

1969
Dec. 5

[VASSILIADES, P., TRIANTAFYLIDIS, LOIZOU, JJ.]

PANAYIOTIS
KALLENOS
v.
THE POLICE

PANAYIOTIS KALLENOS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3125*).

Threatening violence—Section 91(c) of the Criminal Code, Cap. 154—Offence charged not born out by the evidence—But the Court of Appeal using its powers under section 145(1)(c) of the Criminal Procedure Law, Cap. 155 convicted the appellant of the offence of public insult contrary to section 99 of the Criminal Code and sentenced him with the maximum fine of £5 and, in addition bound him over for one year in the sum of £50 to keep the peace.

Insult—Public insult contrary to section 99 of the Criminal Code, Cap. 154—See above.

Criminal Procedure—Appeal—Conviction of the offence of threatening violence contrary to section 91(c) of the Criminal Code quashed—Substituted by a conviction of public insult contrary to section 99 of the Code (supra), the Court of Appeal acting in this respect under the provisions of section 145(1)(c) of the Criminal Procedure Law, Cap. 155—See, also, hereabove.

The facts sufficiently appear in the judgment of the Court.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Panayiotis Kallenos who was convicted on the 10th September, 1969, at the District Court of Famagusta (Criminal Case No. 4374/69) on one count of the offence of threatening violence contrary to section 91(c) of the Criminal Code, Cap. 154 and was sentenced by S. Demetriou, D.J., to pay a fine of £50.

P. Eleftheriou, for the appellant.

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

The judgment of the Court was delivered by :—

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VASSILIADES, P. : The appellant, a farmer 38 years of age, of the village of Ayia Napa, went to his field in the vicinity of the village on April 7, 1969, to attend to his usual work. There he saw the complainant with his wife and daughter working in their field adjacent to that of the appellant. Noticing some interference with the irrigation pipes, the appellant started arguing with the complainant regarding the pipes for which, apparently, the two neighbours had earlier quarrels. The complainant, in his chief-examination, stated the incident, as follows :—

“ I was busy with the pumping machine when he (the appellant) started insulting me ‘ You are an ass, I shall shoot you as Thomas (another co-villager of theirs) did. You will see your bowels falling out ’. At once I started on my way to report the case to the police ”.

Complainant’s wife, who also gave evidence for the prosecution, described appellant’s conduct as insulting and threatening.

The appellant was prosecuted by the police for threatening violence contrary to section 91(c) of the Criminal Code, Cap. 154. The particulars of the offence, as stated in the charge are that the appellant “ with intent, to cause another person to omit to do an act which that person is legally entitled to do, threatened another, to wit, Marcos Antoni Kkara of Ay. Napa, with the words ‘ Vre kkilintziere ekopses tes solines alla na souroupiasi to fos tzie mine dakato Enna se pexo san to shillon oi san ton Thoman pou safisen tziefiges ’ ”.

The appellant pleaded not guilty to the charge ; and the Court heard the evidence of the complainant, his wife and a police sergeant who investigated into the case. The appellant was convicted on the count charged ; and was sentenced to £50 fine or four months’ imprisonment in default. Against this conviction and sentence the appellant took the present appeal.

Apart of the unfortunate framing of the charge (a matter which is apparent on the face of it) the evidence of the complainant does not bear out the offence charged. His version of the incident, as given earlier, falls short of the particulars constituting the offence as stated in the charge.

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The substance of the incident lies in the insulting language used by the appellant which, as not unusual in such incidents, contained also an idle threat. Learned counsel for the Attorney-General, quite rightly and properly, in our opinion, conceded this morning before us, that this is so. The conduct complained of, is much nearer a public insult than the threatening contemplated in section 91(c) of the Criminal Code.

Without going into detail, we have no hesitation or difficulty in holding that, in the circumstances of this case, as they appear from the evidence, the charge of threatening is misconceived ; and, in any case, is not supported by the evidence. On the other hand, there can be no doubt that there was an incident between the appellant and the complainant, (apparently originating in their strained personal relations), during which the appellant used insulting language against the complainant in the presence of the latter's wife and daughter in circumstances amounting to the offence of public insult.

We, therefore, allow the appeal and set aside the conviction for threatening ; but making use of our powers under section 145(1)(c) of the Criminal Procedure Law, Cap. 155, we convict the appellant of the offence of public insult contrary to section 99 of the Criminal Code, Cap. 154. For this offence which is punishable with £5 fine or one month's imprisonment or both, we sentence the appellant to a fine of £5 and, in addition, bind him over in the sum of £50 for one year to keep the peace.

Appeal allowed ; conviction set aside ; appellant convicted for public insult as stated above ; and sentenced to £5 fine or one month's imprisonment and bound over in the sum of £50 for one year to keep the peace.

Appeal allowed.