

[IN THE PRIVY COUNCIL]

1964 *Present*: Viscount Dilhorne, Lord Morris of Borth-y-Gest, Lord Pearce, Lord Upjohn, and Lord Donovan

ABDUL AZEEZ and others, Appellants, and THE QUEEN,
Respondent

PRIVY COUNCIL APPEAL No. 15 OF 1964

S. C. 799-807/59—M. C. Balangoda, 69020

Criminal trespass—“Intent to annoy”—Quantum of evidence—Penal Code, ss. 427, 433.

Such annoyance as may be caused to an occupier of property by the commission of civil trespass upon that property is not sufficient to establish the offence of criminal trespass. To constitute the offence of criminal trespass, it must be established beyond reasonable doubt that the intent or object with which the trespass was committed was one of those specified in section 427 of the Penal Code.

The accused-appellants were convicted on three counts, in each of which the offence of criminal trespass was an essential ingredient. It was alleged by the prosecution that the criminal trespass was committed by the accused by entering into a certain tea estate with the intention of annoying the Superintendent who was in occupation of the estate and had refused them permission to enter. The defence was that the purpose of the appellants, who were trade union officials, in entering the estate was to persuade certain labourers, who had been on strike on the estate, to give up their “sathyagraha”. The Magistrate who heard the case did not believe that the purpose of the appellants in trespassing upon the estate was to get the strikers to abandon Sathyagraha. He found that, quite apart from the fact that there was direct evidence that the entry of the accused into the estate did cause annoyance to the Superintendent, it was quite clear that the natural consequence of the trespass was to cause annoyance to him.

Held, that the evidence in the case did not suffice to establish either directly or by inference beyond reasonable doubt that the object of trespassing on the estate was to annoy the Superintendent. While accepting the Magistrate’s conclusion that the expressed intention to get the strikers to abandon Sathyagraha was merely a pretext for entry, this finding by the Magistrate did not exclude the possibility that the real object of the trade union officials in making the trespass was to meet the strikers, as stated by a witness, and to discuss the strike with them. Although a natural consequence of the trespass might have been to cause annoyance to the Superintendent, in the circumstances of the present case it was not established with the degree of certainty required to justify conviction, that the trespass was effected with intent to annoy the Superintendent.

Held further, that, although the intent of the accused has in most cases to be inferred from the circumstances of the case, the fact that the entry into the estate was in defiance of the Superintendent did not warrant the inference that the trespass was committed with intent to annoy him. If that was the case, then every trespass committed after the occupier of the property had refused permission to enter would constitute the offence of criminal trespass.

APPEAL from a judgment of the Supreme Court reported in (1963) 65 N. L. R. 553.

E. F. N. Gratiaen, Q.C., with *John A. Baker* and *M. I. Hamavi Haniffa*, for the accused-appellants.

Mark Littman, Q.C., with *Mervyn Heald*, for the respondent.

Cur. adv. vult.

December 8, 1964. [*Delivered by* VISCOUNT DILHORNE]—

The eight appellants were convicted on three counts in the Magistrate's Court at Balangoda on the 24th July 1959. Their appeal to the Supreme Court of Ceylon was dismissed on the 28th October 1963, and their appeal to the Judicial Committee was by special leave granted on the 26th March 1964.

The accused were charged as follows :—

“ You are hereby charged, that you did, . . . at Pettiagala Estate on the 4th February 1959,

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.

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 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 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.”

Criminal trespass is defined by section 427 of the Penal Code as follows :—

“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 second and third counts both charge criminal trespass. The first count charged the appellants with being members of an unlawful assembly, the common object of which was to commit the criminal trespass they were charged with committing in the third count.

An unlawful assembly is defined by section 138 of the Penal Code, the material parts of which read as follows :—

“An assembly of five or more persons is designated an ‘unlawful assembly’ if the common object of the persons composing that assembly is—

. . .

Thirdly—To commit any mischief or criminal trespass or other offence ; or

. . .”

It is to be noted that the first count alleges that the object of the unlawful assembly was to commit criminal trespass “to the annoyance of A. S. Rasanayagam” and the third count alleges criminal trespass “with intent to cause annoyance to A. S. Rasanayagam”, but that the second count does not specify the intent with which the criminal trespass was alleged to have been committed.

