

GEORGE O. PHILOTAS,

v.

THE REPUBLIC,

Appellant,

Respondent.

1966
Nov. 10,
1967
Feb. 16
—
GEORGE O.
PHILOTAS
v.
THE REPUBLIC

(*Criminal Appeal No. 2823*)

Criminal Procedure—Appeal—Appeal against conviction for theft, contrary to section 267 of the Criminal Code, Cap. 154—Primary facts found by the trial Court—Inferences drawn therefrom not unreasonable having regard to the evidence—Moreover, the only reasonable conclusion in the present case was that appellant was guilty of the offence charged.

Criminal Law—Theft contrary to section 267 of the Criminal Code, Cap. 154—Conviction—Appellant a person employed in the public service—“Deficiency” case—Conviction not shown to be unreasonable having regard to the evidence.

The appellant was convicted by the Assize Court of Limassol of stealing the sum of £1,329.359 mils, the property of the State, on a date between the 21st May, 1965, and the 27th December, 1965, while being a person employed in the public service. He was sentenced to 2 1/2 years' imprisonment. He now appeals against conviction only on the ground that on the totality of evidence the inferences drawn by the trial Court were not justified on the evidence.

The charge was based on an allegation of a general deficiency in money for which the appellant was accountable on the 27th December, 1965. There is no dispute as to the amount of the deficiency and the only issue before the Assize Court was whether the appellant had stolen the aforesaid amount.

The Court, after reviewing the evidence and in dismissing the appeal :

Held, (1) the only ground of appeal in this case is that on the totality of the evidence the inferences drawn by the trial Court were not justified on the evidence. In support of his submission counsel for the appellant cited the following cases : *R. v. Tucker* [1952] 2 All E.R. 1074 ; *R. v. Tomlin* [1954] 2 All E.R. 272, 273 F.H. ; *R. v. Lawson* [1952]

1966
Nov. 10,
1967
Feb. 16
—
GEORGE O.
PHILOTAS
v.
THE REPUBLIC

1 All E.R. 804 ; and *R. v. Williams* [1953] 1 All E.R. 1068 ; 37 Cr. App. R. 71. The first three cases were “ deficiency ” or “ general deficiency ” cases, while the fourth (*William’s* case) was a case of taking the master’s money from the till. The *Tucker* case is not applicable to the facts of the present case and the other three cases do not help the appellant’s case. The law applicable to this case is well settled and we need not elaborate on it.

(2) We are satisfied that it has not been shown that the judgment of the trial Court was either wrong or not supported by the evidence, or that the inferences drawn by the trial Court were unreasonable having regard to the primary facts found by them. We are, therefore, of the view that it cannot be said that the conviction was unreasonable having regard to the evidence.

(3) On the contrary, we are of the view that all the circumstances of the case, including the long delay of more than four months on the part of the appellant to disclose the deficit and his failure to disclose it until the last moment when he was forced to close his books, as well as his deliberate lies when his superior checked his cash balance in November, lead to one and only one conclusion, that he is guilty of the offence charged.

Appeal dismissed. Sentence to run from the date of conviction.

Cases referred to :

- R. v. Tucker* [1952] 2 All E.R. 1074 ;
- R. v. Tomlin* [1954] 2 All E.R. 272, 273 F.H.;
- R. v. Lawson* [1952] 1 All E.R. 804 ;
- R. v. Williams* [1953] 1 All E.R. 1068 ; 37 Cr. App. R. 71.

Appeal against conviction.

Appeal against conviction by appellant who was convicted on the 8th June, 1966, at the Assize Court of Limassol (Criminal Case No. 2009/66) on one count of the offence of theft contrary to section 267 of the Criminal Code Cap. 154 and was sentenced by Loizou, P.D.C., Malachtos and Papadopoulos, D.JJ. to 2 1/2 years’ imprisonment.

L. Clerides with *Chr. Tselingas*, for the appellant.

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

Cur. adv. vult.

VASSILIADES, P.: The judgment of the Court will be delivered by Josephides, J.

JOSEPHIDES, J.: The appellant was convicted by the Assize Court of Limassol of stealing the sum of £1,329.359 mils, the property of the State on a date between 21st May, 1965, and the 27th December, 1965, at Limassol, while being a person employed in the public service. He was sentenced to 2 1/2 years' imprisonment and he now appeals against conviction only.

The charge was based on an allegation of a general deficiency in money for which the appellant was accountable on the 27th December, 1965. There is no dispute as to the amount of the deficiency and the only issue before the trial Court was whether the appellant had stolen the aforesaid amount.

The appellant put forward as his only ground of appeal that, the Court having based their findings on inferences, the question was whether the inferences so drawn were justified ; and it was submitted that on the totality of evidence the inferences drawn were not justified or that serious doubts had been raised which entitled the appellant to be acquitted.

