

1982 April 5

[TRIANTAFYLIDIS, P., DEMETRIADES AND LORIS, JJ.]

ION CHARALAMBOUS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeals Nos. 4284, 4286*).

---

*Criminal Law—Stealing goods in transit—Sections 266(i) and 255 of the Criminal Code, Cap. 154—Employee of Cyprus Airways seen taking box of watches out of hold of an aircraft—At beginning of judgment of trial court the appellant's presence at the scene was described as connected with performance of his duties whilst in concluding part of the judgment such presence was treated as unauthorised—On the evidence on record, initial statement of Judge the correct view as to what has actually happened—Therefore trial Judge erred as regards true nature of presence of appellant at the scene at the material time—Guilt of appellant cannot be treated as having been established with the certainty required in a criminal case—Burden of proving appellant's guilt all along on prosecution—Conviction quashed.*

The appellant, an employee of the Cyprus Airways, was convicted of the offence of stealing goods in transit, in that he stole from an aircraft of Cyprus Airways a box containing one hundred and fifty watches, which were being transported through Larnaca International Airport to Saudi Arabia. He was seen taking the box in question out of the hold of an aircraft, in which, also, other boxes containing watches had been loaded; and he placed it on a cart which was nearby and was being looked after by another employee of Cyprus Airways. The trial Judge found that the taking of the box as above constituted the actus reus of the offence of stealing and that the necessary mens rea, was, to be inferred beyond reasonable doubt from the conduct of the appellant at that time and subsequently.

In this finding the trial Judge has apparently taken the view that the appellant did not go to the place where the loading was taking place in the normal course of his duty but on his own; but at the very beginning of his judgment, when the trial Judge was relating in a narrative form the history of the relevant events, he stated expressly that the appellant was one of the employees of Cyprus Airways who were taking part in the loading on the aircraft of the boxes containing the watches. 5

*Upon appeal against conviction:*

*Held*, that from the evidence on record there can be no doubt at all that the initial statement of the trial Judge, at the opening of his judgment, is the correct view both as regards what has actually happened and as regards the true nature of the presence of the appellant near the aircraft, which has to be, obviously ascribed to performance of his duties and to be treated as being of an innocent nature; that it is, therefore, clear that the trial judge was labouring under some kind of misconception when, in concluding his judgment, he treated the presence of the appellant near the aircraft concerned as being somehow of a sinister nature and a factor from which there could safely be inferred his intent to steal; that having come to the conclusion that the trial Judge erred as regards the true nature of the presence of the appellant at the scene at the material time, this Court is of the view that, even if it accepts everything else in his judgment as having been correctly found, it cannot treat the guilt of the appellant as having been established with the safety and certainty required in a criminal case, and it needs hardly point out that the burden of proving the appellant's guilt was all along on the prosecution and that the appellant was not required to prove his innocence by explaining why, while at work as an employee of Cyprus Airways, he was near the aircraft, because he is presumed to be innocent until he would be proved guilty; accordingly the conviction of the appellant has to be set aside, as well as the sentence passed on him, and the appellant will be discharged. 10  
15  
20  
25  
30  
35

*Appeals allowed.*

**Appeals against conviction and sentence.**

Appeals against conviction and sentence by Ion Charalambous who was convicted on the 20th November, 1981 at the District

Court of Larnaca (Criminal Case No. 6055/80) on one count of the offence of stealing goods in transit, contrary to sections 266(c) and 255 of the Criminal Code Cap. 154 and was sentenced by Constantinides, D.J. to seven months' imprisonment.

5 *E. Efstathiou* with *Sp. Efstathiou*, for the appellant.

*R. Gavrielides*, Senior Counsel of the Republic, for the respondents.

TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant was convicted by the District Court of Larnaca, on November 20, 1981, of the offence of stealing goods in transit, contrary to sections 266(c) and 255 of the Criminal Code, Cap. 154; and on December 5, 1981, he was sentenced to imprisonment for seven months.

15 He has appealed both against his conviction (Cr. A. 4284) and the sentence passed on him (Cr. A. 4286).

20 According to the particulars of the count on which he was convicted, the appellant, on June 25, 1980, stole from an aircraft of Cyprus Airways a box containing one hundred and fifty watches, which were being transported through Larnaca International airport to Saudi Arabia.

25 The salient facts of the case are that on the aforesaid date the appellant, who was an employee of the Cyprus Airways posted at Larnaca Airport, was seen taking the box in question out of the hold of an aircraft, in which, also, other boxes containing watches had been loaded. The appellant placed the box, which he took out of the hold, on a cart which was nearby and was being looked after by another employee of Cyprus Airways.

30 The trial judge found that the taking of the box by the appellant out of the hold of the aircraft constituted the actus reus of the offence of stealing and that the necessary mens rea, that is the intent to steal, was to be inferred beyond reasonable doubt from the conduct of the appellant at that time and subsequently. In this respect the learned judge has apparently taken the view that the appellant, when he went to the spot where the loading of the aircraft concerned was taking place, he did not go there in the normal course of duty, but on his own. It is to be noted, however, in this connection, that at the very

beginning of his judgment, when the learned trial judge was relating in a narrative form the history of the relevant events in this case, he stated expressly that the appellant was one of the employees of Cyprus Airways who were taking part in the loading on the aircraft in question of the boxes containing the watches, and it is only later on, towards the conclusion of his judgment, that the trial judge, when he set out the factors on the basis of which he inferred that the appellant had the intent to steal, included among them his view that the appellant was not ordered right from the start to take part in the loading of the aircraft and that he only turned up there later.

After weighing carefully all the submissions which were put forward by counsel for the parties we have reached the following conclusions:

From the evidence on record there can be no doubt at all that the already referred to initial statement of the trial judge, at the opening of his judgment, to the effect that the appellant was one of the employees of Cyprus Airways who were all along taking part in the loading of the aircraft, is the correct view both as regards what has actually happened and as regards the true nature of the presence of the appellant near the aircraft, which has to be, obviously, ascribed to performance of his duties and to be treated as being of an innocent nature.

It is, therefore, clear, in our opinion, that the trial judge was labouring under some kind of misconception when, in concluding his judgment, he treated the presence of the appellant near the aircraft concerned as being somehow of a sinister nature and a factor from which there could safely be inferred his intent to steal.

Having come to the conclusion that the trial Judge erred as regards the true nature of the presence of the appellant at the scene at the material time, we are of the view that, even if we accept everything else in his judgment as having been correctly found, we cannot treat the guilt of the appellant as having been established with the safety and certainty required in a criminal case; and we need hardly point out that the burden of proving the appellant's guilt was all along on the prosecution and that the appellant was not required to prove his innocence by ex-

plaining why, while at work as an employee of Cyprus Airways, he was near the aircraft, because he is presumed to be innocent until he would be proved guilty. We must add that we very much appreciate the fair attitude of counsel for the respondents, who, on being asked by us to comment on the nature of the presence of the appellant near the aircraft at the material time, he chose, correctly in our view, not to press in this respect arguments against the appellant and left the case to be decided by us on the basis of the judgment and record before us.

10 In the light of all the foregoing we have decided that the conviction of the appellant has to be set aside, as well as the sentence passed on him, and the appellant is consequently discharged.

15

*Appeals allowed. Conviction and sentence set aside.*