

CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL
FROM THE ASSIZE COURTS AND DISTRICT COURTS.

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

STAVROS S. ERAKLIDES,
v.
THE POLICE,

Appellant,
Respondents.

(Criminal Appeal No. 3131).

THE ATTORNEY-GENERAL OF THE REPUBLIC,
v.
STAVROS S. ERAKLIDES,

Appellant,
Respondent.

(Criminal Appeal No. 3132).

Mines and Quarries (Regulation) Law, Cap. 270—Conviction for quarrying sand and shingle from the seashore without a “quarry licence”—Sections 37 (2) and 43 (2) of the Law—Sentence—Appeal against conviction and sentence—Attorney-General—Appeal against sentence as being manifestly inadequate—No reason shown for disturbing the findings of trial Judge based mostly on credibility of witnesses—No reason shown either why the sentence imposed should be reduced or increased—Sentence not wrong in principle ; or manifestly excessive or manifestly inadequate—Appeals dismissed.

Seashore—Protection of foreshore—Quarrying sand and shingle from seashore without a “quarry licence”—Whether appellant

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(offender) rightly prosecuted under Cap. 270 (supra); or whether the law applicable in a case of this kind is rather the Foreshore Protection Law, Cap. 59—Doubtful whether Cap. 270 (supra) is applicable.

Appeal—Sentence—Sentence imposed not disturbed on appeal—Sentence not wrong in principle; nor manifestly excessive or manifestly inadequate.

Appeal—Findings of fact of trial Courts—Based on credibility of witnesses—No sufficient reason shown why such finding ought to be disturbed on appeal.

Foreshore Protection Law, Cap. 59—Obviously intended to protect the foreshore.

Appeal—Practice—Supreme Court may not deal with a matter not raised in the notice of appeal; unless the case falls within the proviso to section 144 of the Criminal Procedure Law, Cap. 155. See, also, supra.

Sentence—See supra.

Findings of fact—Credibility of witnesses—See supra.

The appellant in the first appeal was found guilty by the trial Court of quarrying sand and shingle from the seashore without a “quarry licence”, contrary to sections 37 (2) and 43 (2) of the Mines and Quarries (Regulation) Law, Cap. 270. He was sentenced to £45 fine and, in addition, was bound over in the sum of £100 for two years to “keep the Law”, presumably Cap. 270, under which he was being sentenced. The offender, who had nine similar previous convictions during the last five years, appealed both against conviction and sentence. The Attorney-General appealed against sentence on the ground that it was, in the circumstances, manifestly inadequate.

Dismissing both appeals, the Court :—

Held, (I). As to the conviction: We see no reason for disturbing the findings of the trial Judge, based mostly on credibility of witnesses (see *Koumbaris v. The Republic* (1967) 2 C.L.R. 1, at p. 9).

Held, (II). As regards sentence: We have not been satisfied by either side that there are any reasons for interfering with the sentence imposed; or that in the circumstances of this

case the sentence imposed is manifestly excessive or manifestly inadequate. (See *Iroas v. The Republic* (1966) 2 C.L.R. 116, at p. 118 ; *Hapsides v. The Police* (1969) 2 C.L.R. 64, at p. 66).

Appeals dismissed.

Per curiam : While the Foreshore Protection Law, Cap. 59, was obviously intended to protect the foreshore, it may be doubtful whether the Mines and Quarries (Regulation) Law, Cap. 270 is applicable to a case of this kind, in view of the meaning of the English words "quarry" and "quarrying" as considered in the English cases on the point. We leave the matter at that, as it has not been taken at the trial or raised in the notice of appeal. Section 144 of the Criminal Procedure Law, Cap. 155, provides that the Supreme Court "shall hear and determine the appeal only on the grounds set out in the notice of appeal"; unless the case comes within the proviso to the section.

Cases referred to :

Koumbaris v. The Republic (1967) 2 C.L.R. 1, at p. 9 ;
Iroas v. The Republic (1966) 2 C.L.R. 116, at p. 118 ;
Hapsides v. The Police (1969) 2 C.L.R. 64, at p. 66.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Stavros S. Eraklides who was convicted on the 11th October, 1969, at the District Court of Nicosia (sitting at Morphou) (Criminal Case No. 2022/69) on one count of the offence of quarrying sand and shingle without a licence contrary to sections 37 (2) and 43 (2) of the Mines and Quarries (Regulation) Law, Cap. 270 and was sentenced by HjiConstantinou, D.J., to pay a fine of £45 and was further bound over in the sum of £100 for two years to keep the said Law, and appeal against the insufficiency of the said sentence by the Attorney-General of the Republic.

