

IOSIF CONSTANTINOU PAPHITIS,

Appellant,

v.

THE POLICE,

Respondents.

IOSIF
CONSTANTINOU
PAPHITIS
v.
THE POLICE

(*Criminal Appeal No. 3107*).

Obstruction—Wilfully obstructing free passage on ‘public thoroughfare’ or ‘public place’—Meaning scope and effect of the words ‘obstructing free passage’—Section 374(a) of the Criminal Code Cap. 154—Object of the legislator in making the relevant provision in section 374 (supra)—Ingredients of the offence.

Criminal Procedure—Appeal—Amendment of the charge—Appeal against conviction dismissed—And determined by convicting appellant on an amended charge—Criminal Procedure Law, Cap. 155 section 145(1)(c).

Criminal Procedure—Appeal—Costs—Order for costs against unsuccessful appellant—Criminal Procedure Law, Cap. 155, section 151 (1).

Amendment of charge on appeal—See above.

Costs—Costs against unsuccessful appellant—See above.

Words and Phrases—‘Public thoroughfare’ in section 374(a) of the Criminal Code Cap. 154—‘Public place’ ibid.

The appellant runs a small bar business in a blind alley of Hellas street in the town of Kyrenia. In connection with his business, he placed outside his shop on ground which forms part of the blind alley in question, a table with a Kebab-cooker where he roasts meat on skewers for his customers. The trial Judge convicted him of wilfully obstructing the free passage on the said blind alley (which he found to be a public place) contrary to section 374(a) of the Criminal Code Cap. 154 and sentenced him to £0.500 mls fine. The appellant took this appeal against both conviction and sentence.

Dismissing the appeal the Court :

Held, (1). The object of the legislator in making the relevant provision in section 374 of the Criminal Code is clear. It was to make it an offence (punishable with a fine not exceeding £5)

for any person to wilfully obstruct the free passage of the public on "any public thoroughfare or public place" by placing thereon "any materials or other things".

(2) The fact that any articles so placed only obstruct the passage on part of a public place allowing the public to pass from the remaining part is clearly no answer to such a charge, unless the articles are so placed temporarily and provisionally for purposes connected with the normal and customary use of the public place and in a way reasonably consistent with public use at the material time.

(3) There is no connection whatsoever between this case and Articles 28 and 35 of the Constitution invoked on behalf of the appellant.

(4) We agree however, that the use of the word "thoroughfare" in the charge to describe the blind alley in question was unfortunate; we also agree that it should be stated in the particulars of the charge that the obstruction was 'wilful' as this is one of the ingredients of the offence. Using the powers given to the Court by the Criminal Procedure Law, Cap. 155 we make order for the conviction of the appellant on an amended charge by adding in the particulars the word 'wilfully' in the proper place and by substituting the words 'public place' for 'public thoroughfare'.

(5) In the result we dismiss the appeal with £5 costs against the appellant under section 151(1) of the Criminal Procedure Law, Cap. 155.

Appeal dismissed with £5 costs.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Iosif Constantinou Paphitis who was convicted on the 18th June, 1969, at the District Court of Kyrenia (Criminal Case No. 299/69) on one count of the offence of obstructing the free passage on a public thoroughfare contrary to section 374 (a) of the Criminal Code, Cap. 154, and was sentenced by Demetriades, D.J., to pay a fine of £0.500 mils.

A. Protopapas, for the appellant.

A. Frangos, Senior Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant, a shop-keeper, runs a small bar business in a blind alley of Hellas Street in the town of Kyrenia. In connection with his business, he placed outside his shop, on ground which forms part of the blind alley in question, a table with a kebab-cooker, where he roasts meat on skewers for his customers.

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On February 28, 1969, a Police Constable reported that appellant's cooker table in question and two boxes with bananas placed by its side, were obstructing the free passage in the blind alley, contrary to the provisions of section 374 (a) of the Criminal Code. The appellant was prosecuted accordingly ; and when charged in the District Court of Kyrenia on April 17, 1969, for the offence in the section, he pleaded " not guilty " ; presumably on the advice of his advocate.

The case went to trial ; and it now appears that this prosecution is only part of a long battle between the appellant and his landlord over appellant's use of the blind alley for roasting meat outside the shop, the smoke and smell of which, is objectionable to the landlord and his family, who occupy the house above the shop. We have been told this morning that more than one civil proceedings were taken in the matter, one of which is now actually pending on appeal before the Supreme Court.

In the appeal before us, we are only concerned with the conviction of the appellant and the sentence of £0.500 mls challenged by the appeal. The particulars of the offence as given in the charge, alleged that on the day of the offence the appellant " did obstruct the free passage of a public thoroughfare to wit Phylokypros Street, by placing thereon materials and other things, to wit . . . one table, two boxes of bananas, etc."

