

1. STELIOS YIANGOU ANTONIADES
2. ELPIDA STELIOU,

Appellants,

v.

THE POLICE,

Respondents.

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STELIOS
YIANGOU
ANTONIADES
AND ANOTHER
v.
THE POLICE

(Criminal Appeals Nos. 2723-4)

(Consolidated)

Game and Wild Birds Protection Law, Cap. 65, section 4 (1) (2)—Pursuing game without licence in open season—“Forfeiture” of gun under section 27—Forfeiture is now discretionary in view of Article 12.3 of the Constitution and Law No. 9 of 1964, section 13—Judges should give reasons in exercising of such discretion.

Appellant No. 1 was convicted by the District Court of Limassol on 3 counts of the offence of (1) carrying a fire-arm (a sporting gun) without a certificate of registration, contrary to sections 7 (1) (a) and 4 (a) of the Firearms Law, Cap. 57 as amended by Law 11 of 1959 ; (2) carrying the same gun without a firearms licence, contrary to sections 7 (1) (e) and 4 (a) of the same law, and (3) pursuing game without a game licence during an open season, contrary to section 4 (1) (2) of the Game and Wild Birds Protection Law, Cap. 65, and was sentenced to pay a total amount of £20 fine on all three counts and £6.930 mils costs and he was further prohibited from carrying a gun for a period of 18 months and the gun in question was ordered to be forfeited. The appellant claims that the gun is worth over £100.

The appeal against conviction was abandoned by the appellant and it was dismissed. The Court then dealt with the order of forfeiture.

Held, (1) the forfeiture of the gun amounts to excessive punishment in the circumstances of this case and we, accordingly vary the order of the trial Court by setting aside the forfeiture order.

(2) We take into account that the appellant was pursuing game in an open season and we consider that the penalty imposed and the prohibition order were adequate punishment having regard to the nature of the offence.

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(3) The forfeiture of a gun is now discretionary in consequence of the constitutional provisions of Article 12. 3 of the Constitution and of the recently enacted Law 9 of 1964, section 13*.

Appeal against conviction dismissed ; Appeal against forfeiture order allowed ; forfeiture order set aside.

Directions to Judges :

The forfeiture of a gun being now discretionary in consequence of the constitutional provisions of Article 12. 3 of the Constitution and of the recently enacted Law 9 of 1964 (section 13), trial Judges in deciding to exercise their discretion either in favour or against an accused person should give reasons for doing so.

Appeal.

Appellant No. 1 was convicted on the 25.6.64 at the District Court of Limassol (Cr. Case No. 460/64) on 3 counts of the offence of (1) carrying a firearm (a sporting gun) without a certificate of registration, contrary to sections 7 (1) (a) and 4 (a) of the Firearms Law, Cap. 57 as amended by Law 11 of 1959 ; (2) carrying the same gun without a firearms licence, contrary to sections 7 (1) (b) and 4 (b) of the same Law, and (3) pursuing game without a game licence during an open season, contrary to section 4 (1) (2) of the Game and Wild Birds Protection Law, Cap. 65, and was sentenced by Limnatis D.J. to pay

**Editorial Note :* Section 13 of the Game and Wild Birds (Amendment) Law, 1964 (Law 9 of 1964), amends section 27 of the Game and Wild Birds Protection Law, Cap. 65, (the main Law), and runs as follows :

“ 13.

(a) The Court may, at its discretion, in addition to any other penalty, if in the commission of the offence a gun is used either by him or by any other person to his knowledge (whether such other person has been convicted for any offence or not), prohibit him from carrying a gun for a period of not more than seven years.”

Article 12 3 of the Constitution provides that the punishment should be proportionate to the gravity of the offence.

a total amount of £20 fine on all three counts and £6.930 mils costs and he was further prohibited from carrying a gun for a period of 18 months and the gun in question was ordered to be forfeited.

A. S. Myrianthis, for the appellant.

A. Frangos, Counsel of the Republic, for the respondents.

VASSILIADES, J. : The Judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J. : In this case the appellant was originally charged, with his wife, with (1) carrying a firearm (a sporting gun) without a certificate of registration, contrary to sections 7 (1) (a) and 4 (a) of the Firearms Law, Cap. 57 as amended by Law 11 of 1959, (2) carrying the same gun without a firearms licence, contrary to sections 7 (1) (b) and 4 (a) of the same law, and (3) pursuing game without a game licence during an open season, contrary to section 4 (1) (2), of the Game and Wild Birds Protection Law, Cap. 65.

At the close of the case of the prosecution, the wife was not called upon and she was acquitted and discharged. In fact it is common ground that the wife possesses a valid certificate of registration and a firearms licence in respect of the sporting gun which is the subject of the forfeiture order under appeal.

The appellant was found guilty on all three counts by the trial Court which imposed a total of £20 fine and £6.930 mils costs. The fine imposed was : £5 on count 1 (certificate of registration), £5 on count 2 (firearms licence) and £10 on count 3 (pursuing game). In addition to this fine and costs he was also prohibited from carrying a gun for a period of 18 months and the forfeiture of the gun was ordered under the provisions of section 27 of the Game and Wild Birds Protection Law, Cap. 65. The appellant claims that the gun is worth over £100.

The appeal against conviction in this case has been abandoned by the appellant and is hereby dismissed. We are only concerned with the order of forfeiture. On the facts of the case there is no doubt that the wife of the appellant is the registered owner and she has committed no offence. Considering that the total monetary penalty imposed on the appellant amounts to £27, in addition

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to the prohibition of 18 months from carrying a gun, we are of the view that the forfeiture of the gun amounts to excessive punishment in the circumstances of this case and we, accordingly, vary the order of the trial Court by setting aside the forfeiture order. We take into account that the appellant was pursuing game in an open season and we consider that the penalty imposed and the prohibition order were adequate punishment having regard to the nature of the offence.

The forfeiture of a gun being now discretionary in consequence of the constitutional provisions and of the recently enacted Law 9 of 1964 (section 13), we are of the view that trial Judges in deciding to exercise their discretion either in favour or against an accused person should give reasons for doing so.

In the result the appeal against conviction is dismissed and the forfeiture order of the gun is set aside.

Appeal against conviction dismissed ; appeal against forfeiture order allowed ; forfeiture order set aside.