

1955 *Present* : H. N. G. Fernando, J.

PERERA, Appellant, *and* KARUNATILLEKA (Inspector of Police),
Respondent

S. C. 8—M. C. Colombo, 9,989

Penal Code—Section 340—“ Using force ”

Placing one's finger, foot or lips in contact with another's person or clothes constitutes the use of force within the meaning of section 340 of the Penal Code.

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

Colvin R. de Silva, with *M. L. de Silva*, for the accused-appellant.

George Candappa, Crown Counsel, for the Attorney-General.

December 20, 1955. H. N. G. FERNANDO, J.—

The question of law of some interest in this case is whether a person who "molests" a girl of tender years by touching her private parts after lifting up her dress, but without using any threat or restraint, commits the offence of using criminal force. The first part of the definition of "using force" in section 340 of the Penal Code is the following :—

"A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other".

It would seem that the essence of this part of the definition is that there should be interference with the freedom of movement, by causing either an involuntary movement or a movement different from one which is being performed or an obstruction to free movement. If that view be correct, then the act of molesting a person lying on a bed or sitting on a chair, which is unaccompanied by any force or restraint which impedes the person's ability to continue in the same position or to change it, or which causes the person to move from that position, does not constitute the use of force under the first part of the definition.

But the remaining part of the definition does not postulate this element of interference with movement: an act of placing *any substance* in contact with a person's body or clothes, or with anything so situated that the contact affects the person's sense of feeling, does constitute the use of force. The question therefore is whether the term "substance" was intended to denote only something inanimate or else to include also any part of the human person. While the narrower connotation appears at first sight to be the reasonable one, I think on reflection that the wider one was intended, and that placing one's finger, foot or lips in contact with another's person or clothes does constitute the placing of a "substance" in such contact and can therefore constitute the use of force within the meaning of the definition. I am confirmed in this opinion by the illustration (f) to section 341 in which it is stated that the intentional pulling up of a woman's veil constitutes the use of force to the woman. This could only be so if the hand with which the veil is touched is a "substance", for the act would not necessarily be an interference with movement which is essential for the first part of the definition.

There is nothing in the evidence in the case which would justify interference with the conviction entered under section 343 of the Code. I am asked to consider the question of sentence, but I think the present inclination of Magistrates to deal somewhat severely with offences of this nature is one that should not be discouraged.

The appeal is dismissed.

Appeal dismissed.