

1976 March 24

[STAVRINIDES, L. LOIZOU, AND A. LOIZOU, JJ.]

KYRIACOS CHRISTODOULOU TSIELEPOS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3696*).

5 *Criminal Law—Stealing—Stealing by a person in the public service—
Section 267 of the Criminal Code, Cap. 154—Ingredients of the
offence—Not established that things stolen were Government
property or that they had come into the possession of the accused
by virtue of his employment—Conviction under section 267 set
aside—Substituted by conviction for simple theft under section
262 of the Code.*

10 The appellant, who is a policeman, was found carrying in his
car certain furniture which came into his possession whilst
serving at the Turkish village of Kato Arodhes, where he was
temporarily transferred in order to guard the properties of its
Turkish Cypriot inhabitants who had left it and moved to the
Turkish-occupied part of the Island.

He was tried on a count which reads:

15 “The accused on the 3rd day of September, 1975 at Kato
Arodhes, in the District of Paphos, being a police constable,
did steal furniture valued at £10, the property of unknown
person(s)”;

20 and was found guilty of stealing under section 267* of the
Criminal Code, Cap. 154 and sentenced to two months’ im-
prisonment.

* Section 267 reads: “If the offender is a person employed in the public service and the thing stolen is the property of Her Majesty or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for seven years”.

He appealed against conviction.

Held, (1) that in order to establish an offence under section 267 the prosecution, in addition to proving theft as defined by section 255 of the Code, had to prove the accused's employment as a policeman, that the furniture was Government property and that it "had come into his possession by virtue of his employment". 5

(2) That whereas the statement of the offence in the charge refers to section 267, which relates to stealing by a person in the public service, the particulars of the offence following it are those appropriate to simple stealing *i.e.* there is no allegation either that the things stolen were Government property or that they had come into the possession of the accused by virtue of his employment; that such allegations could not be established, for clearly the goods had been, and when the appellant took them still were, private property and "had not come into his possession by virtue of his employment"; and that, accordingly, the conviction must be set aside. 10 15

(3) That the evidence accepted by the trial Judge established the offence of simple theft under section 262 of the Code; and that this is a proper case for substitution of a conviction under that provision for the conviction under section 267. 20

Appeal allowed. Conviction under section 267 set aside; conviction under section 262 substituted therefor. 25

Appeal against conviction.

Appeal against conviction by Kyriacos Christodoulou Tsielepos, who was convicted on the 14th February, 1976 by the District Court of Paphos (Criminal Case No. 2600/75) on a charge of stealing by a person in the public service, contrary to section 267 of the Criminal Code, Cap. 154 and was sentenced by Demetriou, Ag. S.D.J. to two months' imprisonment. 30

T. Papadopoulos with *P. Ioannides*, for the appellant.

Cl. Antoniadis, Counsel of the Republic, for the respondents. 35

STAVRINIDES J. gave the following judgment of the Court. In this appeal against conviction the appellant was tried by the District Court of Paphos on a count which reads:

“The accused on the 3rd day of September, 1975 at Kato Arodhes, in the District of Paphos, being a police constable, did steal furniture valued at £10, the property of unknown person(s).”

- 5 He was found guilty of stealing under s.267 of the Criminal Code and sentenced to two months' imprisonment.

The relevant facts are briefly these: The appellant, who is a policeman, was, on the 29th August, 1975, together with two other policemen, temporarily transferred to Drousha Police Station in order to guard the properties of the Turkish Cypriots who had left their villages and moved to the Turkish-occupied part of the island. On the 3rd of the following September he was sent to the Turkish village of Kato Arodhes, whose inhabitants had similarly left on the 28th of the preceding month.

10 At about 9.30 a.m. that day he was intercepted at the junction of the Kathikas—Arodhes—Ktima roads by p.w.3 Vladimirov Nicolaou, a police sergeant, who had gone there in pursuance of certain information. The appellant was driving his own car. On top of the vehicle there was a couch and a book-case and inside a school desk. On being told by Nicolaou that he was investigating a case of theft by him (the appellant) of certain furniture and being cautioned, the appellant said that “he had found the things in the street” at Kato Arodhes. At 10.45 p.m. on the same day, at Stroumbi

15 Police Station, he volunteered a statement (*exhibit 3*) in which he said that he had taken that furniture because his eight-year old son, who had been with him at Kato Arodhes, told him that he needed the desk to write on and the book-case to keep his books in. On September 6 he was formally charged and in answer he said, “I did not steal these things. I took them in order to protect them because they were in the street”. In his sworn evidence before the Court he said that he noticed the furniture, which he called “paliosanidha”, in the street, he thought he was entitled to take it and it did not occur to him

20 that he was committing an offence. In the same breath he said that his object in taking it was to protect it and he intended to carry them to Ktima Police Station. He also stated that when he was transferred to Drousha Police Station “he was detailed to guard only property of some value, *i.e.* doors and window shutters”.

25
30
35
40

The provision under which the appellant was found guilty reads:

“If the offender is a person employed in the public service and the thing stolen is the property of Her Majesty, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for seven years.”

Obviously, in order to establish an offence under that section 5
the prosecution, in addition to proving theft as defined by
s.255 of the Code, had to prove the accused’s employment as a
policeman, that the furniture was Government property and
that it “had come into his possession by virtue of his employ-
ment”. Now whereas the statement of the offence in the charge 10
refers to s.267, which relates to stealing by a person in the
public service, the particulars of the offence following it are
those appropriate to simple stealing, *i.e.* there is no allegation
either that the things stolen were Government property or
that they had come into the possession of the accused by virtue 15
of his employment. Nor could either of such allegations be
established, for clearly the goods had been, and when the appel-
lant took them still were, private property and “had not come
into his possession by virtue of his employment”.

For these reasons the conviction is set aside. However, this 20
is not the end of the matter: clearly the evidence accepted by
the learned trial Judge established the offence of simple theft
under s.262 of the Code, and this is a proper case for substitu-
tion of a conviction under that provision for the conviction
under s.267. 25

Conviction set aside and appellant convicted of simple theft
under s.262 of the Code.

*Appeal allowed. Conviction under
section 267 set aside; conviction
under section 262 substituted 30
therefor.*