

1969
Jan. 24

[VASSILIADES, P., TRIANTAFYLIDIS, JOSEPHIDES, JJ.]

THE ATTORNEY-
GENERAL
OF THE
REPUBLIC
v.
TAKIS
HERODOTOU

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Appellant,
v.
TAKIS HERODOTOU,
Respondent.

(Criminal Appeal No. 3048).

Goats—The Goats Law, Cap. 66 (with its amendments 1957–1960)—Grazing goats within boundaries of a “prescribed village”—“Prescribed village”—Section 4—Publication of the statutory notice in the Official Gazette sufficient proof that a village is a “prescribed village” under the statute—Punishment—Penalty at fifty mils per animal, together with an order for the forfeiture of the goats—Section 13(1)—Forfeiture, however, no longer mandatory in view of the provisions of paragraph 3 of Article 12 of the Constitution to the effect that punishment should be proportionate to the gravity of the offence—Forfeiture held to amount to a punishment within Article 12.3.

Criminal Procedure—Acquittal—Appeal against acquittal by the Attorney-General—Section 137(1) (a) of the Criminal Procedure Law, Cap. 155—Powers of the Court of Appeal—Determining the instant appeal under section 145(3)(a)(i) of the Criminal Procedure Law, Cap. 155 the Court set aside the order of acquittal, convicted the respondent as charged and passed the appropriate sentence.

“Prescribed village”—Section 4 of the Goats Law, Cap. 66—Evidence—Publication of the statutory notice in the Official Gazette sufficient evidence that a village is a “prescribed village”—See, also, above under Goats.

Acquittal—Appeal against acquittal by the Attorney-General—Section 137(1)(a) of the Criminal Procedure Law, Cap. 155—Powers of the Court of Appeal—Section 145(3)(a)(i) of Cap. 155 (supra)—See above under Criminal Procedure.

Appeal—Acquittal—Appeal by the Attorney-General—Powers of the Court of Appeal—Section 137(1)(a) and 145(3)(a)(i) of the Criminal Procedure Law, Cap. 155—See above under Criminal Procedure.

Forfeiture—Forfeiture of goats—Section 13(1) of the Goats Law, Cap. 66—No longer mandatory in view of Article 12.3 of the Constitution—Such forfeiture is a punishment thereunder—See above under Goats.

Constitutional Law—Article 12.3 of the Constitution—See above under Goats.

Words and Phrases—Forfeiture in section 13(1) of the Goats Law, Cap. 66—It amounts to a “punishment” within Article 12.3 of the Constitution—See above under Goats.

This is an appeal by the Attorney-General under section 137(1)(a) of the Criminal Procedure Law, Cap. 155 against the acquittal of the respondent by the District Court of Limassol at the trial upon a charge under the Goats Law, Cap. 66 (and its amendments 1957–1960) for grazing, or suffering to graze a flock of 80 goats and kids on September 13, 1967 in the area of the village of Ayios Therapon, in the District of Limassol which is a “prescribed village” under the provisions of section 4 of the said Law.

In determining this appeal under section 145 (3)(a)(i) of the Criminal Procedure Law, Cap. 155, the Supreme Court set aside the judgment of the trial Court, convicted the respondent as charged and passed sentence under section 13(1) of the statute by imposing a penalty of £4 (*i.e.* fifty mils for every goat), but refraining in this case to order thereunder the forfeiture of the animals such forfeiture being no longer mandatory in view of the provisions of Article 12.3 of the constitution to the effect that the punishment must be proportionate to the gravity of the offence.

Held, (1). The publication of the statutory notice in the *Official Gazette* was sufficient proof that the village of Ayios Therapon is a “prescribed village” for the purpose of the statute. On the other hand, there was evidence that the area in which the flock of the respondent was found grazing on the material date was within the boundaries of the said village. This sufficiently established the charge.

(2) Determining this appeal under section 145(3)(a)(i) of the Criminal Procedure Law, Cap. 155, we set aside the judgment of the trial Court and convict the respondent as charged.

(3) The punishment provided by this particular statute (the Goats Law, Cap. 66) is fixed under section 13(1) of the

1969

Jan. 24

—
THE ATTORNEY-
GENERAL
OF THE
REPUBLIC
— v. —
TAKIS
HERODOTOU

1969
Jan. 24

—
THE ATTORNEY-
GENERAL
OF THE
REPUBLIC
v.
TAKIS
HERODOTOU

statute at fifty mils for every goat together with an order for the confiscation of the goats. This particular provision of the Goats Law, however was considered by the Supreme Constitutional Court in the case of *District Officer of Kyrenia v. Adem Salih*, 3 R.S.C.C.69. The Court following a previous case, held that the forfeiture of the animals amounts to a punishment and should be read subject to the provisions of paragraph 3 of Article 12 of the Constitution ; the trial Court having " a discretion whether or not to order according to the merits of each case the forfeiture of a goat or kid ".

(4) In the circumstances of this case we think there should be no order for forfeiture. The number of goats (eighty) in the charge brings the penalty to £4 which we impose as sentence.

Appeal allowed.

Cases referred to :

District Officer of Kyrenia v. Adem Salih, 3 R.S.C.C.69.

Appeal against acquittal.

Appeal by the Attorney-General of the Republic against the acquittal of the respondent by the District Court of Limassol (Boyadjis, D.J.) of a charge contrary to sections 7 and 13 of the Goats Law, Cap. 66 for grazing or suffering to graze a flock of 80 goats and kids in the area of the village of Ay. Therapon in the District of Limassol which is a " prescribed village " under the provisions of section 4 of the said Law.

