

[BOURKE, C.J. and ZEKIA, J.]

THE POLICE

Appellants

v.

THEOCHARIS LOIZOU SKOUFARIS

Respondent.

(Case Stated No. 124)

Criminal Code, Cap. 13, Section 303—Possession of property reasonably suspected of being stolen—Suspicion and possession must relate to the same period—Whether suspicion is reasonable a question of fact.

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In September, 1957 it was discovered by the Police that the respondent's bank account showed the amount of £5,505 to his credit and that the respondent had paid into the bank the sum of £2,750 the day after a certain Menelaos Naziris was convicted in May, 1956, of embezzling the sum of £6,388. As a result of this discovery the Police suspected that the figure to the respondent's credit represented stolen money and the respondent was charged with having in his possession, between April and June, 1956, the sum of £5,505 reasonably suspected of being stolen property, contrary to section 303 of the Criminal Code Law, Cap. 13. The trial judge held that the prosecution failed to establish a prima facie case and the respondent was acquitted.

Held: (1) In order to support a charge under section 303 of the Criminal Code Law, Cap. 13 it must be established that the suspicion that the property was stolen property had been conceived by somebody at the material time of the possession of the property by the accused as alleged in the charge. Even if it could be said that possession by the respondent of £5,505, or part of it, between April and June 1956, as charged, was established, the suspicion did not arise until September, 1957.

Police v. Haralambous and Yanni, 14 C.L.R. 109 and

Kamilaris v. Police, 18 C.L.R. 78, followed.

(2) The question whether on the facts the suspicion is a reasonable one is one of fact and not of law.

Decision of the trial judge confirmed.

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Cases referred to :

- (1) *Police v. Haralambous and Yanni*, 14 C.L.R. 109.
- (2) *Kamilaris v. Police*, 18 C.L.R. 78.

Case stated.

Case stated by Hajianastassiou, D.J., of the District Court of Nicosia, on the application of the Attorney-General. The respondent, Theocharis Loizou Skoufaris of Evrychou, was acquitted on the 24th April, 1958, of the charge of possessing the sum of £5,505, reasonably suspected of being stolen property, contrary to Section 303 of the Criminal Code Law, Cap. 13 (Case No. 1028/58, District Court, Nicosia).

R. Grey for the appellants.

M. Triantafyllides with *C. Phanos* for the respondent.

The facts of the case sufficiently appear in the judgment of the Court which was delivered by :

BOURKE, C.J. : This is a case stated on application of the Attorney-General by Judge Hajianastassiou of the District Court at Nicosia. The respondent was charged with an offence contrary to section 303 of the Penal Code which reads as follows :—

“ 303. Any person who has in his possession any chattel, money, valuable security or other property whatsoever, which is reasonably suspected of being stolen property, is, unless he establishes to the satisfaction of a Court that he acquired the possession of it lawfully, guilty of a misdemeanour and is liable to imprisonment for six months.”.

The particulars of the charge were :—

“ The accused between the 23rd day of April, 1956, and the 29th day of June, 1956, on a day to the prosecution unknown, at Nicosia, in the district of Nicosia, did have in his possession the sum of £5,505.000 mils reasonably suspected of being stolen property.”.

It appears that suspicion fell upon the respondent in connection with the disposal of £6,388, being the property of the Cyprus Asbestos Mines Ltd., for the embezzlement of which one Menelaos Naziris was convicted in May, 1956,

and sentenced to imprisonment. As a result Police-Sergeant Aristocleous made enquiry concerning the account of the respondent with the Bank of Cyprus. It was in September, 1957, that it was found that this account showed the amount of £ 5,505 to the respondent's credit and that he had paid into the Bank the sum of £ 2,750 on a fixed deposit the day after Menelaos Naziris was convicted in May, 1956. There was no proof that the respondent was in possession of £ 5,505 whether in the form of bank notes or any other form between the dates specified in the charge. But even if it could be said that at least he was in possession of £ 2,750 in May, 1956, there was no proof of the requisite suspicion arising in anyone's mind in connection with the possession of money between April to June, 1956. According to the case, the account of the respondent with the Bank was found in September, 1957, to be in credit to the extent of £ 5,505 and when he discovered this Police-Sergeant Aristocleous suspected that the figure to the credit represented stolen money deposited by the respondent. The learned Judge held that there was no case upon which the respondent could properly be called upon for an explanation and he entered an order of acquittal. He concluded that section 303 could not apply to a credit entry in a bank account and further he was not satisfied that the suspicion entertained by the Police witness who investigated the account was in the circumstances a reasonable one. One of the questions reserved goes to whether the trial Judge was justified in failing to be satisfied on the facts as to the quality of the suspicion required to be proved for the purposes of the section. It has been submitted on behalf of the respondent that this does not constitute a point of law such as can validly be made the subject-matter of a case stated. We think that there is substance in the objection. Since that is our opinion it means that the verdict of the District Court must anyway be confirmed and it is not strictly necessary to deal with the remaining question. To support a charge under the section the prosecution must be "in a position to prove that on a given date a certain person had in his possession property which some other person reasonably suspected to be stolen property", *Police v. Haralambous & Yanni*, 14 C.L.R. 109, 113. The reasonable suspicion that the property is stolen must be conceived by somebody while the

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property is still in the possession of the accused, *Kamilaris v. Police*. 18 C.L.R. 78. In the instant case the prosecution set out to prove possession of £5,505 on a day unknown between 23rd April, 1956, and 29th June, 1956. Even if, in some way that is obscure to us on the facts as given, it could be said that evidence of credit entries in a bank ledger to the account of the respondent discovered in September, 1957, could go to establish possession as alleged of the £5,505 or part of it on a day between April and June, 1956, the suspicion entertained by the police witness did not arise until a day in September, 1957, when he saw the figure of the total amount entered to credit at that date. That is to say that at the material time of possession as alleged in the charge there was no suspicion in the mind of the witness. In our opinion the proceedings were misconceived and the learned Judge came to a correct decision in law.

Decision of the trial Court confirmed.