

1968
Aug 19

[VASSILIADES, P, TRIANTAFYLLOIDES AND STAVRINIDES, JJ.]

EFSTATHIOS
CHARALAMBOUS
PASPALLI
v
THE POLICE

EFSTATHIOS CHARALAMBOUS PASPALLI,

Appellant,

v.

THE POLICE,

Respondents

(Criminal Appeal No 3013)

Criminal Law—Receiving stolen property contrary to section 306 (a) of the Criminal Code, Cap 154—Conviction and sentence—Appeal—Findings of the trial Court mostly inferences drawn from the circumstances of the case, especially from the behaviour of the accused—Warranted by the evidence with the degree of certainty required in a criminal case—Sentence not excessive—Duty of the Courts to deal with offences of this nature with severity—Especially when committed, during the present anomalous times in Cyprus, by a Greek against a Turk, or vice versa

Evidence—Inferences—Guilty knowledge—See above

Sentence—Receiving stolen property contrary to section 306 (a) of the Criminal Code—Counts should deal with offences of this nature with severity—Especially when committed, during the present anomalous times in Cyprus, by a Greek against a Turk, or vice versa—See, also, above

Receiving stolen property—See above under Criminal Law, sentence

The appellant was convicted in the District Court of Paphos of the offence of receiving, contrary to section 306 (a) of the Criminal Code, Cap 154, eight ewes, valued at £50, the property of a Turk, N A, knowing them to have been stolen; he was sentenced to 12 months' imprisonment. He appealed against conviction and sentence. The appellant, a Greek was at the material time 63 years of age with a clean record.

Dismissing the appeal, the Court

Held, c. to conviction

The findings of the trial Court were mostly inferences drawn from the circumstances of the case. We have not been persuaded that the trial Court was not properly entitled

to treat the animals of the complainant as stolen property and to conclude, from the relevant behaviour of the appellant on the 8th July, 1967, that he had received them knowing them to have been stolen property.

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Held, as to sentence :

(1) We regard this case as a very serious one : it is the duty of this Court to deal with offences of this nature with severity, especially when committed during the present anomalous times in Cyprus, by a Greek against a Turk, or *vice versa* ; it is at times such as these that property needs the maximum protection it can be given under the Rule of Law.

(2) It is not without some difficulty that we have refrained from increasing the sentence, as we had power to do, although the appellant is 63 years of age with a clean record. But we do not propose to make any special order regarding the commencement of the sentence ; thus, according to law it will begin from to-day.

Appeal dismissed.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Efstathios Charalambous Paspalli who was convicted on the 30th July, 1968, at the District Court of Paphos (Criminal Case No. 2874/67) on one count of the offence of receiving contrary to section 306 (a) of the Criminal Code Cap. 154 and was sentenced by Papadopoulos, D.J., to 12 months' imprisonment.

E. Komodromos, for the appellant.

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

VASSILIADES, P. : The judgment of the Court will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J. : This case was fixed to-day before us for the purpose of dealing with an application, to this Court, for the release of the appellant on bail, pending the hearing of the appeal, which he has filed against his conviction, by the District Court of Paphos, on the 30th

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July, 1968, of the offence of receiving, contrary to section 306 (a) of the Criminal Code, Cap. 154, on the 8th July, 1967, at Kelokedara, 8 ewes, valued at £80, the property of one Nevzat Ahmet of Stavrokonnou, knowing them to have been stolen ; he was sentenced to 12 months' imprisonment.

Counsel for the appellant having declared that he is ready to argue the merits of the appeal itself, and counsel for respondents not raising any objection to such a course, we decided, in the interests of justice, to deal with the appeal itself, rather than with the application for bail.

The main facts of the case are as follows :—

The complainant lost his animals about the middle of May, 1967.

Later on, he noticed some of his animals, on the 8th July, 1967, in an area near Kelokedara village, where he had not been able to go before, in view of the anomalous situation prevailing in Cyprus ; in this area, which was of an extent of about 50 donums, there were, at the time, ten shepherds, all with their flocks, which were mixed up and grazing together.

