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MODISTOS
SAVVA
PITSILLOS
v.
THE POLICE

[JOSEPHIDES, STAVRINIDIS, JJ AND HADJIANASTASSIOU, AG. J]

MODISTOS SAVVA PITSILLOS

Appellant,

v

THE POLICE,

Respondents

(Criminal Appeal No 2832)

Criminal Law—Disturbance contrary to section 95 of the Criminal Code, Cap 154—Ingredients of the offence creating in a public place a noise without reasonable cause, in a manner likely to cause a breach of the peace—Failure of the prosecution at the trial to establish the ingredients of the offence—Place where the appellant-accused was found at the material time not a “public place” within the meaning of section 4 of the Criminal Code (supra)—“Reasonable cause” within section 95 (supra)

“Public place” within the meaning of section 4 of the Criminal Code (supra)—See above

“Reasonable cause” within section 95 of the Criminal Code (supra)—See above

Constitutional Law—Fundamental rights and liberties of the citizen—Guaranteed by the Constitution—Article 113 and 114 of the Constitution A person about to be arrested must be informed at the time of his arrest of the reasons of his arrest—Article 113 of the Constitution and section 9 (3) of the Criminal Procedure Law, Cap 155 Arrest without warrant allowed only in the cases provided by Article 114 of the Constitution—Right of resistance in case of an unlawful arrest

Human rights—Fundamental human rights guaranteed by the Constitution—See under Constitutional Law above

Resistance to an unlawful arrest—Right of a man to resist an unlawful arrest—Proper balance between personal freedom on the one hand and social security on the other—Social security requires that the police should have power to make a lawful arrest—But individual freedom requires that a man should have the power as indeed, he has, in law, the right, to resist an unlawful arrest

Lawful arrest—See above.

Unlawful arrest and the right of the person concerned to resist the unlawful arrest—Duty of the Courts—See above and infra the observations which follow.

Observations by the Supreme Court on the duty of the Courts to see that a true balance is kept between personal freedom on the one hand and social security on the other. Social security requires that the police should have power to make a lawful arrest, but individual freedom requires that a man should have power to resist an unlawful arrest. If the police should overstep the mark and arrest a man when they have no lawful authority to do so, he is entitled to resist the unlawful arrest.

Appeal against conviction.

Appeal against conviction by appellant who was convicted on the 12th July, 1966, at the District Court of Nicosia (Criminal Case No. 6998/66) on one count of the offence of disturbance contrary to section 95 of the Criminal Code, Cap. 154, and was sentenced by Demetriou, D.J., to pay a fine of £8.

Appellant in person.

A. Frangos, Counsel of the Republic, for the respondents.

The facts sufficiently appear in the judgment of the Court which was delivered by :

JOSEPHIDES, J.: The appellant, who was convicted of disturbance, contrary to the provisions of section 95 of the Criminal Code, and sentenced to pay a fine of £8, now appeals against his conviction.

The particulars of offence given in the charge were as follows :

“The accused on the 5th day of February, 1966, at Nicosia, in the District of Nicosia, in a public place, to wit in a parking place by the Pancyprian Academy of Girls, did create a noise without reasonable cause, in a manner likely to cause a breach of the peace.”

The ingredients which had to be proved by the prosecution in this case were : (a) a noise, (b) in a public place, (c) without reasonable cause, and (d) in a manner likely to cause a breach of the peace.

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Unfortunately, the appellant was not legally represented either in the Court below or before us and we did not have the benefit of legal argument on his behalf. In the notice of appeal he put forward several grounds which may be summarised under three heads :

- (1) failure of the trial Court to adjourn the case as some of the witnesses did not attend Court ;
- (2) irregularities by the police from the day of the offence until the day of trial ; and
- (3) errors and omissions in the notes of evidence kept by the trial Judge.

However, after hearing him address us in person, we allowed him to add a new ground to the effect that the prosecution had failed to prove the ingredients of the offence and particularly that the alleged "noise" had not been created by the appellant in a "public place".

