

1964

Present: Sri Skanda Rajah, J.

D. DHARMARATNE THERO, Appellant, and OFFICER-IN-CHARGE, NITTAMBUWA POLICE, Respondent

S. C. 424/63—M. C. Gampaha, 70,300/A

Criminal trespass—“ Intent to commit an offence ”—Penal Code, ss. 433, 434.

Where a person was charged under section 433 of the Penal Code with committing criminal trespass with intent to commit an offence, to wit, “ forcible occupation ” of a temple—

Held, that the charge was bad in law for the reason that “ forcible occupation ” is not an offence known to the law.

APPPEAL from a judgment of the Magistrate’s Court, Gampaha.

H. W. Jayewardene, Q.C., with *F. A. Abeyewardene, N. R. M. Daluwatte* and *S. R. de Silva*, for the Accused-Appellant.

D. S. Wijesinghe, Crown Counsel, for the Attorney-General.

February 17, 1964. SRI SKANDA RAJAH, J.—

The accused in this case is a Buddhist monk. He has been charged with committing two offences, namely, criminal trespass and house trespass.

The charges were amended twice and the amended charges as they stood at the time of the conviction read thus :—“ You are hereby charged that you did within the jurisdiction of this Court at Mangalatiya on 23.12.61 did commit criminal trespass by entering into the premises of the Warana Rajamaha Viharaya the property in the occupation of Rev. Eswatte Dhammatillake Thero the High Priest of the Warana Rajamaha Temple with intent to commit an offence, to wit,

forcible occupation of the temple and that you have thereby committed an offence punishable under section 433 of the Ceylon Penal Code, Chapter 19.

That at the same time and place aforesaid and in the course of the same transaction set out in count 1 above, the abovenamed accused did commit house trespass by entering into the Warana Rajamaha Viharaya Awasaya the property in the occupation of the said Rev. Eswatte Dhammatillake Thero of the Warana Rajamaha Viharaya, Mangalatiriya, with intent to commit an offence, to wit, forcible occupation of the said Awasaya and that he has thereby committed an offence punishable under section 434 of the Ceylon Penal Code, Chapter 19."

The plaint in this case was filed on 3rd January, 1962, and the trial was concluded after an inordinate delay only on 22nd February, 1963. Both charges refer to "With intent to commit an offence, to wit, forcible occupation". As soon as this appeal was taken up I asked the learned Crown Counsel if "forcible occupation" is an offence known to our law and he very rightly conceded that there is no such offence.

The Magistrate himself should have realised this when he framed the charges or at least when he amended the charges for the second time. Therefore, the charges were bad in law and the accused should have been acquitted at least at the stage when the objection was taken at the conclusion of the trial.

I would, therefore, set aside the conviction and acquit the accused. I do not order a re-trial because of the inordinate delay. This seems to be the order of the day in our Courts.

Appeal allowed.