The complainant spoke to the appellant—who was one of the shepherds present in the area—about the animals which he had lost ; the appellant denied all knowledge of such animals being in his own flock ; it was after talking to the appellant, and while he was proceeding away from him, that the complainant noticed some of his animals in the mixed up flocks, which were grazing there.

From the evidence before the Court it is clear that it cannot be said whether the complainant noticed his animals in the flock of the appellant or in a specific flock ; it is a fact, however, that he did not notice them anywhere immediately near the place where the appellant was standing at the time.

On the same day the complainant, in company with a police-constable went to the "mandra" (sheep-fold) of the appellant, in that same area ; the constable asked the appellant, who had been working in the "mandra", whether he had any animals, other than his own, in his flock. The appellant denied this ; then the constable asked him to

have a second and more thorough look around, which he did ; and again he said that he did not see any animals, other than his, in his flock ; the flock was at the time scattered outside and around the "mandra".

Then the constable asked the appellant to put all his animals into the "mandra" in order to count them ; they were found to be 85 sheep and one goat.

It is common ground that the appellant had only 77 sheep, and, therefore, 8 of the animals were not his own ; they were identified there and then by the complainant as being his animals which he had lost in May.

According to the evidence of the appellant, as soon as he noticed animals in his flock which did not belong to him, he told the Police about it ; and in a statement which he made to the Police on the 9th July, 1967, he stated that he did notice animals, not belonging to him, as the flock was being shepherded into his "mandra" to be counted, and he mentioned this to the Police at the time. According, however, to the police-constable who, as aforesaid, accompanied the complainant to the "mandra" of the appellant, the latter said nothing as alleged by him ; and even after the animals had been counted in the "mandra", and the complainant identified eight animals as his own the appellant still said nothing ; he only spoke of the eight animals not belonging to him, later on, after the police-constable asked him if such animals belonged to him or not ; and it is clear that the trial Court did not attach any credit to the appellant's evidence, while accepting the evidence of the police-constable.

On the basis of the events related above, and other relevant material established to his satisfaction, the learned trial Judge found that the appellant knew of the existence of the animals of the complainant among his flock, at the material time ; and that such animals constituted stolen property and that the appellant had possession of them knowing them to have been stolen.

The said findings of the trial Court were mostly inferences which were drawn from the circumstances of the case ; and, having heard at length the arguments put forward by learned counsel for the appellant, we have not been satisfied that such inferences were not warranted by the evidence with the degree of certainty which is required in a criminal case ; we have not been persuaded that the trial Court was not, *inter alia*, properly entitled to treat the animals

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of the complainant as stolen property and to conclude, from the relevant behaviour of the appellant on the 8th July, 1967, that he had received them knowing them to be stolen property.

Thus, we did not find it necessary to call upon counsel for the respondents regarding the conviction, and we heard him only on the question of sentence, which has been attacked by the appellant as being manifestly excessive, in view especially, of his age (63 years old) and of his clean past ; counsel for the respondents, described the sentence as being rather on the lenient side, but he did not invite us to treat it as being inadequate, nor do we have before us an appeal against sentence on such a ground.

We regard this case as a very serious one ; it is the duty of this Court to deal with offences of this nature with severity, especially when committed, during the present anomalous times in Cyprus, by a Greek against a Turk, or vice versa ; it is at times such as these that property needs the maximum protection it can be given under the Rule of Law.

We definitely do not consider the sentence imposed on the appellant as being manifestly excessive ; on the contrary, it is not without some difficulty that we have refrained from increasing such sentence, as we had power to do, irrespective of the stand taken on behalf of the respondents.

We do not propose to make any special order regarding the commencement of the sentence ; thus, according to law, it will begin as from to-day.

Before concluding we must put on record our appreciation for the expeditious and effective way in which the Police have acted in investigating this case, and especially for the most fair manner in which the appellant was given, until the last moment, at his "mandra", on the 8th July, 1967, an opportunity to behave as an innocent person would have done, had he been such a person, which he was not.

In the result, this appeal is dismissed.

Appeal dismissed.