The expression "public place" is defined in section 4 of the Criminal Code as including "any public way and building, place or convenience to which the public are entitled or permitted to have access either without any condition or upon condition of making any payment"

The only evidence against the appellant on this point was that of two policemen. P. C. 103 Michael A. Tsangaris stated :

"I went up to the accused who was in the parking place for cars of the Land Registry and the District Office, just outside the yard of the Pancyprian Academy for Girls. The school-yard is separated from the parking place by wire. The accused was selling cakes, known as 'bombes', to the girl-students of the Academy."

P. C. 2829 Christakis Constantinides stated :

"Upon information, in company with P. C. 103, I visited the Pancyprian Academy for Girls. There, near the wire fencing of the yard, the accused had his motor-cycle and he was there."

The Judgment of the learned Judge, which was a short one, was as follows :

"From the evidence before the Court it is evident that the offence of which accused is charged has been proved. I believe the prosecution witnesses who stated they went to the locus and accused for no

reason started shouting etc. in a public place. I discard the evidence of accused and do not believe his version ; his witnesses were no help at all. Kassianides was present only for a short time when accused left for the police station. Therefore I find accused guilty as charged."

It will be observed that the learned trial Judge found as a fact that "accused for no reason started shouting etc., in a public place".

In the course of the argument Mr. Frangos, Counsel for the respondent, very fairly, we think, conceded that there was no definite direct evidence that the incident took place in a public place within the meaning of the law. But, he added, the trial Judge may have inferred this from other evidence.

With great respect to the learned Judge, we do not think that there was anything in the evidence to show that the parking place in which the accused was found at the time was a "public place" within the meaning of section 4 of the Criminal Code, and not a *private* parking place. For this reason the accused would be entitled to be acquitted.

It would also appear that, even on the police version of the facts, the appellant may have had "reasonable cause" for creating a noise. The police stated that they asked him to "leave the place" where he was lawfully practising his trade as a hawker of cakes, and the only reason given to him was that "his presence was undesirable", and that he caused "annoyance" (see evidence of P.C. 103—Tsangaris, at page 2C and 3B of the record). The appellant was not charged with any offence, he was not told why his presence was undesirable, nor why, how and to whom he caused annoyance ; nor was he told that he was doing anything contrary to any law.

He very naturally started protesting, shouting and weeping. According to the evidence of P.C. 2829 Constantinides, the accused said "why does the Government persecute me wherever I go? What have I done to the Police and you are after me wherever I go?" "I told him", P.C. Constantinides stated "to stop shouting about the Government and the Police because if he continued to shout we would take him to the Police Station". (see page 3E of the record). Under these circumstances could it be reasonably said that the appellant created a noise without reasonable cause? We think not.

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Normally this should conclude the appeal, but as the facts of this case would appear to touch upon one of the fundamental rights and liberties of the citizen guaranteed by the Constitution, namely, the right to liberty and security of person (Article 11), we feel that we ought to put the facts on record to enable the appropriate authority to look into the matter as we are of the view that further investigation is necessary.

The incident for which the appellant was accused before the Court took place on the 5th February, 1966, but although he was taken to the Police Station immediately by the two policemen no written statement was taken from him, nor was he charged with any offence, in fact he was not formally charged until some 40 days later, that is, on the 16th March, 1966, which was about a month after he had made a written complaint to the Commissioner of Police against the two policemen for breaking his glass-case in which he was carrying cakes on that day. The charge was eventually filed in Court on the 28th April, 1966, that is, two months and 23 days after the alleged offence. It was the version of the appellant, who is a licensed hawker of cakes, that this was a made up case against him and that he was charged by the police some 40 days after the alleged offence, long after he had complained to the police authorities that the two policemen had broken his glass-case, and that this was done in order to cover up their wrongful action. We quote in an appendix at the end of this judgment* the material part of the evidence (examination-in-chief) of the two policemen and that of the appellant.

