

1967

Present : Samerawickrame, J.

R. SELLIAH, Appellant, and A. I. E. DE KRETSEK, Respondent

*S. C. 241/67—M. C. Avissawella, 76,168**Criminal trespass—Intention to annoy—Proof—Penal Code, s. 433.*

Where an estate labourer, after his services have been terminated, remains on the estate unlawfully, contumaciously and in defiance of the Superintendent, an intention to annoy must be inferred and he is guilty of criminal trespass. The fact that he has made an application to the Labour Tribunal for re-instatement does not justify his remaining on the estate pending the proceedings.

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

Bala Nadarajah, for the accused-appellant.

H. V. Perera, Q.C., with *L. Kadirgamar*, for the complainant-respondent.

Cur. adv. vult.

September 4, 1967. SAMERAWICKRAME, J.—

This is an appeal against a conviction in the Magistrate's Court of Avissawella on a charge of criminal trespass punishable under Section 433 of the Penal Code.

The facts on which the charge was based are set out in the evidence of Mr. A. I. E. de Kretser, Superintendent, Kiriporuwa Group, Yatiyantota. The appellant was a labourer on the estate. On or about 18th July, 1963 it was found that he was erecting without permission a cattle shed 20 feet away from the line rooms. The rule designed to safeguard the health of the occupants of the line rooms was that sheds should be at least 75 yards away. The Superintendent went to the spot and found that the appellant was erecting the shed and told him that he was doing something unlawful and directed him to demolish the shed. The appellant refused to do so and said that he would not carry out his orders. The Superintendent suspended the appellant and gave him one month's time to demolish the shed. The appellant failed to demolish the shed and the Superintendent terminated his services and gave him a month's time to leave the estate. The appellant refused to accept the notice which the Superintendent wanted to hand over to him and in an arrogant manner asked him to do what he wanted. A copy of the notice was fixed on the door of the line room and another copy was sent by registered post. The appellant did not leave the line room and this prosecution was therefore made.

The appellant has made an application to the Labour Tribunal and proceedings upon his application are pending. In evidence the appellant admitted that when he was suspended he was told that work would be given to him if he demolished the shed. He also stated that he was willing to leave the estate in the event of his application to the Labour Tribunal being refused ; till the proceedings were over he would stay.

It was suggested in the course of cross-examination of the complainant that the shed had been built as far back as the year 1954. When the appellant gave evidence, however, he said it was put up in 1962.

Upon the facts stated it appears to me that the appellant has remained on the estate unlawfully, contumaciously and in defiance of the complainant and an intention to annoy is to be inferred. In 51 New Law Reports at page 475, the Privy Council said: "The case of *Forbes v. Rengasamy* on which the courts in Ceylon relied is distinguishable because in that case the accused did not give evidence as to his real intention and the court thought that his conduct had been defiant." Where the accused has given evidence and, after an examination of his evidence, the Court finds that his conduct was contumacious and defiant, the result must be the same.

It is true that upon his application to the Labour Tribunal that body has the power to order his reinstatement and in the event of the Tribunal making such an order he may be provided with a line room for his occupation. This fact does not, however, justify his remaining on the estate pending the proceedings. Indeed, the appellant did not say that he believed that he was entitled to remain till the termination of those proceedings. In the light of the facts and circumstances of this case, the statement by the appellant that he was prepared to leave the estate if his application to the Labour Tribunal failed is no more than a specious excuse for his continued defiance of the complainant by a trespass which has already lasted for nearly four years. The finding of the learned Magistrate that the intention on the part of the appellant to annoy the complainant has been established is justified. The conviction of the appellant is correct and I accordingly dismiss the appeal.

Appeal dismissed.

