JEYARAM AND ANOTHER
v.
BAGAWANTALAWA POLICE

COURT OF APPEAL
YAPA. J.,
C.A. NO. 279/90
M.C. HATTON 54045
JULY 24TH, 1996
MAY 7TH, 14TH, 1997

Penal Code – S. 427, 433 – Criminal Trespass – Occupation within the meaning of S. 433 is not actual physical possession – conduct – causing annoyance.

The Superintendent of the Estate had directed his assistant to hand over the line room in question to one P., after the handing over the appellants had forcibly occupied the said line room, and refused to vacate though ordered to do so by the Superintendent, the appellants were charged under S. 433 and convicted.

On appeal, it was contended that the charge was defective as P was in occupation of the line room whereas the charge stated that the Superintendent was in occupation and in control of the line room and it was further contended that there was no evidence that the appellants entered the line room with the intention of annoying the Superintendent.

Held:

1. It is clear that for the purpose of S. 427, the occupation can be by oneself or by an agent and the Superintendent of the estate as an agent of the owner is said to be in occupation of the line rooms.

   The Superintendent is in paramount occupation not only of the estate within whose confines the line rooms are situated but also of the line rooms. While a labourer on an estate is in occupation of his line room, the Superintendent who resides on the estate is in occupation of the entire estate including the line rooms.

2. It is a primary requirement of liability for criminal trespass that the accused's act of entering or remaining in the line room in the occupation of the Superintendent should be unlawful, the act of continuing to remain in the line room without authority, the action taken by the Superintendent to suspend the appellants from work untill they left the line room, all go to show inferentially that the conduct of the appellants had been to cause annoyance to the Superintendent.

Cases referred to:

1. *Selvanyakam Kangany v. Henderson* – 47 NLR 337 at 345.
2. *Abraham v. Hume* – 52 NLR 449.
3. *King v. Selvanayagam* – 51 NLR 470.
4. *Nandoris v. Inspector of Police, Warakapola* – 77 NLR 304.
5. *Selliah v. D. C. Kretser* – 70 NLR 263.
6. *Forbes v. Rengasamy* – 41 NLR 294.

APPEAL from the magistrate's Court of Hatton.

S. Mandaleswaram with D. Dharmatileke for acused appelant.

A. H. M. D. Navaz SC for Attorney-General.

Cur. adv. vult.

November 12, 1997.

HECTOR YAPA, J.

The two appellants in this case were charged under section 433 of the Penal Code, for committing criminal trespass. After trial both appellants were convicted and thereafter they were sentenced to a term of three months rigorous imprisonment. The Superintendent of the Estate, Premaratne, Assistant Superintendent, Sugathadasa and one Periyasamy gave evidence for the prosecution. Premaratne in his evidence stated that on 07.05.90 he directed the assistant superintendent, Sugathadasa, to hand over the line room in question to Periyasamy. Later Sugathadasa informed him that after the handing over of the line room to Periyasamy on 09.05.90, the two appellants had forcibly occupied the said line room. He further stated that even though the appellants were ordered to vacate the said line room, they had failed to do so. Sugathadasa in his evidence stated that on 09.05.90, Periyasamy had informed him that the two appellants had forcibly entered the line that was allocated to him and he therefore informed the Superintendent who ordered the appellants to vacate the line room. Sugathadasa further said that since the appellants had refused to vacate the line room, he took action to inform the police. This witness had also produced a document marked P1, according to which a decision had been taken by the management of the estate, to allocate the said line room to Periyasamy. Periyasamy in his evidence stated that he was given the line room and the key by the Kanakapulle of the estate on 09.05.90 and thereafter he said that he

cleaned the line room and went to bring his family and on his return he found that the appellants had broken the padlock and had occupied the line room. Thereafter, he said that he informed the assistant superintendent and then made a complaint to the police. After the prosecution case, when the defence was called, the 1st accused-appellant gave evidence and denied the charge and took up the position that the line room in question was handed over to him by the Kanakapulle of the estate.