Considering that when the appellant was taken to the Police Station on the day of the incident no statement was taken from him and that he was not formally charged until after the lapse of 40 days and long after he had made a complaint against the policemen, even on the police version of the facts, a number of questions seem to need investigation. *Inter alia*, the following matters would have to be looked into: (a) Did the policemen have lawful authority to ask the appellant to leave the place, where he was carrying on his lawful trade, for the reason given by them? (b) If the policemen were purporting to arrest the appellant, they do not appear to have informed him of the reasons for his arrest in compliance with the provisions of Article 11.4 of the Constitution and section 9(3)

* Vide post, at p. 55 et seq.

of the Criminal Procedure Law, Cap. 155 ; and (c) on what lawful authority did the policemen purport to arrest the appellants without a warrant (Article 11.3 of the Constitution).

It should not be supposed that, in raising these matters, we have any desire to encourage citizens to resist lawful authority. It is the duty of the Courts, however, to see that a true balance is kept between personal freedom on the one hand and social security on the other. Social security requires that the police should have power to make a lawful arrest, but individual freedom requires that a man should have power to resist an unlawful arrest. If the police should overstep the mark and arrest a man when they have no lawful authority to do so, he is entitled to resist the unlawful arrest.

In the result the appeal is allowed and the conviction and sentence quashed. The sum of £8 fine, paid by the appellants, to be refunded to him.

Appeal allowed. Conviction and sentence quashed. Fine paid by appellants to be refunded.

APPENDIX

Extract from the evidence before the trial Court.

M.K.1 'Αστ. 103 Μιχαήλ Α. Τσαγγάρης εκ Λευκωσίας όρκίζεται και λέγει :

Σταθμεύω στον 'Αστυνομικόν Σταθμόν όδοϋ Λάρνακος. Στις 5.2.66 και περί 10.55 π.μ. κατόπιν πληροφορίας έπεσκέφθην με τον 'Αστ. 2828 Τάκην Κατσαντώνην την Παγκύπριον 'Ακαδημίαν Θηλέων, είδα την διευθύντριαν Καν. 'Ιωαννίδου ή όποία μου είπε κάτι. 'Επλησίασα τον κατηγορούμενον ό όποίος εύρίσκετο στον χώρον σταθμεύσεως των αυτοκινήτων Κτηματολογίου και Διοικητηρίου, άκριβώς έξω από την αύλήν της Παγκυπρίου 'Ακαδημίας Θηλέων. Χωρίζεται με σύρμα ή αύλή της σχολής από τό «ππάρκιγκ πλέϊς». 'Ο κατηγορούμενος έπωλοϋσε στάς μαθητριάς της 'Ακαδημίας γλυκίσματα, γνωστά ως πόμπες. Τά γλυκίσματα τά είχε σε ύάλινο κασονάκι σε μιá μοτοσυκλέττα. 'Επλησίασα τον κατηγορούμενον και του άνέφερα ότι ή παρουσία του

είναι άνεπιθύμητος και πρέπει να έγκαταλείψη τον τόπον. 'Ο κατηγορούμενος μόλις μās είδε έκνευρίστηκε και είπε δέν πρόκειται να φύγω δέν φεύγω, γιατί με καταδιώκετε ή άστυνομία, γιατί με καταδιώκει ή κυβέρνηση και όποιο σχολείο πάω δέν με αφήνουν να δουλέψω. Έσυνέχιζε να φωνάζη και να βγάλη άφρους από το στόμα του όταν ό Άστυνομικός 2828 Τάκης Κατσαντώνης τον έπηρε από το χέρι και του είπε αν συνεχίσης να φωνάζης έτσι θα σε πάρω μέσα. 'Ο κατηγορούμενος έκνευρίστηκε περισσότερο και του είπε «με ποιό δικαίωμα να με πάρης μέσα» και ένω τα έλεγε έκτυπούσε συνέχεια με τον γρόνθον του στο γυάλινο κασονάκι και έσπασε το γυαλί και πήγε πάνω στα γλυκίσματα. Στές φωνές του κατηγορουμένου έσυνάχτηκαν μαθήτρίες μέσα στην αύλη και έπίσης 8-10 πρόσωπα στο χώρο σταθμεύσεως ήρθαν εκεί μόλις έπήγα ήρχισε να φωνάζη έμεινα 5 λεπτά με την Καν. έπέστρεψα και διήρκεσε άκόμη 10 λεπτά δηλαδή διήρκεσε 20 λεπτά περίπου. Κατόπιν τούτου όταν έσπασε τα γυαλιά, ό κατηγορούμενος έκαθάριζε τα γλυκίσματά του, του είπαμε να προχωρήση στην Άστυνομία όδου Λάρνακος, δηλαδή ό κατηγορούμενος έπροχώρησε με την μοτοσυκλέττα του και έμεις με το «λάντ ρόβερ». Έκει ήρθε ό γιατρός του Δημαρχείου Νίκος Θεμιστοκλέους και κατέσχε τα γλυκίσματα.