K. Talarides, Senior Counsel of the Republic, for the appellant.

The respondent appeared in person.

The judgment of the Court was delivered by :—

VASSILIADES, P.: This is an appeal by the Attorney-General of the Republic, under section 137 (1) (a) of the Criminal Procedure Law, Cap. 155, against the acquittal of the respondent in the District Court of Limassol, at the trial upon a charge under the Goats Law (Cap. 66 and its amendments 1957-1960). The respondent was charged for grazing, or suffering to graze, a flock of 80 goats and kids, on September 13, 1967, in the area of the village of Ay. Therapon, in the district of Limassol, which is a " prescribed village " under the provisions of section 4 of the Goats Law. The appeal is taken mainly on the ground that the law was wrongly applied to the facts of the case.

1969
Jan. 24

—
THE ATTORNEY-
GENERAL
OF THE
REPUBLIC
v.
TAKIS
HERODOTOU

The respondent, an inhabitant of the neighbouring village of Alassa, in the same district, is the owner of the flock which on the material day was found grazing at locality "Fteleshi" which lies between the villages of Alassa and Ay. Therapon and is found within the boundaries of the latter village. Both these villages, however, are admittedly "prescribed villages" under the Goats Laws.

In his evidence, the respondent—who conducted his own case both in the District Court and before this Court—admitted that it was within his knowledge that the villages of "Alassa, Lofou, Ay. Therapon with its old boundaries and other villages in the area" were declared to be "prescribed villages" under the Goats Law. His case, as far as one can gather from the record, was (a) that his flock was not found in the locality in question, on the material day, and (b) that in any case such locality was not within the boundaries of the village of Ay. Therapon when that village was declared a prescribed area in 1916; but it was subsequently added thereto, at about the year 1922. In such circumstances, the respondent submitted, the locality in question is not, in law, a prescribed area. "I came to know that localities 'Fteleshi' and 'Kato Phinikas' were included in the boundaries of Ay. Therapon village (the respondent added) in about 1922, from a certain Alkiviades Tsitsis of Ay. Therapon, a shepherd, in 1964. During that time, i.e. in 1922, I was not yet born". Respondent's age in the charge is given as 33 years old.

The learned trial Judge took the view that it was "both material and essential" for the prosecution to prove that the locality in question was either within the boundaries of Ay. Therapon village on the date on which it was declared as such, or, if added later, it was so added after June 1, 1948, and not before; and he concluded that he could not find that the locality in question is included in the boundaries of Ay. Therapon village at all "despite the fact that accused himself has stated that since 1922 it is so included, because such evidence is hearsay;" and he acquitted the respondent of the charge.

Learned counsel for the Attorney-General submitted that the evidence amply established the allegations in the charge, which were in fact admitted by the accused himself from the witness box; and that the trial Judge, misdirecting himself on the point, reached an erroneous conclusion.

After hearing both sides this morning, we have no difficulty in allowing the appeal. The essence of the charge lies on

1969

Jan. 24

—
THE ATTORNEY-
GENERAL
OF THE
REPUBLIC
v.
TAKIS
HERODOTOU

the fact that the goats in question were being grazed within the boundaries of a prescribed village ; the village of Ay. Therapon in this case. The publication of the statutory notice in the Official *Gazette* was sufficient proof that the village of Ay. Therapon is a prescribed village for the purposes of the statute. There was evidence that the area in which the flock was found grazing on the material date was within the " boundaries " of the said village, as officially accepted, which fact the accused admitted knowing. This, in our opinion, sufficiently established the charge ; and the appeal against acquittal must succeed.

Determining this appeal under section 145 (3) (a) (i) of the Criminal Procedure Law, we set aside the judgment of the trial Court and convict the respondent as charged. Before proceeding to pass sentence on the respondent under the same section, we would like to hear both sides on the question of sentence.

Mr. Talarides had nothing to say.

Respondent : After my conviction it is my intention to sell my goats and I apply for the necessary time to enable me to dispose of the flock.

Court to respondent : Your decision to dispose of your flock is, we think, very sound and useful to all concerned. We have no power to make any directions for time regarding such disposal. It is a matter for other authorities to deal with ; and we have no doubt that the office of the Attorney-General will give the appropriate directions and advice in the matter.

We shall now proceed to pass sentence. The punishment provided by this particular statute is fixed under section 13 (1) of the statute at fifty mils for every goat, together with an order for the confiscation of the goats. This particular provision of the Goats Law, however, was considered by the Supreme Constitutional Court in the case of the *District Officer of Kyrenia v. Adem Salih of Agirda* in 1962 (3 R.S.C.C. p. 69). The Court held, following a previous case, that the forfeiture of the animals amounts to a punishment and should be read subject to the provisions of para. 3, Article 12, of the Constitution ; the Court having " a discretion whether or not to order, according to the merits of each case, the forfeiture of a goat or kid ".

In the circumstances of this case and particularly the fact that according to respondent's statement he has never been prosecuted for grazing his goats in that locality since he established his mandra in the vicinity about three years ago, we take the view that for this first prosecution there should be no order for forfeiture ; especially as the respondent intends to do away with the flock of the goats in question.

The number of goats in the charge brings the penalty to a total amount of £4 which we impose as sentence ; without any order for confiscation.

Appeal allowed.

1969

Jan. 24

—
THE ATTORNEY-
GENERAL
OF THE
REPUBLIC
v.
TAKIS
HERODOTOU