

1984 September 7

[L. LOIZOU, HADJIANASTASSIOU, DEMETRIADES, JJ.]

ZENON LAZAROU ZENIOU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4104).

5 *Shop Assistants Law, Cap. 185 (as amended)—Keeping shop open after one o'clock in the afternoon on Thursday—Sections 2, 5, 12, 18 and 19(c) of the Law—Shop in question a motor accessories shop—Exempted from closing hours by section 5 and the First Schedule to the Law—Trial Judge wrong in not dealing with the exemptions provided by the Law and whether same afforded a defence—Which in fact it did—Conviction quashed.*

10 The appellant, who was carrying on the business of selling motor accessories, was tried and found guilty on a count charging him with keeping his shop open after one o'clock in the afternoon on Thursday the 18th October, 1979, contrary to sections 2, 5, 12, 18 and 19(c) of the Shop Assistants Law, Cap. 185 (as amended).

Upon appeal against conviction:

15 *Held*, that section 5 of the Shop Assistants Law, Cap. 185 makes clear provision for exemptions of certain shops which are specified in the First Schedule to the Law from closing hours, and one of this type of shops is that which sells motor accessories (see para. 3 of the said Schedule); that in the circumstances,
20 the trial Judge was wrong in not dealing with the exemptions provided by the Law and whether same afforded a defence to the accused, which in fact it does; and that, accordingly, the conviction must be quashed and the accused be discharged.

Appeal allowed.

Appeal against conviction.

Appeal against conviction by Zenon Lazarou Zeniou who was convicted on the 15th December, 1979 at the District Court of Nicosia (Criminal Case No. 23275/79) on one count of the offence of keeping his shop open after one o'clock in the afternoon contrary to sections 2, 5, 12, 18 and 19(c) of the Shop Assistants Law, Cap. 185 (as amended by Law No. 69/79) and was sentenced by Artemides, D.J. to pay £30.- fine.

G. Korfiotis, for the appellant.

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

Cur. adv. vult.

HADJIANASTASSIOU J.: The President of the Court, Mr. Justice Loizou, is indisposed in hospital and for this reason he is unable to sit today in Court. He has, however, informed us that he agrees with the judgment which will be delivered by Mr. Justice Demetriades.

DEMETRIADES J.: The appellant was tried and found guilty by the District Court of Nicosia on a count charging him with keeping his shop open after one o'clock in the afternoon on Thursday the 18th October, 1979, contrary to sections 2, 5, 12, 18 and 19(c) of the Shop Assistants Law, Cap. 185, as amended by the Shop Assistants (Amendment) Law, 1979 (Law 69/79), the Shop Assistants (Schedules Amendment) (Amendment) Order 1979 and the Shop Assistants (Afternoon Weekdays) Closing Order, 1979, and was sentenced to pay a fine of £30.-.

The only Prosecution witness, P.C. Efstathiou, who at the material time was stationed at Ayios Dhometios Police Station, whilst passing outside the shop run by the accused, noticed that there was in it, in addition to the accused, another person. The time was 15.20 hours on a Thursday, an afternoon of a week-day that shops in the area had to be closed. When he noticed that there was another person in the shop, he entered the shop but as he was entering it, that other person walked out of it holding some articles. The witness entered the shop and told the accused that he was to report him for keeping his shop open after one o'clock in the afternoon, the time that

the shop had to close under the relevant legislation. After he cautioned the accused, the latter replied: "I am closed, the person who just left was my partner".

5 The Police Constable said that he knew the partner of the accused who runs a petrol station and, also, sells motor accessories.

It is an undisputed fact that the accused, is carrying on the business of selling motor accessories.

10 The accused gave evidence and said that on the day he was reported, a consignment of motor accessories was delivered to him and that his partner went to the shop to collect some of them. When the Police Constable walked into the shop, he said, there was no shop assistant in it, nor any other person, except himself and that he was behind the counter doing clerical
15 work in connection with the arrival of the consignment of the spare parts.