It is not necessary for their Lordships to decide whether in the absence of any allegation of the intent with which the criminal trespass was committed, the second count was a valid count. Proof of one or other of the intents specified in section 427 of the Penal Code is essential to justify conviction of the offence of criminal trespass. For the purpose of this judgment it will suffice to treat the second count as if it contained an allegation that the trespass was committed with intent to annoy Mr. A. S. Rasanayagam.

The first point taken on behalf of the appellants was that there was no evidence before the Magistrate’s Court sufficient to justify the conclusion that the appellants had met together to trespass on the Pettiagala Estate with the intention of annoying Mr. Rasanayagam and no evidence to justify the conclusion that they trespassed with that intention. The appellants contended that consequently their conviction on the three counts was wrong and that the Supreme Court of Ceylon was wrong in dismissing their appeal.

At the trial evidence was given in support of the prosecution by the Superintendent, Mr. Rasanayagam, an Inspector of Police, S. G. Munasinghe, and by a conductor and a gatekeeper employed on the Pettiagala Estate. The only witness called for the defence was the first appellant Abdul Azeez.

Mr. Rasanayagam gave evidence that labourers on the Pettiagala Estate had been on strike since the 24th December 1958 and that negotiations in relation to the dispute were being conducted between the Employers' Federation and the Democratic Workers' Congress, a trade union.

He said he had told the appellant Suppiah who was the District Representative of the Trade Union that till the negotiations were completed, no official of the Union should enter the estate.

He also said that on the 1st February the first appellant Abdul Azeez who was President of the Trade Union spoke to him on the telephone and said that he wished to enter the estate and go to where the strikers were performing "Sathyagraha" in order to persuade them to give it up and go to their line rooms. Some time before this date some of the strikers had engaged in squatting in front of the factory and on occasions in front of the Superintendent's residence and some of them had gone on hunger strike. This is called Sathyagraha.

The Superintendent told Mr. Abdul Azeez that he could not give permission to him to enter the estate without first consulting the Employers' Federation. He undertook to consult the District Convenor of the Federation and let him have a reply. A few minutes later Mr. Rasanayagam telephoned to Mr. Abdul Azeez and told him that he was not able to contact the District Convenor and therefore he was sorry he could not grant his request.

On the 4th February two cars drove up to the main gates of the estate. According to the gatekeeper about ten people got out and entered the estate by a side entrance next to the main gate which is kept locked. The gatekeeper reported this to the conductor who in turn reported this by telephone to the Superintendent. Mr. Rasanayagam immediately telephoned the police. A few minutes after he had done so Inspector Munasinghe came to the Superintendent's bungalow in the course of a routine patrol. In consequence of what Mr. Rasanayagam said the Inspector went with other police to the road leading from the main gate to the Factory. Mr. Rasanayagam followed them. He saw that the party approaching consisted of the first appellant Abdul Azeez and nine or ten others. He said that he was annoyed by the presence of the first appellant and his party on the estate and worried lest their presence would lead to trouble.

The Inspector told the first appellant that Mr. Rasanayagam had protested at their entry upon the estate and at his request some of those with the first appellant turned back and left. The first appellant asked

for a few minutes to discuss the matter with his friends. The Inspector told them they were committing an offence. After a short discussion the first appellant said that they were going ahead along the road. The Inspector told them that he could not allow them to proceed further, and then as they persisted in trying to go further into the estate arrested them. The eight appellants then arrested were taken to the police station. The first seven are all officials of the trade union, the Democratic Workers' Congress. According to the first appellant the eighth appellant had not gone to the estate with them but had joined them on the estate.

The Inspector also testified that when he first spoke to the first appellant the latter said that he wanted to meet the strikers. The Inspector could not remember whether Mr. Abdul Azeez had told him that he wanted to do so in order to persuade them to give up the hunger strike.

Mr. Rasanayagam also testified that on the 20th February the first appellant, accompanied by a police officer and a Labour officer with permission entered the estate to call off the strike.

On this evidence it is clear that the first seven appellants who were officials of the trade union trespassed when they entered the estate. The position with regard to the eighth appellant is not clear. There was no evidence that he was a trespasser on the estate when he joined the other appellants on the estate.