Appellant in Criminal Appeal No. 3131 (respondent in Criminal Appeal No. 3132) appears in person.

M. Kyprianou and *Cl. Antoniadis*, Counsel of the Republic, for the respondents in Criminal Appeal No. 3131 and for the appellant in Criminal Appeal No. 3132.

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The judgment of the Court was delivered by :—

VASSILIADES, P.: These two appeals, No. 3131 and No. 3132, arise in the same case. They were consolidated ; and were heard together. The former is an appeal by the defendant against conviction and sentence ; the latter is an appeal by the Attorney-General against sentence.

In July last, the defendant was charged jointly with another person in the District Court of Nicosia, sitting at Morphou, for quarrying without a “ quarry licence ” sand and shingle from the seashore at Syrianochori, in the district of Nicosia, on May 2, 1969. The charge was preferred under section 37 (2) and section 43 (2) of the Mines and Quarries (Regulation) Law, Cap. 270. Both accused pleaded not guilty to the charge ; and the case went to trial in September last.

The prosecution was conducted by one of the Counsel of the Republic ; and both accused were defended by an advocate. Two police officers gave evidence for the prosecution ; and, in due course, both accused gave sworn evidence and called one witness for the defence.

After hearing addresses from both sides, the trial Judge reserved his decision which he delivered in the form of a considered judgment a few days later on October 4, 1969. There, he stated his reasons for accepting the evidence for the prosecution and rejected that of the defence ; they were mainly grounds of credibility.

Upon the accepted evidence, the trial Judge found that the two defendants were seen by the police witnesses when actually engaged in loading a lorry with sand and shingle from the seashore, about ten yards away from the road. The appellant before us was operating the loading machinery ; the other defendant was the driver of the lorry which was being loaded. The police approached ; verified the position on the spot ; spoke to the defendants ; and went away.

Both defendants were convicted as charged. The appellant before us, who had nine similar previous convictions during the last five years, was sentenced to £45 fine and in addition, was bound over in the sum of £100 for two years “ to keep this Law ” ; presumably the Mines and Quarries (Regulation) Law, Cap. 270, under which he was being sentenced. The other accused was fined £10.

We find it unnecessary to deal in detail with the long address of the appellant which gave us considerable difficulty owing to the fact that without professional assistance he was obviously unable to handle the matter ; especially to distinguish between what was relevant and what was irrelevant to the case.

Learned counsel for the prosecution, on the other hand, could not give us a satisfactory reason why was this prosecution taken under the Mines and Quarries (Regulation) Law, Cap. 270 ; and not under the Foreshore Protection Law, Cap. 59, which is the Law intended to protect the foreshore, where such protection is considered necessary. Be that as it may, however, we find it unnecessary to deal with that matter in the present appeal, as it has not been taken at the trial or raised in the notice of appeal. Section 144 of the Criminal Procedure Law, Cap. 155, provides that, in dealing with an appeal, the Supreme Court " shall hear and determine the appeal only on the grounds set out in the notice of appeal " ; unless the case falls within the proviso to the section.

As matters stand, we can dispose of the whole case (the two consolidated appeals) without any difficulty. As already indicated, we see no reason for disturbing the findings of the trial Judge, based mostly on credibility. (See *Koumbaris v. The Republic* (1967) 2 C.L.R. 1, at p. 9). And as regards sentence, we have not been satisfied by either side that there are any reasons for interfering with the sentence ; or that in the circumstances of this case the sentence imposed, is manifestly excessive or manifestly inadequate. (See *Michael Afxenti Iroas v. The Republic* (1966) 2 C.L.R. 116, at p. 118 ; *Hapsides v. The Police* (1969) 1 C.L.R. 64, at p. 66).

Before closing this case, however, we think that it may be useful to add that while the Foreshore Protection Law, Cap. 59, was obviously intended to protect the foreshore, it may be doubtful whether the Mines and Quarries (Regulation) Law, Cap. 270, is applicable to a case of this kind, in view of the meaning of the English words " quarry " and " quarrying " as considered in the English cases on the point. We leave the matter at that.

Appeal and cross-appeal dismissed ; conviction and sentence affirmed.

Appeal and cross-appeal dismissed.

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