

[O' BRIAIN, P., ZEKIA, VASSILIADIS and JOSEPHIDES, JJ.]

FRANGISKOS KYRIACOU,

Appellant,

v.

THE WELFARE OFFICE,

Respondent.

(Criminal Appeal No. 2386).

1961
June 29
FRANGISKOS
KYRIACOU
v.
THE WELFARE
OFFICE

Criminal law—Criminal procedure—Charge—Duplicity—Two offences charged in one count—Parent charged with wilful abandonment and neglect of his under-aged children in a manner likely to cause injury to their health—The Children Law, Cap. 352, section 54(1)(2)—Charge bad for duplicity—But on the evidence appellant convicted of the offence of wilfully neglecting his children in a manner likely to cause injury to their health—Presumption of neglect in a manner as aforesaid—Cap. 352, section 54(2)(a)—Ingredient of wilfulness—Proof.

Observations regarding the drafting of charges by the Welfare Department.

The appellant was charged in one count with wilfully abandoning and neglecting his three underaged children contrary to section 54(1)(2) of the Children Law, Cap. 352. He was convicted by the trial court accordingly and sentenced to six months imprisonment.

Section 54 of the Children Law, Cap.352, provides:

“(1) If any person who has attained the age of sixteen years and has the custody, charge or care of any child under that age, wilfully assaults, ill-treats, neglects, abandons or exposes him or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb or organ of the body and any mental derangement) that person shall be guilty of an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

(2) For the purposes of this section —

(a) a parent or other person legally liable to maintain a child shall be deemed to have neglected him in a manner

likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him or if, having been unable otherwise to provide such food, clothing or medical aid, he failed to take other steps to procure it;

(b)

Held: (1) The charge is bad for duplicity. Section 54(1) of Cap. 352 creates, *inter alia*, two separate offences: (a) wilful neglect and (b) wilful abandonment. Therefore the conviction is set aside.

(2) But, having regard to the evidence adduced, we consider that the appellant might have been convicted by the trial court of wilfully neglecting his children in a manner likely to cause injury to their health, under section 54(1) (2) of that Law, Cap. 352 and we convict him accordingly.

(3) There is evidence that the appellant failed to provide for his under-aged children and under sub-section (2) (a) of section 54 of Cap. 352 it is presumed that he neglected them in a manner likely to cause injury to their health.

(4) As to the ingredient of "Wilfulness" there is ample evidence establishing that ingredient.

(5) The formal order will be as follows:

Order: The appellant is bound over in the sum of £50 for a period of two years to come up for judgment if and when called upon by the District Court of Nicosia. The appellant will not be called upon and no sentence will be passed on him provided he pays regularly the sum of £2.- per week for the maintenance of his children beginning on the 10th July, 1961: Payment to be effected to the Welfare Office, Nicosia.

Appeal allowed. Appellant convicted and sentenced as aforesaid.

Appeal against conviction and sentence.

The appellant was convicted on the 17th June, 1961, at the District Court of Nicosia (Criminal Case No.5887/61) on one count of the offence of abandonment and neglect of his children, contrary to section 54(1)(2) of Part X of Cap. 352, and was sentenced by Georghiou D.J. to six months' imprisonment.

Lefkos Clerides for the appellant.

O. Beha for the respondent.

The facts sufficiently appear in the judgment of the Court which was delivered by:

JOSEPHIDES, J.: In this case the accused was charged with "abandonment and neglect of his children" contrary to section 54 (1) (2) of the Children Law, Cap.352. In the particulars of the offence it was stated that the accused "wilfully abandoned" his three under-aged children and that he "failed to provide them with adequate food and clothing".

We are of opinion that the charge, as framed, is defective. Section 54(1) provides, *inter alia*, that a person shall not wilfully "abandon" his child in a manner likely to cause him injury to health. That is one offence. The same sub-section provides that a person shall not wilfully neglect his child in a manner likely to cause injury to health. It appears that these two separate offences were charged and included in the particulars of offence in one and the same charge.

In the circumstances of the case we are of opinion that the charge is defective and we, therefore, set aside the conviction. But, having regard to the evidence adduced, we consider that the appellant might have been convicted by the trial court of the offence of wilfully neglecting his children under sec. 54(1) & (2) of the same Law and we convict him accordingly. There is evidence that he failed to provide for his children and under sub-section (2) of section 54 it is presumed that he neglected them in a manner, likely to cause injury to their health.

As to the ingredient of wilfulness there is evidence that the accused was in good health and able to work and that he has failed to provide for his children. From this, the Court would be entitled to infer that the appellant wilfully neglected to maintain his children. Having convicted the appellant of the offence of wilful neglect we now proceed to consider the question of punishment.

Having given the matter our best consideration, after hearing both counsel and the Welfare Officer, we feel that in the best interests of justice and of the children the order which this Court ought to make is that the accused should pay £2 a week for the maintenance of his children beginning on the 10th July, 1961. The formal order is as follows:

Order : The appellant is bound over in the sum of £50 for a period of two years to come up for judgment if and when

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called upon by the District Court of Nicosia. The appellant will not be called upon and no sentence will be passed on him provided he pays regularly the sum of £2 per week for the maintenance of his children beginning on the 10th July, 1961. Payment to be effected to the Welfare Office, Nicosia.

There is one point we would like to make, and that is about the drafting of charges by the Welfare Department. Of course they are not experienced in these matters and we are not casting any blame on them, but we consider that it is desirable that the Attorney-General's office should be consulted when charges are being drafted by the Welfare Department.

Conviction set aside. Appellant convicted of wilfully neglecting his children contrary to section 54(1) and (2) of Cap. 352 and sentenced as indicated hereabove.