M.K.2 Άστ. 2829 Χριστάκης Κωνσταντινίδης εκ Λευκωσίας όρκίζεται και λέγει :

Στις 5.2.66 έστάθμευα στον σταθμό Λάρνακος. Κατόπιν πληροφορίας έπεσκέφθημεν μαζί με τον Άστ. 103 την Παγκύπριον Άκαδημία Θηλέων. Έκει κοντά στα τέλια της αύλης είχε ό κατηγορούμενος την μοτοσυκλέττα του και ό κατηγορούμενος ήτο εκεί. Μόλις μās είδε άρχισε να φωνάζη: «Γιατί ή κυβέρνηση να με καταδιώκη όπου πάω. Τι έκαμα της άστυνομίας και όπου πάω βουράτε με». Του είπα να σταματήσει να φωνάζη για την Κυβέρνηση και άστυνομία γιατί αν συνεχίση να φωνάζη θα τον πάρουμε στην άστυνομία. Μετά ό 103 έπήγε μέσα στην σχολήν να δη την διευθύντριαν και έπέστρεψε μετά 10 λεπτά. Κατά την διάρκεια αυτήν έγώ έπερίμενα κοντά στον κατηγορούμενο. Τον συνεβούλευσα να μη φωνάζη και να σταματήσει να κλαίη. 'Ο κατηγορούμενος έκλαιε και έφώναζε και το στόμα του ήτο άφρισμένο γύρω. Μετά ήρθε ό Άστ. 103 και ό κατηγορούμενος συνέχιζε άκόμα να φωνάζη όποτε έγώ τον έπηρε από το μανίκι του ύποκαμίσου του και του είπα να σταματήσει άλλως θα τον έπερνα μέσα την ίδιαν ώραν. Μου είπε εν τάξει εν να πάω να πάρω την μοτοσυκλέττα μου. 'Ο κατηγορούμενος συνεχώς έκτυπούσε στο άμαζάκι συνεχώς με το χέρι του. Όταν του είπα ότι θα τον πάρω μέσα έκόντεψε να πάρη την μοτοσυκλέττα. Έκτύπησε με δλην του την δύναμιν στο γυαλί λέγοντας γιατί να με πάρετε μέσα. Το γυαλί έσπασε και τα μικρά τεμάχια

γυαλιού έπεσαν στα γλυκίσματα. 'Ο κατηγορούμενος ήρχισε να μαζεΰη τὰ γυαλλάκια από τὰ γλυκίσματα. 'Εν συνεχεία του είπαμε να μὰς ακολουθήση στην άστυνομία και τὸ έπραξε. 'Ο κατηγορούμενος έφώναζε πολύ δυνατά και έκτυπούσε τὸ άμαξάκι περι 15 λεπτά 'Εμαζεύτη κόσμος, περι 10 άτομα γύρω μας και μέσα στα τέλια οί μαθήτριες του σχολείου.

