

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

VASSOS LAMBROU,

Appellant,

v.
THE REPUBLIC,

Respondent.

(Criminal Appeal No. 2560).

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Criminal Law—Carrying revolver or pistol of any kind contrary to section 4(1) (2) of the Firearms Law, Cap. 57, as amended by Law 11/59—The substance of the offence lies in the nature and not in the description of the weapon—Therefore a conviction of carrying a pistol on evidence upon which it can be said that accused was carrying either a pistol or a revolver, is good in law—Revolver is a kind of pistol.

Appeal—Findings of fact of trial Courts—The High Court will be slow to upset such findings unless it can be shown on the record that they could not be made on the evidence.

The accused was convicted by the Assize Court Nicosia for carrying a pistol contrary to section 4(1)(2) of the Firearms Law, Cap. 57 as amended by Law 11 of 1959.

On appeal it was argued that section 4(1) (2) of the Firearms Law, was intended to provide and in effect creates two distinct offences i. e., the offence of possessing a revolver and the offence of possessing a pistol, and since some witnesses said that the accused was carrying a pistol and others that he was carrying a revolver, therefore the accused was entitled to be acquitted of the charge of possessing a pistol. Alternatively it was argued that the evidence before the trial Court was not such as to entitle the Court to find the accused guilty of either possessing a pistol or a revolver.

Held : (1) The Appeal Court will not upset the findings of the trial Court unless it can be shown from the record that such findings could not be made on the evidence.

(2) On the evidence it was open to the trial Court to make the findings of facts upon which the appellant was convicted.

(3) The Appeal Court is not called upon to deal with the distinction between a revolver and a pistol but has to decide

only whether the accused was in possession or had under his control the prohibited weapon.

(4) The legislature by using the words "uses or carries any revolver or pistol of any kind", indicated the evil which the legislature wanted to guard against such lethal weapons without special permit.

(5) The substance of the offence lies in the nature and not in the description of the weapon, and a revolver is a kind of pistol.

Appeal dismissed sentence to run from the date of conviction.

Appeal against conviction.

The appellant was convicted on the 9.10.62 at the Assize Court of Nicosia (Criminal Case No. 15853/62) on one count of the offence of carrying a pistol contrary to s. 4(1)(2) of the Firearms Law, Cap. 57 as amended by s. 3(a) (b) of Law 11 of 1959 and was sentenced by Stavrinides, P.D.C., and Georghiou and Demetriades, D.J.J. to 3 years' imprisonment.

Lefkos N. Clerides for the appellant.

S. A. Georghiades for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, J. : This is an appeal against a conviction by the Assize Court of Nicosia for carrying a pistol contrary to section 4(1)(2) of the Firearms Law, Cap. 57, as amended by Law 11 of 1959.

The appeal is made on the grounds set out in the supplement attached to the Notice of Appeal prepared by counsel. But, for the purposes of deciding the appeal, we find it unnecessary to deal with all the grounds given in the Notice. Learned counsel for the appellant argued his client's case mainly on two grounds :

The first ground is that the section of the Law under which the appellant was convicted, *i.e.* section 4(1)(2) of the Firearms Law, is intended to provide for, and in effect creates two distinct offences : The offence of possessing a revolver,

and the offence of possessing a pistol. And, as in this case, counsel submitted, the evidence is such that on the question whether the accused was holding a revolver or a pistol, there cannot be the certainty required in a criminal case to support a conviction, inasmuch as some of the witnesses stated that the article which the accused was holding was a revolver, while other witnesses stated it was a pistol, the appellant is entitled to be acquitted of the charge of possessing a pistol, upon which he was convicted.

The second ground of appeal is that the evidence before the trial court was such that it was not open to the Court to find the accused guilty of either possessing a pistol or a revolver.

Dealing with the second ground first, we may say again, what has been said on many previous occasions, that this Court will not upset the findings of the trial court, unless it can be shown on the record, that such findings could not be made on the evidence. In this case, we take unanimously the view that, on the evidence before them, it was open to the trial court to make the findings of facts upon which they convicted the appellant. This disposes of the second ground which rests on the facts.

Going now to the first ground: learned counsel for the appellant based his arguments in this connection, upon the distinction in the description of the weapons commonly known as revolvers or pistols. We take the view that in these cases the Court is not called upon to deal with that distinction. What the Court has to decide is whether the accused was in possession or had under his control the prohibited weapon. The material words of the section are:

“4 (2) Any person who—

(a) Uses or carries any revolver or pistol of any kind
.....shall be guilty of an offence.....”.

I lay stress on the words “uses or carries any revolver or pistol of any kind”, which, in our opinion, clearly indicate the evil which the legislature wanted to provide for in this section when they made it an offence for any person to handle, use or carry such lethal weapons, without special permit. The substance of the offence lies, we think, in the nature and not in the description of the weapon. We accept the submission made by the learned counsel for the Republic, based upon the

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view taken by the Assize Court, that, in the context of section 4(1)(2) a revolver is a kind of pistol ; and we are of opinion that, in the circumstances of this case, it is immaterial whether the article in appellant's hand was a revolver or any other kind of pistol.

We are unanimously of the opinion that this appeal must fail.

MR. CLERIDES : May I ask that the sentence should start to run from the date of conviction.

COURT : The Court has considered this point and, as the grounds of appeal were prepared by counsel who believed that there was an arguable point, we think that, in the circumstances of this case, the sentence should run from the date it was imposed by the Assize Court ; and we direct accordingly.

Appeal dismissed. Sentence to run from date of conviction.