal Code created a distinct and separate offence, unlike Section 32 which merely declared a principle of liability and which did not create a substantive offence.

5. On the 27th November 1963 the Appellant was granted special leave to appeal to Her Majesty in Council.

10 6. On the 22nd January 1965 the Attorney General of Ceylon was given leave to appear at the hearing of this action as Amicus Curiae. There have been conflicting decisions in the Supreme Court of Ceylon on the issue whether charges of this kind can be properly joined in one information; in addition a number of appeals are pending which will be affected by the result of the present appeal. The outcome of this appeal is therefore a matter of importance in the administration of the law in Ceylon.

20 7. The Amicus Curiae will submit to the Court that there was no irregularity in the joinder of the charges brought against the Appellant; that the joinder of these charges was permissible under Section 180 of the Criminal Procedure Code since Section 146 of the Penal Code creates a distinct and separate offence; and that in any event if there was any irregularity no failure of justice has been occasioned thereby and accordingly under the terms of Section 425 of the Criminal Procedure Code
30 the Judgment of the Magistrates' Court was not thereby rendered invalid.

8. Accordingly the Amicus Curiae humbly submits that the indictment and trial of the Appellant was not null and void for the following amongst other

R E A S O N S

1. BECAUSE Section 180 of the Criminal Procedure Code permitted the joinder of charges based on Section 146 and Section 32 of the Penal Code.
- 40 2. BECAUSE if there was any irregularity it was not such as to invalidate the Judgment of the Magistrates' Court.

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3. BECAUSE the Judgment of T.S. Fernando J.,
was right for the reasons therein stated.

MARK LITTMAN

DICK TAVERNE

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COURT OF CEYLON

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- and -

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THE ATTORNEY GENERAL
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