The prosecution called two witnesses ; and in due course the appellant gave evidence for the defence. The first witness for the prosecution was a Lands Clerk, who produced official Land Registry plans showing the part of the town where the blind alley and appellant's shop are found. The plan shows the blind alley in question as plot 136. Parallel and further to the east of the blind-alley (plot 136) the plan shows an arcade as plot 137. Both these plots, 136 and 137, are side-passages off Hellas Street.

The Land Registry witness was cross-examined regarding the precise position of the shop ; and regarding the

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name and nature of the passage. It was suggested to him that the plate "Phylokypros Street" is found at the next blind alley the arcade plot 137; and that plot 136 is not a public place. The witness insisted that Phylokypros Street is plot 136 and not 137. He also insisted that plot 136, whatever its plate-name may be, is a public blind alley leading to Hellas Street. This is the blind alley where beyond all doubt, appellant's shop is found.

The second witness for the prosecution was a Police Constable who testified as to the articles found at the time of the offence outside appellant's shop, *i.e.* the table with the kebab-cooker and the two boxes; and stated that these were obstructing the public passage. When he asked the appellant to remove them his reply was—

"It is my trade, and if I remove them how am I going to live?"

The appellant, who is a married man of 52 years of age and the father of nine children, stated in his evidence that he has been a tenant of the shop in question for two periods: 1961 to 1964 and 1966 to the present day. He also stated that the width of the blind alley is 8' 6"; that the table with his kebab-cooker is "between 2' 6"-3' wide;" and that persons using the blind alley can pass by the side of the table and boxes without any obstruction. He added that the public make no use of the passage in question, other than as customers of his shop; or for access to the landlord's house.

It was submitted on behalf of the appellant that on that evidence the prosecution had failed to prove the charge. The main points taken were that the blind alley was not a "thoroughfare" as alleged in the charge; that no offence could be committed unless the obstruction were wilful, which was not alleged in the charges. In any case, it was submitted, on the evidence before him, the trial Judge could not find "wilful obstruction".

The trial Judge, accepting the evidence for the prosecution, found the accused guilty; and convicted him accordingly. He sentenced him to 10/- fine. These are the conviction and sentence challenged by the present appeal.

Learned counsel for the appellant submitted that the blind alley could not be described as a "thoroughfare"; and referred to dictionary-definitions and other such

matter. We agree that the blind alley marked on the plan as plot 136, where appellant's shop is found, cannot answer the description of a thoroughfare.

Counsel further took the point that by placing the table and boxes in question, the appellant did not intend to obstruct the way of persons wishing to use the blind alley ; and, therefore, he did not wilfully obstruct their passage. Counsel furthermore took a number of other points including a submission that the conduct of the appellant was protected by the provisions in Articles 28 and 35 of the Constitution regarding equality before the law and efficient application of the provisions regarding human rights.

After hearing counsel exhaustively, we found it unnecessary to call on the respondents. The substance of this case is, we think, perfectly clear. The appellant, disputing that the blind alley in question is a public place, claims that he is entitled to make use of it in the way he was doing on the day of the offence. He has made it perfectly clear that he intends to continue doing so because this is necessary for the purposes of his trade upon which he and his family depend.

The object of the legislator in making the relevant provision in section 374 of the Criminal Code, is equally clear. It was to make it an offence (punishable with a fine not exceeding £5) for any person to wilfully obstruct the free passage of the public on "any public thoroughfare or public place" by placing thereon "any materials or other things". The fact that any articles so placed only obstruct the passage on part of a public place, allowing the public to pass from the remaining part, is clearly no answer to such a charge, unless the articles are so placed temporarily and provisionally, for purposes connected with the normal and customary use of the public place and in a way reasonably consistent with public use at the material time. We think there is no merit whatsoever in the submission regarding the intention of the appellant in this case ; and no connection whatsoever between this case and the Articles of the Constitution which were invoked on behalf of the appellant in aid of his defence.

We agree, however, that the use of the word 'thoroughfare' in the charge to describe the blind alley in question was unfortunate ; and should be eliminated from the particulars. We also agree that it should be stated in the

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charge that the obstruction was 'wilful' as this is one of the ingredients of the offence.

Using the powers given to the Court by the Criminal Procedure Law, Cap. 155, we make order for the conviction of the appellant on an amended charge, the particulars of which will read :

“ The accused on the 28th February, 1969, at Kyrenia town, did wilfully obstruct the free passage in a public place to wit the blind alley plot 136, by placing thereon outside the shop which he occupies as a tenant, materials and other things, to wit a cooking-table and two boxes ”.

In the result we dismiss the appeal with costs against the appellant to indicate in a practical way the lack of substance in his defence and in this appeal. We order under section 151(1) of the Criminal Procedure Law, Cap. 155, the appellant to pay £5 costs in this appeal.

Appeal dismissed. Order for costs accordingly.

*Appeal dismissed. Order
for costs as above.*