The facts as found by the trial Court, which were uncontested, were as follows : The accused, who was 29 years old, joined the public service in March, 1957, and at the material time he was a clerical assistant serving in the District Pay Office in Limassol at a salary of £408 per annum.

From the 21st May to the 27th December, 1965, he performed the duties of Assistant Pay Officer in Limassol, and he was also detailed as Assistant Pay Officer in Paphos from the 29th July to the 17th August, 1965, in addition to his Limassol duties. To enable him to perform his duties the Government opened a current account in his name with the Bank of Cyprus in Limassol and paid to his credit the sum of £10,000 (ten thousand pounds). A cheque-book was issued to the appellant and he was thereby enabled to draw any amount up to £10,000 on signing a cheque in his favour without any other formality. It seems that no second signature was required on the cheque. His duties were to pay authorized vouchers including payrolls. In so far as the vouchers were concerned there was a limit of £25, but there was no limit in the case of payrolls and travelling claims. On the 10th July, 1965, his credit with the bank (which was officially known as "imprest") was increased by the Go-

1966
Nov. 10,
1967
Feb. 16

—
GEORGE O.
PHILOTAS
v.
THE REPUBLIC

1966
Nov. 10,
1967
Feb. 16
—

GEORGE O.
PHILOTAS
v.
THE REPUBLIC

vernment to £13,000 (thirteen thousand pounds). Both at Limassol and Paphos the appellant had the exclusive use of a steel safe. The accused had to keep a cash-book in which he entered all his receipts and payments.

The authorized procedure which the appellant as an Assistant Pay Officer had to follow was given in detail in evidence and in the judgment of the trial Court. Stated simply it was this : Whenever he had to effect payments of payrolls and other vouchers he used to draw from the bank by means of cheque a sum of money and he had to make an entry in his cash-book. He then proceeded to effect payment which he again had to enter in his cash-book. When, as a result of payments made by him, his funds required replenishment he submitted an application on a prescribed form to the Treasury Headquarters, summarising the payment vouchers paid by him and attaching to it the relevant vouchers. The Treasury Headquarters, after satisfying themselves of the correctness of the appellant's application and payments effected, issued and dispatched to him a cheque in his favour for a sum equal to the aggregate sum of the vouchers paid by him.

On the 19th November, 1965, the appellant on instructions reduced his imprest by refunding to the Treasury the sum of £8,000 (eight thousand pounds).

On the 23rd December, 1965, the Pay Officer-in-charge of Limassol and Paphos Districts (Michael Nicolaou) instructed the appellant to close his books as his authority to act as an assistant pay officer would be determined at the end of the month and as, in any event, all pay officers had to surrender their imprest at the end of the year. On the following day, the 24th December, the appellant did not attend the office and left a message to his superior that he would be going to Nicosia to see his father who was ill. In evidence before the trial Court the appellant admitted that this was untrue. The reason why he went to Nicosia, as he said, was to see his relatives, to whom he had spoken earlier about the deficit, and ascertain whether they had been able to find the money for him. The appellant returned to the office on the first day after the Christmas holidays, that is on the 27th December, 1965. In the morning of that day his superior (Nicolaou) repeated his instructions to the appellant to close his accounts and the latter said that he would do so ; but at about noon of the same day he saw his superior and disclosed to him that he had a deficit of £1,329.359 mils.

During the whole of the period that the appellant was performing the duties of assistant pay officer his books were not checked or audited by any one but on the 19th November, 1965, his superior (Nicolaou) carried out a rough check and, relying on information given to him by the appellant himself as to his bank balance, found the appellant's cash in order. The appellant, however, admitted in evidence before the trial Court that he deliberately gave false information to his superior as to the amount of his bank balance so that the deficit should not be discovered. This he did, he said, in order to gain time in the hope of finding the money from other sources.

The appellant both in his statement to the police on his arrest on the 10th January, 1966, and in his evidence before the trial Court admitted discovering the deficit of £1,329.359 mils on the 16th August, 1965. Three days later, according to his version, he rechecked his books and cash and he found again the same deficit, but he did not disclose this deficit to his superiors until the 27th December, 1965, when he had been pressed to close his accounts as from the 23rd December, 1965. Furthermore, as already stated, he admitted lying to his superior on the 19th November, 1965, with regard to his bank balance.

The trial Court further found on the evidence of G. P. Hartsiotis, a Senior Supervisor of Accounts in the Treasury Headquarters in charge of Pay Officers, that as a result of the checking of appellant's books (carried out after the deficit was disclosed) the deficiency, if any, on the 21st August, 1965, could not have been more than £900. Finally the trial Court found that the appellant altered the stubs of two cheques (dated 20th September, 1965, and 2nd November, 1965, respectively) to read £1,000 less each, to show that he had drawn £2,000 (two thousand pounds) less from the bank account. The accused admitted these alterations but he was not in a position to say when or why he made them. He said that he probably did so in his confusion and panic. The reason the accused gave to the Court for not disclosing the deficit to his superiors before the 27th December was that he was afraid of the consequences and that he also hoped that he would be able to find the money and make good the loss.