Mr. Abdul Azeez gave evidence that his purpose in going to the estate on the 4th February was to persuade the strikers to give up the hunger strike and return to their lines, the same purpose as that he had stated when he telephoned asking permission to enter the estate on the 1st February. He said that he did not for a moment imagine that his action would cause any embarrassment to the estate management.

The learned magistrate in the course of his judgment said :

“ After careful examination of the evidence given by the first accused and the circumstances of this case, I am of the view that the claim put forward by the first accused was merely a pretext for the first accused ” and the other trade union officials “ to enter the estate against the wishes of the Superintendent of the estate who was in occupation ”.

It is clear from this passage that the learned magistrate did not believe that the purpose of the appellants in trespassing upon the estate was to get the strikers to abandon Sathyagraha. His rejection of this evidence of Mr. Abdul Azeez does not establish that their trespass was committed with intent to annoy Mr. Rasanayagam.

Later in his judgment, the learned magistrate said :

“ Quite 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 accused's act would be to cause annoyance

to Rasanayagam. I am therefore satisfied that the real intention of the 1st to the 8th accused " (the 1st to 7th appellants, the 8th accused having died) " 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 to 8th accused " (the 1st to 7th appellants) " 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."

Counsel for the respondent before their Lordships sought to sustain the convictions on a similar line of reasoning. It was urged that the natural and probable consequence of their trespass was that annoyance would be caused to Mr. Rasanayagam and that in the absence of any evidence accepted by the magistrate pointing to any other intent, the Court was entitled to infer that that was their intent.

It may well be the case that the commission of civil trespass does cause annoyance in the majority of cases to the occupiers of the property trespassed upon, but to constitute the offence of criminal trespass, it must in the Lordships' view be established beyond reasonable doubt that the intent or object with which the trespass was committed was one of those specified in Section 427 of the Penal Code, namely, to commit an offence or to intimidate, insult or annoy any person in occupation of the property.

In their Lordships' view the evidence in this case did not suffice to establish either directly or by inference beyond reasonable doubt that the object of trespassing on the estate was to annoy Mr. Rasanayagam. While accepting the learned magistrate's conclusion that the expressed intention to get the strikers to abandon Sathyagraha was merely a pretext for entry, this finding by the learned magistrate does not exclude the possibility that the real object of the trade union officials in making this trespass was to meet the strikers, as Mr. Abdul Azeez said to the Inspector, and to discuss the strike with them.

Although a natural consequence of the trespass might be to cause annoyance to Mr. Rasanayagam, in the circumstances of this case it is, notwithstanding the learned magistrate's finding, not established with the degree of certainty required to justify conviction, that the trespass was effected with intent to annoy Mr. Rasanayagam.

For these reasons in their Lordships' opinion the appeals of all the appellants should be allowed and their convictions quashed. They have humbly advised Her Majesty accordingly.

The learned magistrate went on to say, immediately after the passage already cited :—

“ 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 (*sic*) 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. ”

In relation to this passage it suffices to point out that in the first count the appellants were charged with forming an unlawful assembly, the common object of which was to commit criminal trespass by entering the estate, and that in the second and third charges the criminal trespass related to entry into the estate. There was no charge preferred against the accused in relation to their conduct when upon the estate.

The appeals of the appellants to the Supreme Court of Ceylon were dismissed. In the course of his judgment, with which his brother judges agreed, Chief Justice Basnayake said :—

“ The entry of the accused after permission to enter had been asked for and not granted by the Superintendent in our opinion brings the accused within the ambit of Section 427 of the Penal Code The intent of the accused is one that has to be inferred from the circumstances of the case. In the instant case the 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. ”

Their Lordships do not take the view that every trespass comes within the ambit of section 427. They agree with the learned Chief Justice that the intent of the accused has in most cases to be inferred from the circumstances of the case, but the fact that the entry was in defiance of the Superintendent does not warrant the inference that the trespass was committed with intent to annoy him. If that was the case then every trespass committed after the occupier of the property had refused permission to enter would constitute the offence of criminal trespass.

Their Lordships having formed the opinion that by the evidence given in this case it was not established that the intent of the accused was to annoy the Superintendent, did not find it necessary to consider the other grounds put forward in support of the appeals.

Appeal allowed.