1943
Dec. 28

VENIZELOS HARALAMBOUS v. THE POLICE.

[JACKSON, C.J., AND HALID, J.]

VENIZELOS HARALAMBOUS, *Appellant*,

v.

THE POLICE, *Respondents*.

(*Criminal Appeal No.* 1770.)

Cyprus Criminal Code Order in Council, 1928, section 297—Possession of property reasonably suspected to have been stolen.

Held : Moral certainty, in the absence of legal proof, that particular property has been stolen is not inconsistent with the presence of "suspicion" as the word is used in section 297 of the Cyprus Criminal Code Order in Council, 1928.

Police *v.* Haralambous (14 C. L. R.. p. 116) considered.

Appeal from a conviction by the District Court of Famagusta.

Indianos for the appellant.

P. N. Paschalis, Crown Counsel, for the respondent.

The facts are set forth in the judgment of the Court which was delivered by :—

JACKSON, C.J. : This is an appeal, by leave of the Court, from the decision of the District Court at Famagutsa, convicting the accused, on the 10th October last, of the offence of being in possession, on the 6th September, of 70 sacks of cement reasonably suspected to have been stolen and failing to establish, to the satisfaction of the Court, that he had obtained possession of the cement lawfully. The charge was framed under section 297 of the Cyprus Criminal Code Order in Council, 1928, and the appellant was sentenced to six months' imprisonment, the maximum sentence under that section.

The only ground on which leave to appeal has been given is that the evidence at the trial did not establish the offence with which the appellant was charged, in that it did not establish the existence of a reasonable suspicion that the cement had been stolen.

The appellant was seen in possession of the cement by two persons, the first witness, who is related by marrigae to the appellant, and the second witness, who is a young girl and knew the appellant. He was a soldier in uniform and he was driving a military lorry, containing 70 bags of cement, in a village about six miles from Famagusta, where military stores are handled. To the first witness the appellant said, after some preliminaries, that he was going to take the cement to the village of Engomi where he might find someone to buy it. He asked the second witness, the girl, if he might leave the cement in her father's garden and she, having had a good look at what the lorry contained, objected, saying that her father would be angry.

There was evidence before the trial Court that there was no cement on the market at the material time, but there was no direct evidence that either of the witnesses mentioned was aware of that fact. Neither of the two witnesses said that they suspected that the cement which they saw in the appellant's possession was stolen. They were not asked whether they did or not, and there may, of course, have been reasons why this question was not put to them.

Upon this evidence the learned President of the District Court called upon the appellant to establish to the satisfaction of the

Court that he had acquired possession of the cement lawfully. Being dissatisfied with appellant's reply, the Court convicted him.

The only question before us is whether, upon the evidence before him, the learned President was right in calling upon the appellant for an explanation. We think that he was clearly right and that he was fully justified in inferring from the circumstances the existence of a suspicion in the minds of both the witnesses, who saw the cement in the appellant's possession, that it had been stolen.

The argument in the case presented some unusual features in that it turned on the existence of suspicion, as an essential element in the case, in the minds of persons who took no action upon that suspicion. It seems to have been assumed, both by the prosecution and by the defence, on the authority of *Police* v. *Haralambous* (14 C.L.R., p. 116), that to justify a charge under section 297 of the Cyprus Criminal Code suspicion that the property found in the possession of the person charged has been stolen, must exist in the mind of someone who found the property in that persons's possession. It is, to say the least, doubtful whether the case cited provides authority for that proposition as an invariable essential. There are important differences between section 297 of the Criminal Code and the section of the English Act which were discussed in that case. Moreover it is clear that in the present case someone, other than the two witnesses, took action under the section, since otherwise the appellant would never have been brought before the Court. If it is said, as it was said in this case, on the authority of an *obiter dictum* in the case of *Police* v. *Haralambous*, that knowledge is inconsistent with suspicion and that the police could not have "suspected" because they "knew" that a larceny had been committed and "knew" that the sacks found in the appellant's possession were the actual sacks stolen, the further question arises as to the kind of knowledge, or certainty, that the *dictum* referred to. Was it moral certainty or legal certainty? Legal certainty in regard to any proposition means that the proposition can be proved by legal evidence and can scarcely be said to exist until the proposition has been so proved to the satisfaction of a Court. How, otherwise, could charges for larceny, receiving and unlawful possession be included, as the learned President pointed out, in the same charge sheet? In this case the police evidently considered, rightly or wrongly, that a larceny could not be proved. Why, then, should moral certainty, in the absence of legal proof, be inconsistent with the presence of "suspicion" as the word is used in section 297?

It is unnecessary for us to answer these questions in this particular case in order to decide, as we have decided, that the learned President was right in calling on the appellant for his explanation, but we have drawn attention to them because the case of *Police* v. *Haralambous* seems to have led to some perplexity in the present case and we wish to indicate our view that there are points in the construction of section 297 of the Cyprus Criminal Code, which that case leaves undecided. We draw attention, also, to the statement of the learned Chief Justice in his judgment in that case that it must not be assumed that the illustrations which he had made use of in his judgment exhaust all the sets of circumstances to which the section is applicable.

For the reasons which we have given we consider that this appeal should be dismissed.