

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

SIDKI MAHMOUT

Respondent.

(Criminal Appeal No. 2519).

1962
July 3

THE ATTORNEY-
GENERAL
v.
SIDKI MAHMOUT

Antiquities—Excavating for the purpose of discovering antiquities contrary to the Antiquities Law, Cap. 31, section 14(1) and (2).

Criminal procedure—Plea—Plea of guilty—Change of plea—New trial. Sentence—Appeal by the Attorney-General against inadequacy of punishment.

The respondent was charged that on 2nd April 1962, he did excavate in the area of Polis for the purpose of discovering antiquities without a licence in writing first obtained from the Director of Antiquities. To this charge the respondent pleaded guilty. The trial Court ordered £2 fine and that an outstanding recognizance of £50 should remain in force for the remaining period. At the trial Respondent's counsel put facts in mitigation stating, *inter alia*, that his client was digging for big stones to enable him to construct a bridge and not for the purpose of finding antiquities. On appeal by the Attorney-General against the inadequacy of the sentence, the High Court :

Held : (1) Since the plea in mitigation amounted to a plea of not guilty and since the alleged intention of the respondent was not to discover antiquities but to dig stones, the case should be remitted for a new trial, the respondent being allowed to change his plea.

(2) Facts going to the assessment of the punishment had not been adequately put before the trial Court and other material was not made available to the trial Judge to enable him to assess a proper punishment in the case.

(3) This is a proper case for new trial so that counsel for the Republic may present fully facts so that the Judge may pass a proper sentence.

*New trial ordered on
the above terms.*

1962
July 3
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THE ATTORNEY-
GENERAL
v.
SIDKI MAHMOUT

Appeal against sentence by the Attorney-General of the Republic.

The respondent was convicted on the 7/5/62 at the District Court of Paphos (Cr. Case No. 675/62) on one count of the offence of unlawful excavation of antiquities, contrary to s.14 (1) (2) of the Antiquities Law Cap. 31 and was sentenced by Malyali, D.J. to pay a fine of £2.—

V. Aziz for the appellant.

R. Denktash for the respondent.

The judgment of the Court was delivered by :—

ZEKIA, J. : The respondent in this case was charged that on the 2nd April, 1962, at the locality "Fteliades" in the area of Polis he did excavate for the purpose of discovering antiquities without a licence in writing first obtained from the Director of Antiquities.

The record discloses that on being charged he pleaded guilty. Facts were related and as far as facts given, are concerned are related in a few lines : "He is a person with some knowledge of antiquities. On 2.4.62 at about 3.20 p.m. P.W.1 and 2 whilst on patrol received information and went and found accused digging in a cave. He was holding a spade and a small knife". It is stated that the respondent had a previous similar conviction for which he had been bound over in the sum of £50 for 2 years to keep the peace.

His counsel on the other hand, in mitigation stated that the respondent on the material day was building a bridge for someone and he required big stones for the construction of this bridge, and he went to this cave to dig big stones there and that it was a technical offence, his object not being to find antiquities. The accused is a married man with two children and the sole supporter of his family.

On the presentation of his case the Court ordered £2 fine and also ordered that his recognizance to remain in force for the remaining period. The spade and knife to be forfeited.

The appellant on behalf of the Republic in this case appeals against the inadequacy of the punishment.

Two points are to be considered in this particular appeal:

- (1) It appears that although the respondent pleaded guilty his counsel was allowed to put facts in mitigation which amounted to a plea of not guilty. It is the ingredient of this offence that digging must be with an object to discover antiquities. If his object was something else there was no offence. It is, therefore, possible that the respondent in this case did not fully realise the nature of the offence to which he pleaded guilty ;
- (2) The second point we want to make is that the facts going to the assessment of the punishment had not been adequately put before the trial Court and apart from the facts which we quoted, it does not appear that any other material was made available to the trial Judge with a view to assess a proper punishment in the case.

In the circumstances we think that it is a proper case for a new trial and we order, accordingly, that this case should be remitted to the trial Court for a new trial and then the Counsel for the Republic will be in a position to present fully the facts and explain the seriousness of the case so that the Judge might be in a better position to pass a proper sentence.

The respondent is at liberty to change his plea.

*New trial ordered on
the above terms.*

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Zekia, J.