The appellant denied stealing the money and after the deficit came to light on the 27th December, told the supervisor of accounts Hartsiotis that the deficit was probably due (a) to the loss of paid payrolls, or (b) probably to

1966
Nov. 10,
1967
Feb. 16
—
GEORGE O.
PHILOTAS
O.
THE REPUBLIC

1966
Nov. 10,
1967
Feb. 16
—

GEORGE O
PHILOTAS
v.

THE REPUBLIC

short cash received from the banks, or (c) to loss of the money. He repeated these explanations in his evidence before the trial Court, adding that the money may have been stolen by one of his colleagues who may have had a duplicate key of the safe.

As to (a), the loss of paid payrolls, learned counsel for the appellant conceded before this Court that there were no missing paid payrolls. As to (b), this does not seem to have been argued before us but, in any event, on the evidence of four bank cashiers the trial Court rightly found that the appellant did not receive short cash from the banks. As to (c), appellant's counsel submitted that the trial Court did not direct their mind sufficiently to this aspect of the appellant's case. Having gone through the evidence and the judgment of the trial Court we are satisfied that the Court considered this matter carefully and that there was ample evidence to support their finding that the appellant had exclusive possession of the keys of his safe, and that there was no opportunity on the part of his colleagues to steal money from his safe.

There was evidence from the appellant's superior (Hartsiotis) that the appellant was of excellent character and an honest officer, and there was also evidence from the investigating officer of the case that he did not find that the appellant had indulged in any unusual expenditure on his family or any other person or was gambling. The appellant's explanation for failing to disclose the deficit for a period exceeding four months was that he panicked. Learned counsel for the appellant in referring to this evidence complained that the trial Court did not sufficiently direct their mind to it. Having gone through the evidence and the judgment of the trial Court, we are satisfied that due consideration was given by the trial Court to this evidence. After reviewing the evidence and directing their mind to the appellant's version, the Assize Court in a careful judgment came to the conclusion that they could not believe the appellant's version. They found it most unreasonable to accept the view that such a large amount of money could have vanished in any of the ways put forward by the appellant or in any other way unconnected with him ; and, considering all the circumstances of the case and especially the appellant's conduct all along, his deliberate lies, his failure to disclose the deficit until the very last moment, when he was left with no other alternative, and the alteration of the figures on the stubs of the two cheques, the trial Court were satisfied beyond any doubt that the appellant had committed the theft with which he was charged.

1966
Nov. 10,
1967
Feb. 16

—
GEORGE O.
PHILOTAS
v.
THE REPUBLIC

As already stated, the only ground of appeal was that on the totality of evidence the inferences drawn by the trial Court were not justified on the evidence. In support of his submission learned counsel for the appellant cited the following cases : *R. v. Tucker* [1952] 2 All E.R. 1074 ; *R. v. Tomlin* [1954] 2 All E.R. 272, 273 F-H ; *R. v. Lawson* [1952] 1 All E.R. 804 ; and *R. v. Williams* [1953] 1 All E.R. 1068 ; 37 Cr. App. R. 71. The three cases were " deficiency " or " general deficiency " cases, while the fourth (*Williams' Case*) was a case of taking the master's money from the till. The *Tucker* case is not applicable to the facts of the present case and the other three cases do not help the appellant's case. The law applicable to this case is well settled and we need not elaborate on it.

Having given the matter our best consideration we are satisfied that it has not been shown that the judgment of the trial Court was either wrong or not supported by the evidence, or that the inferences drawn by the Court were unreasonable having regard to the primary facts found by them. We are therefore of the view that it cannot be said that the conviction was unreasonable having regard to the evidence. On the contrary, we are of the view that all the circumstances of the case, including the long delay of more than four months on the part of the appellant to disclose the deficit and his failure to disclose it until the very last moment when he was forced to close his books, as well as his deliberate lies when his superior checked his cash balance in November, lead to one and only inference, that he is guilty of the offence charged. His appeal accordingly fails.

Before concluding this judgment we consider it necessary to make certain observations on a matter concerning the handling of public money which we think is of public importance. The evidence in this case has disclosed that a young clerical assistant with a salary of £408 per annum was entrusted with public money amounting to £13,000 (thirteen thousand pounds) which was put in his absolute control and discretion (this sum was reduced to £5,000 four months later), and his accounts were never duly checked or audited over a period of five months. This is a matter of grave concern and we express the hope that the responsible authorities will look into it with a view to making such arrangements as to avert risks to public funds in the future.

In the result the appeal is dismissed.

The sentence to run from the date of conviction.

Order accordingly.