Sections 2, 5, 12, 18 and 19(c) of Cap. 185 read as follows:

"2. In this Law—

20 'retail trade or business' includes the business of a barber or hairdresser, the sale of refreshments or intoxicating liquors, and retail sales by auction, but does not include the sale of programmes and catalogues and other similar sales at theatres and places of amusement;

25 'shop' means any premises (including markets) where any retail trade or business is carried on;

'shop assistant' means any person employed in or about a shop, but does not include a shopkeeper or any person employed solely as a caretaker or as a cleaner or other domestic servant;

30 'shopkeeper' means the person, company, association or partnership having charge of any shop or owning the business thereof or employing any person in or in connection therewith and includes the manager, agent or other person acting or apparently acting in the general management or
35 control of any shop;

'week' means the period from midnight on Saturday to midnight on the following Saturday.

5. Every shop shall be closed not later than one o'clock in the afternoon on one week-day in every week and shall remain closed and shall not reopen earlier than five o'clock on the following morning: 5

Provided that this section shall not apply to any shop solely kept open for one or more of the purposes set forth in the First Schedule to this Law.

12. Any shopkeeper who contravenes or fails to comply with— 10

(a) any of the provisions of sections 4, 5, 6, 7, 8, 9, 10, 16 and 17 of this Law;

(b) any Order made under the provisions of section 19 of this Law, 15

shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and fine:

Provided that, in the case of a shop assistant employed within fifteen minutes after the closing hour in contravention of the provisions of this Law or of any Order made under the provisions of section 19 of this Law, the shopkeeper shall not be guilty of an offence against this Law or any such Order, if he proves that the shop assistant was engaged only in serving customers whom he was already serving or who were in the shop before the closing hour or that there was reasonable ground for believing that the article supplied to the customer was required in the case of illness. 20 25

18. This Law shall apply to such towns, villages or other areas as the Governor in Council may by Order appoint. 30

19. Notwithstanding anything in this Law contained the Governor in Council at any time, by Order published in the Gazette, may— 35

(c) appoint the day on which any shop or class of shops shall be closed in accordance with the provisions of section 5 of this Law and vary the hour at which such shop or class of shops are required to be closed under the provisions of such section and may appoint different days and hours for different shops or different days and hours for different parts of a town, village or other area;

By the Shop Assistants (Schedules Amendment) (Amendment) Order, 1979 (see No. 162 in the Third Supplement, Part 1, to the official Gazette of 1979) issued by the Minister of Labour and Social Insurance, to whom the Council of Ministers had delegated the powers vested in it by section 19 of the Law, paragraphs 11 and 16 of the First Schedule and paragraph 11 of the Second Schedule to Cap. 185 are deleted. By the Shop Assistants (Afternoon Weekday) Closing Order, 1979 (see No. 163 in the Third Supplement, Part 1, to the Official Gazette of 1979) the Minister of Labour and Social Insurance, to whom the Council of Ministers had delegated the powers vested in it by section 19 of Cap. 185, it is ordered that shops had to close at 1.00 p.m. every Thursday and Saturday.

The allegation of the accused that he was entitled to carry out clerical work at the time he was reported by the Prosecution witness was rejected by the trial Judge, who, in his judgment, says that he did not deal with the issue of the exemptions provided in the Schedule to the Law, as this issue was not the subject of the case and that he had decided it and came to his conclusions only on the basis of the facts of the case. The trial Judge found that the provisions of Order No. 163, above, are clear and in his opinion absolute.

From the transcript of the record of the proceedings before the trial Judge, it does not appear whether the accused had raised this matter as part of his defence, though this issue is a ground of his appeal which, however, was not argued before us.

Section 5, however, of Cap. 185, makes clear provision for exemptions of certain shops which are specified in the first Schedule to the Law from closing hours, and one of this type of shops is that which sells motor accessories (see para. 3 of the said Schedule).

In the circumstances, we feel that the trial Judge was wrong in not dealing with the exemptions provided by the Law and whether same afforded a defence to the accused, which in fact it does.

In the result, the conviction is quashed and the accused is discharged. 5

*Appeal allowed. Conviction quashed
and accused discharged.*