

1963 *Present* : Basnayake, C.J., Abeyesundere, J., and G. P. A. Silva, J.

ABDUL AZEEZ and others, Appellants, and THE ATTORNEY-
GENERAL, Respondent *Set aside in 68N73 P.C.*

S. C. 799-807/59—M.C. Balangoda, 69020

Criminal trespass—“ Intent to annoy ”—Penal Code, s. 427.

The 1st accused asked for permission to enter a tea estate and was not granted permission. Despite the refusal, he and the other accused entered the estate in defiance of the Superintendent whose permission they had sought. Having entered without permission, they disobeyed the lawful directions of an Inspector of Police not to proceed further. The 1st accused, when he gave evidence at the trial, admitted that he entered without permission and pleaded that he did so in order to persuade certain labourers to give up the “satyagraha” which they were performing in connection with their strike on the estate.

Held, that the entry of the accused after permission to enter had been asked for and not granted by the Superintendent brought the accused within the ambit of section 427 of the Penal Code relating to “criminal trespass”.

APPEALS from a judgment of the Magistrate’s Court, Balangoda.

H. V. Perera, Q.C., with (*Miss*) *Maureen Seneviratne*, for Accused-Appellants.

H. B. White, Crown Counsel, for Attorney-General.

Cur. adv. vult.

October 28, 1963. BASNAYAKE, C.J.—

These appeals were heard by a Bench of three Judges in accordance with an order in that behalf made by me under section 48A of the Courts Ordinance.

At the conclusion of the hearing we dismissed the appeals and stated that our reasons would be delivered on a later date. We accordingly deliver our reasons now.

The charges against the accused alleged that they were members of an unlawful assembly the common object of which was to commit criminal trespass, and that in prosecution of the common object they did commit criminal trespass by entering Pettiagala Estate. They were found guilty and sentenced to a term of one month’s rigorous imprisonment on the 1st charge, a term of two months’ rigorous imprisonment on the 2nd charge, and a term of one month’s rigorous imprisonment on the 3rd charge, the sentences to run concurrently.

Briefly the facts are as follows :—The facts alleged in the three charges occurred on Pettiagala Estate in Balangoda on 4th February 1959. A strike among the Tamil labourers of the estate had at the material date been going on for two months. Some of the strikers were also performing “Satyagraha” in the premises of the Superintendent’s bungalow. The

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1st accused was at the material date the President and the 2nd accused was a Joint Secretary of the Democratic Workers' Congress, the 3rd and 4th accused were members of its Executive Committee, the 5th accused was its Treasurer, the 6th accused was the Balangoda District Representative of that body, the 7th accused was the District Secretary, and the 8th accused was a member of the District Executive Committee. The 9th accused was not an office-bearer of the Congress. He joined the others on the estate.

It would appear that on 1st February 1959 the 1st accused telephoned the Superintendent and asked for permission to enter the estate, but was refused permission. Despite that he and the others entered the estate. When the Superintendent was informed of their entry he informed the Balangoda Police Station. The Inspector of Police was out at the time; but he arrived on the estate a little while later in the course of a routine patrol and was informed of the forcible entry of the accused. He immediately went in the direction of the estate factory to which point the accused were proceeding and intercepted them and ordered them to stop. After a brief consultation with the others the 1st accused told the Inspector that they meant to go ahead. They were then informed that they would be arrested if they did so. But as they persisted they were all arrested and charged. The 1st accused gave evidence. He admitted the entry without permission and pleaded that he did so in order to persuade those who were engaged in "satyagraha" to give it up as he thought that there would be violence if anything happened to the "satyagrahis" in consequence of their fasting.

The entry of the accused after permission to enter had been asked for and not granted by the Superintendent in our opinion brings the accused within the ambit of section 427 of the Penal Code. That section reads—

"Whoever enters into or upon property in the occupation of another with intent to commit an offence, or to intimidate, insult, or annoy any person in occupation of such property, or having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass'."

The intent of the accused is one that has to be inferred from the circumstances of the case. In the instant case the 1st accused asked for permission to enter the estate and was not granted permission. Despite that he and the others entered the estate clearly in defiance of the Superintendent whose permission they had sought.

Having entered without permission, they disobeyed the lawful directions of the Inspector not to proceed further. The question is whether the learned Magistrate was wrong in inferring from those circumstances an intent to annoy the person in occupation as alleged in the charges. In our opinion he committed no error in doing so.

ABEYESUNDEBE, J.—I agree.

G. P. A. SILVA, J.—I agree.

Appeals dismissed.