[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

STAVROS ANASTASSIOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3376).

Narcotic drugs—Unlawful possession—Transportation—A person transporting goods is necessarily in possession thereof—Cf. infra.

Unlawful possession—Mens rea—Alleged lack of knowledge of contents of parcels containing prohibited drugs—Parcel containing drugs thrown by accused (now Appellant) out of his car, upon his interception by the Police, soon after he departed from a gipsy camp—Accused denied having any knowledge about parcel—Never alleged that he had received it at said camp without knowledge of its contents—Or that he had no opportunity to acquaint himself with its contents—Requisite mens rea *proved*—Tsaoushis *v.* The Queen, 21 *C.L.R.* 100, distinguished.

Narcotic Drugs Regulations, 1967, *regulation 5—They amount to delegated legislation which is permissible on certain conditions by the Constitution—Consequently, such Regulations cannot be said to be an invalid enactment*—Police and Hondrou, 3 *R.S.C.C.* 82, followed—*Cf. immediately herebelow.*

Constitutional Law—Regulation 5 of the aforesaid Regulations—Not in any way repugnant to the provisions of Article 23, paragraphs 1 and 3, of the Constitution—Cf. also immediately hereabove.

Criminal Procedure—Charge—Information—Framing of information—Misdescription therein of the relevant legislation: "Dangerous Drugs Law, 1967, instead of "Narcotic Drugs Law, 1967"—No prejudice to the defence resulted from such misdescription—Correction directed—Need to draft informations, and charges in general, as accurately as possible, in every respect.

Information — Charge — Framing of — Misdescription of relevant legislation—No prejudice to the defence—See also immediately hereabove.

Delegated legislation—See supra *under Constitutional Law.*

Cases referred to:

The Police and Hondrou, 3 R.S.C.C. 82, at pp. 85–86;

Warner v. *The Metropolitan Police Commissioner* [1968] 2 All E.R. 356, at p. 388;

R. v. *Marriott* [1971] 1 All E.R. 595, at p. 597;

Tsaoushis v. *The Queen,* 21 C.L.R. 100.

The facts sufficiently appear in the judgment of the Court, dismissing this appeal against conviction on a charge of unlawfully possessing narcotic drugs.

Appeal against conviction.

Appeal against conviction by Stavros Anastassiou who was convicted on the 20th October, 1972 at the Assize Court of Limassol (Criminal Case No. 11243/72) on one count of the offence of possessing narcotic drugs contrary to section 24 of the Narcotic Drugs Law, 1967 (Law 3/67) and regulation 5 of the Narcotic Drugs Regulations, 1967 and was sentenced by Loris, P.D.C., Hadjitsangaris and Chrysostomis, D.JJ. to 3 years' imprisonment.

L. Clerides with *T. Eliades* and *P. Pierides,* for the Appellant.

V. Aristodemou, Counsel of the Republic, with *R. Gavrielides,* for the Respondent.

The judgment of the Court was delivered by:–

TRIANTAFYLLIDES, P.: In this case the Appellant has appealed against his conviction of the offence of unlawful possession of a narcotic drug, namely 380 grams of cannabis, contrary to section 24 of the Narcotic Drugs Law, 1967 (Law 3/67), and regulation 5 of the Narcotic Drugs Regulations, 1967.

He was sentenced to three years' imprisonment, but has not appealed against the sentence.

We may, first, point out that by an obvious misdescription the relevant legislation was described in the information as

" the Dangerous Drugs Law" and " the Dangerous Drugs Regulations", but as the references regarding publication in the Official Gazette, which were stated in the information, were those relating to the Narcotic Drugs Law and the Narcotic Drugs Regulations, there is no doubt at all that the misdescription in question could not have prejudiced the defence of the Appellant; and we direct that the information should be treated as having been corrected accordingly. We should, however, avail ourselves of this opportunity to stress the need for drafting informations, and charges in general, as accurately as possible, in every respect.

The salient facts of the case are as follows: On the 5th September, 1972, the Appellant, who was a taxi-driver, and who had just started to drive back from a gipsy camp near Limassol, was stopped by the police; upon that he threw out of a window of his taxi a parcel which was eventually found to contain the quantity of cannabis in respect of which he was charged and convicted. On being asked, there and then, by the police, what the contents of the parcel were and why he had thrown it away, he replied that he did not know and that he had not thrown it away. When the parcel was opened in his presence the Appellant stated that he "did not know anything". At his trial the Appellant elected, as he was entitled to do, to say nothing, when he was called upon to make his defence; and he did not call any witnesses.

It has been submitted by learned counsel for the Appellant that regulation 5 of the Narcotic Drugs Regulations was not validly made, in view of the case of *Police and Hondrou*, 3 R.S.C.C. 82, where it was stated (at pp. 85-86):-

> " The Court in this Case has had to consider whether, and if so to what extent, the House of Representatives is entitled to delegate its power of legislation in relation to the imposition of restrictions or limitations on the fundamental rights and liberties guaranteed by Part II of the Constitution in view of the special nature of the provisions of such Part.
>
> It is only the people of a country themselves, through their elected legislators, who can decide to what extent its fundamental rights and liberties, as safeguarded by the Constitution, should be restricted or limited and this principle is inherently contained in all constitutions, such

as ours, which expressly safeguard the fundamental rights and liberties and adopt the doctrine of the separation of powers.

