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[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

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STELIOS CHR. PETSAS
v.
THE POLICE

STELIOS CHR. PETSAS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3485*).

Criminal Law—Misconduct—Conduct likely to cause a breach of the peace—Section 188(d) of the Criminal Code, Cap. 154—Gesticulation by extending palm and raising the middle finger up and down—Finding that complainant greatly annoyed—Sufficient to justify inference that Appellant conducted himself in a manner likely to cause a breach of the peace—Particularly having in mind the meaning attributed to the said gesticulation by the public.

Evidence in Criminal Cases—Credibility of witnesses—Misconduct—Section 188(d) of the Criminal Code, Cap. 154—Two conflicting versions—Complainant's evidence preferred—Sufficient evidence on which trial Court could make its findings preferring the version of the complainant to that of the accused.

Misconduct—Conduct likely to cause a breach of the peace—Section 188(d) of the Criminal Code, Cap. 154—See, also, under "Criminal Law".

The Appellant in the instant appeal complains against his conviction of the offence of misconduct (by conducting himself in a manner likely to cause a breach of the peace), contrary to s. 188 (d) of the Criminal Code, Cap. 154.

Whilst he was driving by complainant's house, with whom he was not on speaking terms, he turned slightly towards the direction of the complainant, who was sitting with her daughter close to the open window of their house, and by looking at her he made the gesticulation commonly known as "kavli".

At the Court below the Appellant denied that he made the gesticulation complained of and alleged at the same time that he did not even see the complainant and her daughter sitting by their window. He, moreover, alleged that as the weather was

terribly bad the complainant's window was closed and he went on to accuse her of lying in her testimony.

Counsel for the Appellant argued the appeal on two grounds: (a) That there was no sufficient and reliable evidence on which the trial Judge could safely rely and find Appellant guilty of the charge of misconduct and (b) that the finding of the trial Judge to the effect that it is an accepted fact that the gesticulation complained of is an abusive and annoying gesticulation is arbitrary and could not in law support the finding that an offence under the aforesaid section 188(d) (quoted in full in the judgment *post*) had been committed.

As to ground (a) counsel contended that the trial Judge ought to have believed the version of the Appellant and reject that of the complainant because her version was not reliable.

Held, (I), on ground (a):

(1) We are satisfied that there was sufficient evidence on which the trial Judge could make his finding preferring the version of the complainant to that of the accused.

(2) We are not therefore, prepared to reject the finding of the trial Judge on the facts deposed to by the witnesses, especially when the finding is based on the credibility of the witnesses, and we would dismiss this contention of counsel.

Held, (II), on ground (b):

(1) The finding that the complainant was greatly annoyed because of the conduct of the Appellant is sufficient to justify the inference that he conducted himself in a manner likely to cause a breach of the peace. The conduct of the Appellant was intended and was deliberately annoying the complainant, and there was a clear contravention of s. 188(d) (Cf. *Kyprianou v. The Police* (1968) 2 C.L.R. 119 at p. 120).

(2) The appeal has to be dismissed because conduct of such nature is likely to promote a breach of the peace particularly having in mind the meaning attributed to the gesticulation in question by the public in our country.

Appeal dismissed.

Cases referred to:

Kyprianou v. Police (1968) 2 C.L.R. 119 at p. 120.

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Appeal against conviction.

Appeal against conviction by Stelios Chr. Petsas who was convicted on the 27th June, 1973 at the District Court of Famagusta (Criminal Case No. 2646/73) on one count of the offence of misconduct contrary to s. 188(d) of the Criminal Code, Cap. 154 and was bound over by Artemides, D.J. in the sum of £100 for one year to keep the peace and be of good behaviour.

N. Zomenis, for the Appellant.

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

The judgment of the Court was delivered by:—

HADJIANASTASSIOU, J.: On April 6, 1973, a charge was preferred by the police against the accused that he, on March 5, 1973, at Famagusta did in a public place, conduct himself in a manner likely to cause a breach of the peace, contrary to s. 188(d) of the Criminal Code, Cap. 154.

The facts of the case are these: The accused and the complainant reside in the same building, the first living on the first floor and the latter on the ground floor. It appears that their relations were strained due to a series of incidents, and as a result, they were not on speaking terms. On March 5, 1973, following another incident which occurred on March 4, the complainant, Andriani Makri, reported the accused to the Municipal Authorities. Apparently, the accused feeling annoyed because of the complaint against him, at about 3.30 p.m. of the same day whilst the complainant was sitting with her daughter close to the open window of their house situated at Alexandrou Street, the former, who is a driving instructor, drove by her house and when he was opposite their window, he turned slightly towards the direction of the complainant and looking at her, made a gesticulation by extending his palm and raising the middle finger up and down. This is commonly known as “kavli”. The accused was sitting in the car next to his pupil who was driving at that time. The complainant, feeling very annoyed from the conduct of the accused, reported the matter to the police. The accused denied that he had made the gesticulation complained of, alleging at the same time that he did not even see the complainant and her daughter sitting by their window because he was giving instructions to his pupil who was driving at the time. He further explained in

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Court that the gesticulations must have probably been made to his pupil when he was instructing him how to drive. Furthermore, the accused explained that because the weather was terribly bad, the complainant's window was closed and accused the complainant of lying in her testimony.

It was contended for the accused that the offence had not been proved by the prosecution and that the learned trial Judge ought to have believed the version of the accused and rejected that of the complainant because her version was not reliable.

The learned trial Judge, having weighed the evidence before him, accepted the evidence of the complainant and found that the offence was proved by the prosecution. He convicted the accused and ordered him to enter into a recognizance for the sum of £100 and to be of good behaviour for a period of one year and to keep the peace. The accused appealed and what is said by counsel for the Appellant mainly here is twofold. The first point was that there was no sufficient and reliable evidence on which the learned trial Judge could safely rely and find the Appellant guilty of the charge of misconduct. We have considered the evidence adduced in this case and we are satisfied that there was sufficient evidence on which the learned trial Judge could make his finding preferring the version of the complainant to that of the accused. We are not, therefore, prepared to reject the finding of the trial Judge on the facts deposed to by the witnesses, especially when the finding is based on the credibility of the witnesses, and we would, therefore, dismiss this contention of counsel. The second point taken by counsel for the Appellant is that the finding of the trial Judge, viz. that it is an accepted fact that the gesticulation of "kavli" is an abusive and annoying gesticulation, is arbitrary and could not in law support the finding that an offence under that section had been committed.

Section 188(d) of the Criminal Code deals with idle and disorderly persons, and the relevant words for the purposes of this case are:—

“ Every person who in any public place conducts himself in a manner likely to cause a breach of the peace, shall be deemed idle and disorderly persons, and are liable on conviction to imprisonment for one month or to a fine not exceeding £25 or to both”.

In our judgment, going through the evidence and the finding that the complainant was greatly annoyed because of the conduct

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of the Appellant, it is sufficient to justify the inference that the Appellant conducted himself in a manner likely to cause a breach of the peace. We have no hesitation to say that that conduct of the Appellant was intended and was deliberately annoying the complainant, and it seems to us that there was a clear contravention of s.188(d) of the Criminal Code Cap. 154. Cf. *Kyprianou v. The Police* (1968) 2 C.L.R. 119 at p. 120.

Accordingly, in our judgment, this appeal will have to be dismissed because conduct of that nature, as we said earlier, is likely to provoke a breach of the peace, particularly having in mind the meaning attributed to the gesticulation in question by the public in our country.

Appeal dismissed.