

1957

Present : T. S. Fernando, J.

E. W. DE SILVA and another, Appellants, and P. D. F. AMARASEKERA
(S. I. Police), Respondent

S. C. 917—M. C. Kurunegala, 31,856

Mischief by injury to public road—Meaning of “public road”—Penal Code, s. 414.

In a prosecution under section 414 of the Penal Code for committing mischief by causing injury to a public road—

Held, that a road cannot be said to be a public road within the meaning of section 414 of the Penal Code unless the general public, and not merely a class or community, are entitled to use it.

APPPEAL from a judgment of the Magistrate's Court, Kurunegala.

Colvin R. de Silva, with M. M. Kumarakulasingham and Daya Vitanage,
for the accused-appellants.

H. L. de Silva, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 18, 1957. T. S. FERNANDO, J.—

The accused in this case have been convicted of the offence of mischief by injury to a public road, punishable under section 414 of the Penal Code. The act constituting the mischief was the erection of a barbed

¹ (1942) A. C. 435 at 442.

wire fence across the road, and the accused did not contest the evidence that such a fence was erected by them or at their instance or that the erection of the fence made the road impassable for carts. They have taken up the position that they are not guilty of the offence alleged as the fence was not erected across a *public road*.

There does not appear to be any local case relating to the interpretation of section 414, but this section is identical with section 431 of the Indian Penal Code, and it is permissible to look for some guidance on the point in Commentaries on the Indian Penal Code. In a discussion of the meaning of a *public way* appearing in section 279 of the Indian Code (same as section 272 of the Ceylon Code), it is stated in Gour's Penal Law of India (6th ed., Vol. 2, p. 1150) that "the chief characteristic of a public way is that over it all persons have an equal right to pass. Such a way must be distinguished from a way for the benefit of a class or community or one limited to the inhabitants of two or three villages only, which is not a public way, though the public may be permitted to use it So the fact that a defined and definite number of persons had the right to use the way does not make it a public way to which all the citizens are entitled". The commentators appear to think that the expression "public road" in Section 414 has been used to convey the same meaning as a "public way" in section 272.

The road referred to in this case has been described in the evidence as an Irrigation road constructed and maintained by the Irrigation Department and leading to and ending at a regulator controlling the flow of water in a field channel. It appears principally to be a cart track for use by the workmen of the Irrigation Department, but adjoining field owners appear to have free access to and over it. It has been in use for about fourteen years. Witnesses have described it as a public road, but such a description by witnesses is of no real value as the question whether the road was public or not was one for determination upon evidence by the Magistrate. Under cross-examination these same witnesses conceded that the roadway was open only to cultivators and workmen of the Irrigation Department. Upon this evidence I do not consider that the road can be said to be a public road within the meaning of section 414 of the Penal Code as the general public were clearly not entitled to use it although it is quite possible they may have been permitted to use it if occasion had ever arisen for them to attempt to use it. I should add that the conclusion I have reached has also the merit that it does not violate the *eiusdem generis* rule the application of which appears to be appropriate in interpreting the words "any public road, bridge, navigable river or navigable channel" in section 414.

In the view I have taken of the evidence and of the meaning of section 414, I am of opinion that the conviction of the accused has to be quashed. I make order accordingly and direct that they be acquitted.