In the opinion of the Court, therefore, the expression 'imposed by law' in paragraph 3 of Article 23, the expression 'prescribed by law' in paragraph 2 of Article 25 and like expressions in other Articles of Part II of the Constitution, mean, in so far as laying down and defining the extent and framework of the particular restriction or limation is concerned, a law of the House of Representatives. This does not however, prevent the House of Representatives from delegating its power to legislate in respect of prescribing the form and manner of, and the making of other detailed provisions for, the carrying into effect and applying the particular restriction or limitation within the framework as laid down by such law, e.g. the addition of further items or instances falling within the restriction or limitation in question. Such a course is presumed to be included in the will of the people as expressed through the particular law of its elected representatives."

It was argued in this connection by counsel for the Appellant that regulation 5 is delegated legislation intended to restrict the right, under paragraph (1) of Article 23 of the Constitution, to possess goods, namely narcotic drugs, though the right to possess them is not restricted by Law 3/67, under which regulation 5 was made; and, therefore, that such regulation is unconstitutional as not coming, in the light of the *Hondrou* case, within the ambit of paragraph (3) of the said Article 23.

In our opinion section 6 of Law 3/67 provides in clear terms about imposing restrictions on the right to possess narcotic drugs, in such manner as may be prescribed by Regulations made by the Council of Ministers; and regulation 5, together with other provisions of the Narcotic Drugs Regulations, 1967, amounts to delegated legislation carrying into effect the restrictions envisaged by section 6; therefore, such regulation cannot be held to be an invalid enactment on the basis of the *ratio decidendi* of the *Hondrou* case.

Counsel for the Appellant has, further, submitted that though, in fact, the Appellant was transporting the cannabis, yet he was found guilty of possessing it; and he was never

charged with the offence of its transportation. A person who transports goods is necessarily in possession thereof: so, we cannot find any substance in this submission.

The next submission which was made on Appellant's behalf was that there was not proved the *mens rea* required for the offence with which we are concerned; and that, anyhow, no due reasons were given by the trial Court for its finding that *mens rea* had been proved.

Having perused the judgment of the trial Court we are of the view that there were set out adequately therein the grounds on which it based its conclusion that the Appellant knew that he was carrying a parcel containing cannabis; the said grounds were, mainly, the throwing away by the Appellant of the parcel and his subsequent denials of having had it in his possession or thrown it away.

In this respect it has been argued before us, on behalf of the Appellant, that in view of the very short period of time which elapsed between the departure of the Appellant from the gipsy camp up to his interception by the police—assuming always that he got possession of the parcel, in which there was the cannabis, at the camp—it was not safe to conclude that he had the opportunity to discover the contents of the parcel.

In *Warner* v. *The Metropolitan Police Commissioner* [1968] 2 All E.R. 356, Lord Pearce stated (at pp. 388-389):-

> "If a man is in possession of the contents of a package, *prima facie* his possession of the package leads to the strong inference that he is in possession of its contents; but can this be rebutted by evidence that he was mistaken as to its contents? As in the case of goods that have been 'planted' in his pocket without his knowledge, so I do not think that he is in possession of contents which are quite different in kind from what he believed. Thus the *prima facie* assumption is discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it and no reason to suspect that its contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable

opportunity since receiving the package of acquainting himself with its actual contents. For a man takes over a package or suit-case at risk as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal."

In the later case of *R.* v. *Marriott* [1971] 1 All E.R. 595, where there was involved a charge of unlawful possession of cannabis, Edmund Davies, L.J. stated (at p. 597):-

> "Not all members of the House of Lords expressed themselves in precisely the same way, but for the pusposes of this present appeal the result of *Warner's* case may broadly speaking and (we hope) with accuracy be stated in this way: if a man is in possession, for example, of a box and he knows that there are articles of *some* sort inside it and it turns out that the contents comprise, for example, cannabis resin, it does not lie in his mouth to say 'I did not know the contents included resin'. On the contrary, on those facts he must be regarded as in possession of it, and, if not lawfully entitled, would, therefore, be guilty of an offence such as that charged in the present case."

In the light of the above and bearing in mind the behaviour of the Appellant in relation to the parcel—to which we have already referred to in this judgment—we are of the view that it was open to the trial Court to conclude, beyond reasonable doubt, that the Appellant had the parcel in question in his possession with knowledge of its contents. Any possibility that the Appellant received the parcel at the gipsy camp without knowledge of its contents is undoubtedly excluded by the fact that not only he threw the parcel away when he was stopped by the police but he also denied having any knowledge about it; and it is to be noted that he never, at any stage, alleged that he had received the parcel at the gipsy camp without knowledge of its contents or that he had had no opportunity to acquaint himself with its actual contents.

Before concluding we should observe that the case of *Tsaoushis* v. *The Queen*, 21 C.L.R. p. 100, which was referred to in argument, is distinguishable from the present case as it was decided on the basis of its own special facts.

For all the above reasons the appeal is dismissed; but, having regard to the fact that this was a case in which the Appellant raised issues meriting consideration we direct that the sentence imposed on him should run from the date of conviction.

Appeal dismissed.