

1979 September 24

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

STELIOS DEMETRIOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4035*).

*Criminal Law—Criminal responsibility—Defences—Mistake of fact—
Section 10 of the Criminal Code, Cap. 154—Stealing—Defence
that property stolen did not belong to complainant but to a person
who had given permission to appellant to act as he had done rejected
5 —But observation that appellant has acted in good faith—Such
good faith a relevant consideration because of the provisions of
the above section 10—Moreover good faith inconsistent with the
intent required in order to establish commission of offence of
stealing—Conviction set aside.*

10 At his trial of the offence of stealing thirty-seven lorry loads
of earth of the “havera” kind, the property of Thomas Pissas
of Nicosia, the appellant put forward the defence that the field
from which the earth in question was removed did not belong
to the complainant, but to a certain “Frixos”, from whom he
15 had obtained permission to act as he had done.

The trial Court found that, indeed, the field belonged to the
complainant but it, also, observed that the fact that the appellant
has acted in good faith was irrelevant to the charge which had
been preferred against him.

20 *Upon appeal against conviction of the offence of stealing:*

Held, that in a situation of this nature and in the circumstances
of this case the fact that appellant acted in good faith was not an
irrelevant consideration because of the provisions of section 10*

* Section 10 provides as follows:

“10. A person who does or omits to do an act under an honest and
reasonable, but mistaken, belief in the existence of any state of things
is not criminally responsible for the act or omission to any greater
extent than if the real state of things had been such as he believed
to exist.

The operation of this rule may be excluded by the express or implied
provisions of the law relating to the subject”.

of the Criminal Code, Cap. 154; that once it was accepted by the trial Court that the appellant has acted in good faith, in the sense that, as provided by the said section 10, he has done what he has been accused of whilst believing in the existence of a state of things which did not exist, but which he, reasonably and honestly, though mistakenly, believed that it existed, he could not be treated as criminally responsible for the course of action on his part which led to his being charged for having stolen the lorry loads of earth in question; that in all the circumstances on the basis of the evidence adduced, the appellant was at least entitled to the benefit of a reasonable doubt and, therefore, he ought not to have been convicted. 5 10

Held, further, that even if section 10 of Cap. 154 might not be regarded as sufficient to afford to the appellant a complete defence in the circumstances of this particular case, his good faith, as found by the trial Court, is inconsistent with the intent required in order to establish the commission by him of the offence of stealing, and, therefore, for this reason, too, he could not be convicted on that offence. 15

Appeal allowed. 20

Appeal against conviction.

Appeal against conviction by Stelios Demetriou who was convicted on the 26th April, 1979 at the District Court of Nicosia (Criminal Case No. 1155/79) on one count of the offence of stealing, contrary to sections 255 and 262 of the Criminal Code Cap. 154 and was sentenced by Artemides, D.J. to pay £40.— fine with £15.— costs. 25

D. Papachrysostomou, for the appellant.

R. Gavrielides, Counsel of the Republic, for the respondents.

TRIANTAFYLIDIS P. gave the following judgment of the Court. The appellant in this case was convicted by the District Court of Nicosia on April 26, 1979, of the offence of stealing, at Aglandjia, in June, 1978, contrary to sections 255 and 262 of the Criminal Code, Cap. 154, thirty-seven lorry loads of earth of the "havara" kind, valued at C£74, which were the property of Thomas Pissas, of Nicosia. He was sentenced to pay a fine of C£40, as well as C£15 costs. 30 35

The defence put forward by the appellant at the trial was that the field from which his employees removed the said lorry

loads of earth did not belong to the complainant, but to a certain "Frixos", from whom he had obtained permission to act as he had done.

5 The trial Court found, on the basis of the evidence of the complainant, which it believed, that, indeed, the field belonged to the complainant, but at the same time it proceeded to observe in its judgment that the fact that the appellant had acted in good faith was irrelevant to the charge which had been preferred against him.

10 In our opinion, in a situation of this nature and in the circumstances of this particular case, this was not at all an irrelevant consideration, because section 10 of Cap. 154 provides as follows:-

15 "10. A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

20 The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject."

25 In our opinion, once it was accepted by the trial Court that the appellant had acted in good faith, in the sense that, as provided in the above section, he has done what he has been accused of whilst believing in the existence of a state of things which did not exist, but which he, reasonably and honestly, though mistakenly, believed that it existed, he could not be treated as criminally responsible for the course of action on his part which led to his being charged with having stolen the lorry loads of earth in question.

30 We would, also, add that even if section 10 of Cap. 154 might not be regarded as sufficient to afford to the appellant a complete defence in the circumstances of this particular case, his good faith, as found by the trial Court, is inconsistent with the intent required in order to establish the commission by him of the
35 offence of stealing, and, therefore, for this reason, too, he could not be convicted on that offence.

In all the circumstances, we think that, on the basis of the

evidence adduced, the appellant was at least entitled to the benefit of a reasonable doubt and, therefore, he ought not to have been convicted.

We, consequently, set aside his conviction as well as the sentence passed upon him.

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This appeal is allowed accordingly.

Appeal allowed.