

THEODOTOS LEONIDA,

Appellant,

v.

THE POLICE,

Respondents.

THEODOTOS
LEONIDA
v.
THE POLICE

(*Criminal Appeal No. 3121*).

Animal—Cruelty to animals—Cruelly beating an animal (a pointer dog)—Contrary to sections 2 and 3(1)(a) of the Cruelty to Animals Law, Cap. 47—Test of reasonableness to be applied to cases of this kind—The test of reasonableness in the present case against the appellant—Appeal against conviction dismissed—Such test to be decided on the facts of each case.

Cruelty to animals—Test of reasonableness—See hereabove.

In this case the appellant was tried and convicted by the District Court of Limassol of the offence of cruelly beating an animal, that is, a pointer dog by beating it with a stick, contrary to sections 2 and 3(1)(a) of the Cruelty to Animals Law, Cap. 47. The appellant now appeals against his conviction. It was argued on his behalf, *inter alia*, that applying the test of reasonableness the animal was not ill-treated within the provisions of the statute (*supra*); and that the stick in question was not produced in Court.

Reviewing the facts and dismissing the appeal, the Court :

Held, (1). Certainly the true test to be applied in cases of this sort is whether the accused acted reasonably in what he did. There is no doubt however, that the question of reasonableness is decided on the particular facts of each case.

(2) In the present case, considering the facts as found by the trial Judge, we are of the view that the test of reasonableness is against the appellant and that on the findings of fact he was rightly found guilty of cruelly beating the dog in question. (The instant case is on the facts distinguishable from the case *Goodway v. Becher* [1951] 2 All E.R. 349.

Appeal dismissed.

Cases referred to :

Goodway v. Becher [1951] 2 All E.R. 349.

1969

Nov. 28

—
THEODOTOS
LEONIDA
v.
THE POLICE

Appeal against conviction.

Appeal against conviction by Theodotos Leonida who was convicted on the 16th August, 1969, at the District Court of Limassol (Criminal Case No. 5029/69) on one count of the offence of cruelly beating an animal contrary to sections 2 and 3(1)(a) of the Cruelty to Animals Law, Cap. 47 and was bound over by Boyiadjis, D.J., in the sum of £50 for one year to keep the law and he was further ordered to pay £8.300 mils costs of the prosecution.

A. Anastassiou, for the appellant.

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

The facts sufficiently appear in the judgment of the Court. ~

VASSILIADES, P. : We find it unnecessary to call upon you Mr. Frangos. Mr. Justice Josephides will deliver the judgment of the Court.

JOSEPHIDES, J. : In this case the appellant was tried and convicted by the District Court of Limassol of the offence of cruelly beating an animal, that is, a pointer dog, by beating it with a stick, contrary to sections 2 and 3(1)(a) of the Cruelty to Animals Law, Cap. 47 ; and he was bound over in the sum of £50 for one year " to keep the law ", and ordered to pay the costs of the prosecution amounting to £8.300 mils.

The appeal to-day is taken against the conviction only. There were originally five grounds of appeal but learned counsel for the appellant argued his case on three grounds with which I will deal in detail in due course.

The learned trial Judge before convicting the appellant heard three witnesses for the prosecution and no witness on behalf of the defence. The main witness for the prosecution was one Polyxeni Christodoulou who is the mother-in-law of the owner of the pointer dog. Her version was that at about 5.00 p.m. on the 26th February, 1969, while returning to the village from her vineyards, she was accompanied by the complainant's pointer dog and by another dog belonging to one Alexandros Ioannou. On her way to the village she came across the appellant who had with him his goats and dog. When the three dogs met, as not unusual in such cases, there was a dog-fight. Polyxeni

stated that the appellant got down from his donkey and "was hitting the dogs with a big stick ('katsina') which had a piece of sharp iron on its end. I shouted out to accused but he did not answer"; when the complainant's dog returned to her she noticed a big oedema on its side. She went on to state that on the following day, when she met the appellant at the vineyard, she referred to his beating of the dog and said to him, "come and see what you have done to the dog", and that, according to her, the appellant replied "I should have killed the dog outright".

1969
Nov. 28
—
THEODOTOS
LEONIDA
v.
THE POLICE

Finally, Polyxeni stated that complainant used to go to work early in the morning and return at night and that he did not see his dog injured until the 7th March, 1969. Her explanation for not telling the complainant earlier about this incident was that she was afraid lest any trouble would follow in consequence of it. In fact, when the complainant got to know of it he slapped the appellant. On the same day (7.3.69) he reported the matter to the police and took the dog to a veterinary surgeon on the following day. This surgeon in evidence stated that he examined the pointer dog on that day and that he noticed a haematoma "4 to 5 inches big"; but his opinion was that this was a recent injury "which was caused the previous one or two days". He had to operate on the dog.

This was briefly the evidence led by the prosecution in the case. When the accused was called upon to make his defence under the law he made an unsworn statement from the dock saying, "I wish to say nothing". So, at the end of the day, the trial Judge had to decide the case on the evidence of the three witnesses for the prosecution, and as against that he had no evidence at all by or on behalf of the appellant.

After summing up the evidence in his judgment, the learned trial Judge came to the conclusion that the main witness Polyxeni, on whose evidence the case turned, was telling the truth; and we do not think that, considering the evidence put before him, the Judge went wrong in his finding. Having reached that conclusion, he convicted the appellant of cruelly beating the dog.

The first ground of appeal taken by learned counsel for the appellant to-day was that the animal was not cruelly ill-treated within the provisions of the Cruelty to Animals Law, Cap. 47. In support of that ground, counsel referred to *Goodway v. Becher* [1951] 2 All E.R. 349, where it was held that the true test to be applied in such cases was whether

the appellant had acted reasonably in what he did. In that case it was further held that in all the circumstances the appellant had acted reasonably and, therefore, the conviction should be quashed. There is no doubt that the question of reasonableness is decided on the facts of each case. It is a question of fact. Without going into detail, with regard to the particular facts in the *Goodway* case, suffice it to say that that case is distinguishable from the present one. The dog in that case was shot by the appellant on the third occasion that it had gone to his farm to destroy his fowls.

In the present case, considering the facts as accepted by the trial Judge, we are of the view that the test of reasonableness is against the appellant and that on the findings of fact he was rightly found guilty of cruelly beating the dog.

The second ground taken was that the stick, "katsina", with which the dog was hit, was not produced before the Court as an exhibit. We do not think that there is substance in that ground. There was a description by Polyxeni of the stick which had an iron point, and her version was accepted by the trial Judge.

Finally, counsel for the appellant compared the evidence of Polyxeni with that of the owner of the dog and of the veterinary surgeon and, having pointed out certain differences, he submitted that the evidence of Polyxeni should not have been accepted by the trial Judge. But the fact remains that, even if the opinion of the surgeon may, to some extent, contradict the evidence of Polyxeni with regard to the age of the injury, Polyxeni gave positive evidence as to the date of the incident, and opinion evidence is not always absolutely accurate.

For these reasons we are of the view that the appellant was rightly convicted and we dismiss the appeal.

Appeal dismissed.