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Μόδεστος Σάββα Πίτσιλλος έξ 'Αγίου Δομετίου όρκίζεται και λέγει :

Είμαι πλανοδιοπώλης 47 έτων. Στές 52.66 περι 10.20 π.μ. έπήγα στο προαύλιον διοικητηρίου ύπάρχει τέλωμα. Δέν γνωρίζω την αΰλη του σχολείου Παγκ. 'Ακαδημία Θηλέων. Οί μαθήτριες ήγόραζαν καθημερινώς από τὰ πράγματα που έπουλοΰσα. 'Η κ. 'Αθηνά 'Ιωαννίδου μόλις μιὰ μαθήτρια έπήρε 1 γλυκίσμα τής έφώναζε και τής ειπε θά σε πάρω στο διευθυντήριο. Να παίρνετε πράγματα από τὸ περίπτερο. Μετά 10 λεπτά ήρθε τὸ αυτοκίνητο τής άστυνομίας δίπλα από την μοτοσυκλέττα μου. 'Ο άστυνομικός 103 έπήγε πάνω και ὁ Κατσαντώνης έμεινε κοντά μου. Μοΰ ειπε να φύγης να μη έρχεσαι έδω. 'Εχουν παράπονον από τὸ περίπτερο. Του είπα είναι ή δουλειά μας. Μοΰ ειπε ὄχι ή θά φύγης ή θά πάης μέσα. Του είπα δέν θά φύγω μέχρι που θά παίξη ὁ κώδωνας εισόδου. Τὸ διάλειμμα είναι 20 λεπτά. 'Ο Κατσαντώνης άγρίεψε τὸ βλέμμα του και με έτράβηξε από τὸ χέρι. Τότε ήρθε ένας άλλος διευθυντής του σχολείου και κάτι του έλεγε του Κατσαντώνη 'Αγγλικά. Του λέγω θά φύγω μετά 20 λεπτά και θά έρθω στην άστυνομία να δώσω κατάθεσιν γιατί τουτο συνέβη πολλές φορές. 'Ο καθηγητής έφυγε και ὁ Κατσαντώνης με έτράβηξε να με βάλη στο αυτοκίνητο. Του είπα έχω την μοτοσυκλέττα μου δαμαί. Μοΰ ειπε να σου την πάρουμε έμεις. 'Εγώ είπα δέν τους έχω έμπιστοσύνη. Τότε ήρθε τὸ χέρι του Κατσαντώνη πουπάνω και έσπασε τὸ τζάμι και τὰ γυαλιά έπήγαν στα γλυκίσματα. 'Ολες οί μαθήτριες ήταν εκεί και έβλεπαν. Του είπα θά τὸν καταγγείλω στο άρχηγείο. Δέν μοΰ άπάντησε για τὸν σκοπὸν που ήθελε να με διώξη, ήθελα να μάθω τι του έλεγε ὁ καθηγητής. 'Ηθελα να με βοηθήση να εΰρω τὸ ὄνομα τής μαθητριάς και άλλες μαθήτριες να πουν για την διαγωγή μου. Τότε ήρθε ὁ άλλος άστυνομικός κάτω. Του είπα ὅτι ὁ Κατσαντώνης έσπασε τὸ τζάμι τής βιτρίνας και θά πάω στο άρχηγείο να έρθουν να έξετάσουν την υπόθεσιν. 'Όσα ειπαν οί άστυνομικοί ὅτι έφώναζα εναντίον τής Κυβερνήσεως είναι άναληθή. 'Εκαμα παράπονο στο άρχηγείο με έπιστολές. 'Εκαμα παράπονον και ὁ κ. Μιχαηλίδης ειπε ὅτι θά μοΰ πληρώσουν τὰ γλυκίσματα και θά κανονίσουν με τὸν γιατρό του Δήμου. Δέν έφώναζα την ήμέρα εκείνη. 'Η παρούσα υπόθεσις είναι τεχνική. Στὸν Κύκκο ὁ 'Αστυνομικός δέν μοΰ επέστησε την προσοχή στὸν Νόμον. Μοΰ ειπε θά σε κατηγορήσω αλλά ὄχι για άνησυχία. Δέν έσημείωσε ὅσα του είπα και έγώ δέν του τὸ υπόγραψα.