At the hearing of the appeal, one of the matters raised by the learned Counsel for the appellants was that the charge in this case was defective. His submission was that in this case, Periyasamy was in occupation of the line room, where as the charge stated that the superintendent of the estate Premaratne, was in occupation and in control of the line room. This argument of the learned Counsel was based on the fact that the line room in question was given to Periyasamy and it was thereafter that the appellants had entered and occupied the said line room. On this point, some authorities were cited by learned Counsel. However, on an examination of the authorities, it is clear that for the purpose of section 427 of the Penal Code, the occupation can be by oneself or by an agent and further that the superintendent of the estate as an agent of the owner of the estate is said to be in occupation of the line rooms. In the case of *Selvanayakam Kangany v. Henderson*[1] ***Jayatillake, J.*** at 345 stated as follows: "the Superintendent reserved to himself the right to allocate the rooms as he wished. The reservation of such a predominating right must necessarily prevent the occupation of the rooms by the labourers, from being exclusive. The only reasonable inference to be drawn from these facts is that the Superintendent was in paramount occupation not only of the estate within whose confines the line rooms are situate but also of the line rooms". Similar view was adopted in the case of *Abraham v. Hume*[2] where it was stated that, while a labourer on an estate is in occupation of his line-room, the superintendent who resides on the estate is in occupation of the entire estate including the line rooms. The view expressed in the case of *King v. Selvanayagam*[3] that occupation in section 427 is physical occupation appears to be unsound and has not been followed in the case of *Nandoris v. Inspector of Police, Warakapola*[4] where it was held that the occupation of property within the meaning of section 433 of the Penal Code does not mean actual Physical posession.

In the present case, it is seen from the facts that Periyasamy was allocated the line room in question with the key. Thereafter he had taken action to clean the line room and left the line room in order to bring his family to occupy the line room and it was at that stage that the appellants had forcibly entered the said line room and occupied it. Therefore having regard to authorities referred to above, there is no difficulty in holding that in the present case the superintendent of the estate was in occupation and in control of the line room in question. In the circumstances, I am of the view that there is no merit in the submission of learned Counsel that the charge is defective and therefore I hold that the appellants have been properly charged.

It was further submitted by the learned Counsel for the appellants that in this case, there was no evidence whatsoever that the appellants entered the line room with the intention of annoying the superintendent. It is a primary requirement of liability for criminal trespass that the accused's act of entering or remaining in the line room in the occupation of the superintendent should be unlawful. On that matter all the prosecution witnesses have referred to the unlawful entry of the appellants and their act of continuing to remain in the line room with out authority. Thereafter the superintendent had taken action to suspend the appellants from work, until they left the line room which they had forcibly occupied. This action was obviously taken by the Superintendent, since he was annoyed with the conduct of the appellants. In addition, it was the evidence of the prosecution that even up to the date of the trial before the Magistrate's Court, the appellants had been occupying the line room. All these factors goes to show inferentially that the conduct of the appellants had been to cause annoyance to the superintendent. In the case of *Selliah v. De Kretser,*[5] it was held that where an estate labourer, after his services have been terminated, remains on the estate unlawfully, contumaciously and in defiance of the superintendent, an intention to annoy must be inferred and he is guilty of criminal trespass. The fact that he has made an application to the Labour Tribunal for re-instatement does not justify his remaining on the estate pending the proceedings. Similar view had been expressed in the case of *Forbes v. Rengasamy*[6]. Therefore, the submission of the learned Counsel that the prosecution has failed to establish an intention on the part of the appellants to annoy the superintendent is with out merit. Further in this case the learned Magistrate had carefully considered the available evidence and had found it impossible to accept the version of 1st accused-appellant and

had come to the conclusion that the prosecution had established it's case beyond reasonable doubt. I therefore see no reason to interfere with the findings of fact made by the learned Magistrate. In the circumstances, this appeal must fail and the conviction should be affirmed.

The learned Magistrate after convicting the appellants had imposed on each of them, a sentence of three months rigorous imprisonment. However, having regard to the fact that the appellants had also been interested in the said line room, I am of the view that the ends of justice would be met without imposing on them a custodial sentence. Therefore, I set aside the sentence and impose in place of the sentence of three months rigorous imprisonment a fine of Rs. 100, on each of the appellants, with a default term of three weeks' rigorous imprisonemnt. Subject to the said variation in the sentence, the appeal is dismissed.

Appeal dismissed.

Sentence varied.