1973
Sept. 28

THE ATTORNEY-GENERAL OF THE REPUBLIC
v.
AVRAAM AVRAAM ROPAS

[TRIANTAFYLLIDES, P., L. LOIZOU, MALACHTOS, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant.

v.

AVRAAM AVRAAM ROPAS,

Respondent.

(*Criminal Appeal No.* 3480).

Rogues and Vagabonds—Wandering for an "illegal" or "disorderly" purpose—Section 189(*e*) *of the Criminal Code Cap.* 154—*Notion of "disorderly" not the same thing as "illegal"—Conduct, or a purpose may be "disorderly" without being necessarily also, "illegal".*

" Disorderly" conduct or purpose—As distinct from "illegal" conduct or purpose.

Words and Phrase—" Illegal" or "disorderly" conduct or purpose—In section 189(*e*) *of the Criminal Code Cap.* 154.

The Respondent was acquitted by the trial Judge on a charge of wandering for an "illegal" or "disorderly" purpose, contrary to section 189(e) of the Criminal Code Cap. 154 (*Note:* See the text *post* in the judgment). The learned trial Judge held that the words "illegal or disorderly" in the said section 189(e) envisage a purpose to do an act punishable as a crime; and that there was no sufficient evidence to support a conviction, because there existed the possibility that the accused (now *Respondent*) behaved as he did for an immoral or other secret purpose which was not punishable as an offence. The Attorney-General took this appeal against the acquittal. Allowing the appeal, the Supreme Court:-

Held, (1). The trial Judge does not appear to have approached correctly the issue of what is meant by the term "disorderly". " Disorderly" is not the same thing as "illegal" and what is actually meant by it can be gathered from the passage in Words and Phrases legally defined, Vol. 2, 2nd ed., p. 85 (see the passage *post* in the judgment).

(2) The trial Judge was entitled in the circumstances of this case and on a correct application of the law, to give the benefit

of the doubt to the Respondent as regards the issue of whether or not he was in the street, at night, for an "illegal" purpose; but we have to set aside the acquittal of the Respondent because, in the light of the above referred to passage, we are of opinion that there is misdirection in the judgment regarding the notion of the term "disorderly"; such notion was treated by the trial Judge as being more or less the same thing as "illegal"; but this is not in fact so; conduct, or a purpose, may be "disorderly" without being necessarily, also, "illegal".

(3) Therefore, the appeal is allowed, the acquittal is set aside and a sentence of fine in the sum of £10 (or ten days imprisonment in default) is imposed.

Appeal allowed

Cases referred to:

See the cases quoted on page 85 of the Words and Phrases Judicially defined Vol. 2, 2nd ed. namely:

Police v. *Christie* [1962] N.Z.L.R. 1109;

Melser v. *Police* [1967] N.Z.L.R. 437, C.A., per North P. at p. 443.

Appeal against acquittal.

Appeal by the Attorney-General of the Republic against the acquittal of the Respondent by the District Court of Limassol (Chrysostomis, D.J.) on a charge in respect of an offence contrary to section 189(e) of the Criminal Code, Cap. 154.

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

No appearance for the Respondent.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: This is an appeal by the Attorney-General against the acquittal of the Respondent, on a charge in respect of an offence contrary to section 189(e) of the Criminal Code, Cap. 154.

The Respondent has been duly notified that this appeal had been fixed for hearing today but he has failed to appear or to arrange to be represented by counsel; so we shall have to determine the appeal in his absence.

The aforesaid provision reads as follows:

" 189 .....

.....

(e) every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose; shall be deemed to be a rogue and vagabond, and is guilty of a misdemeanour, and is liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year".

The facts, as they were found by the learned trial Judge, who believed the evidence adduced by the prosecution and disbelieved the evidence called by the defence, are as follows: The Respondent (who was the accused before the Court below) was seen by two policemen running barefoot along a street in Limassol town, at about 3.20 a.m.; at the time he was not under the influence of drink. When he saw the policemen he tried to evade them and he entered a car; he was trying to put on his shoes, which were in the car, when he was arrested. On being asked by the policemen what he was doing, he said that he had come to see his child, as he was separated from his wife; and he added that he used to come on many occasions at such a time, as he could not sleep; when he was asked why he was running, he replied that he was an athlete.

