[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

GEORGHIOS NEOCLEOUS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3469).

Criminal Law—Stealing by a servant—Section 268 *of the Criminal Code, Cap.* 154*—Fraudulent intent—Servant acting as salesman of Company stealing its merchandise—Deficit in the merchandise established by evidence from employees of the Company believed by trial Court—Appellant not challenging by cross-examination existence of deficit—Not shown to the satisfaction of Court of Appeal that the inferences drawn by trial Court as regards the guilt of the Appellant, were unreasonable, having regard to the primary facts established before it.*

Evidence—Best evidence—Stealing by a servant—Photocopies of records of complainant Company—Admissible.

Stealing by a servant—Section 268 *of the Criminal Code, Cap.* 154*—Conviction—See, also, under "Criminal Law".*

The facts sufficiently appear in the judgment of the Court.

Cases referred to:

Philotas v. *The Republic* (1967) 2 C.L.R. 13.

Appeal against conviction.

Appeal against conviction by Georghios Neocleous who was convicted on the 31st May, 1973 at the District Court of Limassol (Criminal Case No. 11084/73) on one count of the offence of stealing by a servant contrary to section 268 of the Criminal Code, Cap. 154 and was sentenced to fifteen months' imprisonment.

E. Lemonaris, for the Appellant.

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

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The Appellant was convicted, by the District Court of Limassol, of the offence of stealing by a servant, contrary to section 268 of the Criminal Code, Cap. 154; the particulars of the charge were that between the 7th February, 1972, and the 24th June, 1972, while he was the servant of the complainant company, he stole merchandise valued at £722.790 mils, being the property of the company. The Appellant was sentenced to fifteen months' imprisonment.

The facts of the case are, briefly, as follows:-

During the material period the Appellant was acting as a salesman of the company for the Limassol and Paphos Districts. He had in his possession a stock of merchandise which was the property of the company and he was making sales either on credit or in cash; he was accounting for such sales weekly. When, eventually, there was carried out stock-taking of the merchandise it was discovered that there were missing goods of a total value of £722.790 mils.

The evidence adduced by the prosecution, through witnesses who were employees of the company and whose evidence the trial Court accepted, established the above deficit in merchandise and, also, that while the stock-taking was taking place the Appellant was being kept fully informed as regards the checking of the accounts; it was explained to him how the deficit was ascertained and all that he had to say was that the deficit should not have been so big.

At the trial, where the Appellant pleaded not guilty, counsel who defended him did not challenge, by cross-examination or otherwise, the existence of the deficit in question. The defence of the Appellant, who did not give evidence himself but made an unsworn statement from the dock, was that he could not understand how the deficit occurred and that it had, possibly, been framed up by other employees of the company.

The trial Court rightly, in our view, rejected this version, as being unacceptable and on the basis of the proved primary facts it inferred that the missing merchandise had been misappropriated by the Appellant with fraudulent intent.

It has been submitted by counsel for the Appellant that it has not been established that the Appellant has acted in this matter with fraudulent intent.

In our view this is a case in which it has not been shown to our satisfaction that the inferences drawn by the trial Court, as regards the guilt of the Appellant, were unreasonable, having regard to the primary facts established before it; therefore, we cannot say that his conviction was unsatisfactory (see, for example, in this respect, *Philotas* v. *The Republic* (1967) 2 C.L.R. 13).

In the course of his argument counsel for the Appellant complained that a policeman had wrongly put in a report, showing the deficit, which had been handed to him by another prosecution witness; such witness, who was an auditor in the employment of the company, explained that, having checked the accounts of the company, he made the calculations establishing the deficit. We can find nothing wrong in this respect; the auditor's report was verified by him on oath and there were produced, also, the relevant accounts and other records of the company and, as a matter of fact, he was not cross-examined at all regarding the correctness of the figures contained in the report.

Among the said records were photocopies of certain invoices of which the originals had been forwarded to a client in relation to sales on credit; the originals of such invoices had been issued by the Appellant and were signed by him and a senior employee of the company gave evidence regarding the process by means of which the photocopies were made and kept as part of the records of the company.

Counsel for the Appellant has suggested that there existed a possibility that in the process of photocopying some invoices were lost and, thus, the extent, or even the existence, of the deficiency was not established with certainty. When the aforementioned senior employee of the company gave evidence regarding the photocopying he was not cross-examined as to such a possibility and we find the above suggestion of counsel, which has been put forward on appeal for the first time, to be very far-fetched and without real merit.

We might add that this is not a case in which inadmissible, other than the best evidence was adduced, in the form of copies; the photocopies were, in fact, the best evidence available by way of records of the company.

Lastly, counsel for the Appellant has argued that the trial Court has failed to consider alternative possibilities which might

have been consistent with innocence. The only alternative possibility which has been, actually, put forward by him in this respect has been that the Appellant may have been framed up by other employees of the company; it is a possibility which was expressly rejected by the trial Court and counsel for the Appellant does not complain that it was wrongly rejected. No other alternative possibility was put forward, or appears to arise from the record before us; and it cannot be said that, in the absence of any such possibility arising on the basis of the evidence adduced before it, the trial Court had, in a case of this nature, to start, on its own, discounting various other fanciful possibilities.

In the result, this appeal is dismissed; because the Appellant has originally filed the appeal in person from the prison, without the benefit of legal advice, we have decided to order, in this case, that the sentence imposed on him should run from the date of conviction.

Appeal dismissed.