

1967

Present : Samerawickrame, J.

E. A. MOULIN NONA, Appellant, and J. A. V. ROUTHLEDGE,
Respondent

S. C. 839/66, with Application 372— M. C. Arissawella, 65467

Criminal trespass—Intention to annoy—Quantum of evidence.

The accused-appellant, who was a married woman working on an estate, continued to be in occupation of her lineroom after she was given notice to quit it. The evidence showed that her dominant intention was to remain with her husband and her family in the lineroom of which her husband continued to remain in occupation after his employment on the estate had been terminated.

Held, that the accused could not be convicted, upon the evidence, of the offence of criminal trespass.

APPEAL, with application in revision, from a judgment of the Magistrate's Court, Avissawella.

S. S. Sahabandu, for the accused-appellant/petitioner.

H. W. Jayewardene, Q.C., with *Ralph de Silva, I. S. de Silva* and *S. C. Crossette-Thambiah*, for the complainant-respondent.

Cur. adv. vult.

September 22, 1967. SAMERAWICKRAME, J.—

The appellant appeals from a conviction for the offence of criminal trespass in the Magistrate's Court of Avissawella. She has also filed an application in revision.

The appellant is a married woman and in the original notice served on her terminating her employment, it was stated that her services were being terminated because her husband's employment on the estate had been terminated. The notice also required her to give up her lineroom accommodation and to leave the estate on or before the 18th October, 1963.

In giving evidence, the complainant-respondent, who is the Superintendent of the estate referred not to any act of the accused-appellant alone but stated, "as a result of their continuing to live in this estate it caused me annoyance". In cross-examination too he referred to certain acts done by more than one person. He was obviously referring to the husband of the accused-appellant as well as the appellant.

The accused-appellant gave evidence and she stated that she was still living on the estate with her husband and that her husband too lived in the lineroom. In these circumstances, the learned Magistrate had to consider whether the dominant intention of the accused was to remain with her husband and her family or to annoy the Superintendent. He has failed to give consideration to this aspect of the matter.

Learned counsel for the complainant-respondent pointed to evidence given by the appellant where she stated "I was asked to shift to another lineroom about 100 yards away shortly before giving me notice to quit this lineroom. I told the Superintendent that I cannot go because of the large family". Learned Counsel for the complainant-respondent submitted that this evidence shows that there was defiance on the part of the accused-appellant and that her continued occupation of the lineroom after she was given notice to quit too is referable to such defiance. The appellant has stated that from 1963 she was living in one of the cottage type linerooms near the factory. She has also stated that nine children were born to her on this estate. If the majority of the children are

living with her, there may well have been reason for her to tell the Superintendent that she should not be removed from this cottage type linerroom in view of her large family. There can, however, be no doubt that the appellant was not entitled to disregard the direction of the Superintendent to transfer from the linerroom of which she was in occupation to another linerroom.

This is not a case where one can say with confidence that the continued occupation of the linerroom by the appellant is attributable to defiance of the Superintendent and the intent to annoy him. As I stated earlier, it is a matter for consideration whether the appellant's dominant intention was not to remain with her husband and her family in the linerroom of which her husband continued to remain in occupation. In the absence of consideration of this matter by the learned Magistrate, the conviction of the appellant cannot be sustained. Accordingly, I set aside the conviction of the appellant and the sentence passed on her and I direct an acquittal to be entered.

• The application in revision appears to have been filed because strictly the appeal was out of time. Accordingly, the order made above is made upon the application and the appeal is formally rejected.

Conviction set aside.