The learned trial Judge held that the words "illegal or disorderly" in section 189(e) envisage a purpose to do an act punishable as a crime; and at another point of his judgment he said that there was no sufficient evidence to support a conviction because there existed the possibility that the Respondent behaved as he did for an immoral or other secret purpose which was not punishable as an offence.

It has been submitted by counsel for the Appellant that the trial Court erred in applying the law to the facts of the present case. In our opinion this submission has to be upheld because the trial Judge does not appear to have approached correctly the issue of what is meant by the term "disorderly":

" Disorderly" is not the same thing as "illegal"; and what is actually meant by it can be gathered from the following passage in Words and Phrases Legally Defined, vol. 2, 2nd ed., p. 85:-

" New Zealand.- In the Court below, Tompkins, J., purporting to follow Henry J. in *Police* v. *Christie* ([1962] N.Z.L.R. 1109) came to the conclusion that, 'it is not an ingredient of an offence under that section that the conduct was such as to provoke a breach of the peace or to be calculated to do so'. However, on reading the judgment of Henry, J. in *Christie's* case—which, it must be remembered, was delivered orally—I am by no means sure that Henry, J. intended to be understood as saying that the likely effect of the behaviour on the minds and actions of others who were present was wholly irrelevant. I agree that a person may be guilty of disorderly conduct which does not reach the stage that it is calculated to provoke a breach of the peace, but I am of opinion that not only must the behaviour seriously offend against those values of orderly conduct which are recognised by right-thinking members of the public but it must at least be of a character which is likely to cause annoyance to others who are present. I think that Henry J. meant to be so understood. *Melser* v. *Police* [1967] N.Z.L.R. 437, C.A., per North, P., at p. 443.

' Disorderly conduct is conduct which is disorderly; it is conduct which, while sufficiently ill-mannered, or in bad taste, to meet with the disapproval of well-conducted and reasonable men and women, is also something more—it must, in my opinion, tend to annoy or insult such persons as are faced with it—and sufficiently deeply or seriously to warrant the interference of the criminal law'. Ibid. per Turner, J., at p. 444.

' I agree that an offence against good manners, a failure of good taste, a breach of morality, even though these may be contrary to the general order of public opinion, is not enough to establish this offence. There must be conduct which not only can fairly be characterised as disorderly, but also is likely to cause a disturbance or to annoy others considerably. As Turner, J. has already said, in the ultimate the question is one of degree. That degree the Court must fix in each case, applying the general approach which I have indicated above'. Ibid., per McCarthy, J., at p. 446".

In the light of all the circumstances of this particular case we are of the view that the trial Judge was entitled, on a correct application of the law, to give the benefit of the doubt to the Respondent as regards the issue of whether or not he was in the street, at night, for an "illegal" purpose; but, we have to set aside the acquittal of the Respondent, because, in the light of the dicta in the above-quoted passage, we are of the opinion that there exists misdirection in the judgment regarding the notion of "disorderly"; such notion was treated by the trial Judge as being more or less the same thing as "illegal"; but this is not in fact so; conduct, or a purpose, may be "disorderly" without being necessarily, also, "illegal".

We have considered whether the better course, would be to send this case back for retrial, but we have, in the end, decided that that is not necessary because there is no room for reasonable doubt that the inference to be drawn from the primary facts, as found by the trial Court, is that the Respondent was wandering with a disorderly purpose in mind.

So we have decided to set aside his acquittal and substitute in its place a conviction of the Respondent of an offence under section 189(e), namely that he was found, on the date in question, wandering in a road under such circumstances as to lead to the conclusion that he was there for a disorderly purpose.

There remains the question of passing sentence on the Respondent: We have decided, in the light of all relevant considerations, to order that he should pay a fine of £10 or suffer ten days' imprisonment instead in case of default.

Appeal allowed.