

1982 November 23

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

SEWAGE BOARD OF NICOSIA,

Appellant,

v.

1. ANASTASIA DEMOSTHENOUS,
2. ELENI DEMETRIOU PHILIPPOU,

Respondents.

(Criminal Appeal No.4349).

Sewage and Drainage Law, 1971, (Law 1/1971)—Connecting a private building sewer with a public building sewer without a permit—Section 45(1)(b) of the Law and Regulation 8(4) of the Nicosia Sewage Regulations, 1973—Written consent of the Board required—Ignorance of the regulation regarding requirement of written consent not a defence—Element of mens rea not required. 5

Criminal Law—Mens rea—Ignorance of the Law—Statutory offences—Connecting a private building sewer with a public building sewer—Section 45(1)(b) of the Sewage and Drainage Law, 1971—Element of mens rea not required—Nor ignorance of the relevant statutory requirement a defence—Section 7 of the Criminal Code Cap. 154. 10

This was an appeal against the acquittal of the respondents of the offence of connecting a private building sewer with a public building sewer without a permit from the Sewage Board of Nicosia, contrary to sections 45(1)(b)* of the Sewage and Drainage Law, 1971 (Law 1/1971). 15

Regulation 8(4) of the Nicosia Sewage Regulations, 1973 provides that no one is entitled to proceed with a connection until he is granted for the purpose the written consent of the Board. 20

The respondent who carried out the said connection on the

* Section 45(1)(b) is quoted at pp. 256–257 post.

25th March, 1981, without such written consent from the Board, claimed that she had the oral consent of one of the technicians of the appellant Board; and the trial Judge held that once she had admitted that she had not secured in advance the written consent of the appellant Board, the burden of proof shifted upon her to prove her allegation of oral consent, but such duty was less heavy than that required in the hands of the prosecution in proving her case beyond reasonable doubt and that might be discharged by evidence satisfying the Court of the probability of that which the defendant was called on to establish.

Held, that since no such written consent was ever granted or obtained by the respondent which is prescribed by the relevant regulation, the legal position created is that the respondent, who under the Common Law principle of *ignorantia juris non excusat* and which has been incorporated into our Criminal Code Cap. 154 by section 7, that "ignorance of the law does not afford any excuse for any act or omission which otherwise would constitute an offence unless knowledge of the law by the offender, is expressly declared to be an element of the offence", cannot exonerate herself by her ignorance of the regulation and this leads to the conclusion that this appeal should succeed as the ignorance of the regulation regarding the requirement of the written consent of the Board could not be a defence, particularly so in respect of an offence created by section 45(1)(b) of the Law which imposes strict liability; accordingly the appeal must be allowed.

Held, further that it is obvious from the language of the provision creating the offence and the nature of mischief at which the provision is aimed that this is an offence where the element of *mens rea* is not required.

Appeal allowed.

Cases referred to:

R. v. Carr-Briant [1943] 29 Cr. App. R. 76;

Hailis v. The Police (1982) 2 C.L.R. 99.

35 Appeal against acquittal.

Appeal by the Sewage Board of Nicosia against the acquittal of the respondents on 14.8.1982 by the District Court of Nicosia (Arestis, Ag. D.J.) (Criminal Case No. 17865/81) of a charge of the offences of connecting a private building sewer with a

public building sewer without a permit and of suffering the connection of a private sewer with a public building sewer without a permit contrary to sections 45(1)(b) and (3) of the Sewage Drainage Law, 1971 (Law No. 1 of 1971).

K. Michaelides, for the appellant. 5

Ch. Ierides, for the respondents.

TRIANTAFYLIDIS, P.: The judgment of the Court will be delivered by my brother Judge Mr. Justice A. Loizou.

A. LOIZOU, J.: The two respondents were prosecuted by the appellant Board of Nicosia on two counts, the first for connecting a private building sewer with a public building sewer without a permit from the Sewage Board of Nicosia, contrary to sections 45(1)(b) and (3) of the Sewage and Drainage Law 1971 (Law No. 1 of 1971), hereinafter to be referred to as "the Law"; and the second for suffering the connection of a private building sewer with a public building sewer without a permit from the Sewage Board of Nicosia, contrary to the same provisions of the Law. 10 15

They were both acquitted of the offences charged and the Sewage Board of Nicosia has appealed against their acquittal, having first obtained, under section 137(1)(a) of the Criminal Procedure Law, Cap. 155, the sanction of the Attorney-General for the purpose. 20

When this appeal came up for hearing, however, counsel for the appellant Board did not press the appeal against appellant 1 and rightly so in our view, as on the facts of the case she neither connected nor suffered the connection of the said private building sewer with the public building sewer. The appeal, therefore, against her was dismissed and respondent 2 will, hereinafter, be referred to as the respondent. 25 30

The facts of the case are as follows:—

The respondent and her sister, ex respondent 1, are the owners in undivided shares of plot 708, Sheet/Plan XXI.54.5.II situate in Niovis Street, Nicosia, and as a result of an agreement between them, each one built on the said building site a residence but there has been considerable friction between the two sisters. Each one applied separately to the appellant Board for a permit 35

to construct a private building sewer and the respective permits issued to them contained identical terms, term 3 of which reads as follows:-

5 “The holder of the permit, after the construction of the sewer of the building and the private sewer, must inform the Board of the fact that the sewer of the building and the private building sewer are ready for connection with the public building sewer, or the public sewer not being
10 entitled to proceed to such connection until he obtains for the purpose the written consent of the Board”.

The respondent carried out the said connection on the 25th March, 1981, without such written consent from the Board. She claimed, however, that she had the oral consent of one of the technicians of the appellant Board and the trial Judge held
15 that once she had admitted that she had not secured in advance the written consent of the appellant Board, the burden of proof shifted upon her to prove her allegation of oral consent, but such duty being less heavy than that required in the hands of the prosecution in proving her case beyond reasonable doubt
20 and that might be discharged by evidence satisfying the Court of the probability of that which the defendant was called on to establish. He referred in that respect to the case of *R. v. Carr-Briant* [1943] 29 Cr. App. R. 76.

Guided by that principle and after dealing with the evidence adduced, he concluded that he did not exclude at all the fact
25 that the employees of the appellant Board approved orally the connection in question, and that relying on it she proceeded to do so and that the written consent would have been granted when the private building sewer of respondent 1 was ready for
30 connection.

It should be added, however, that in the evidence adduced for the defence, there was a clear statement that the technicians of the appellant Board take with them the file of the case, check if the constructions made were in order and when they are
35 so, the consent to the owner is given in writing on a green paper and that this green paper is given at the very moment of approval though it may be given later if there is nobody there to take it. But as the evidence goes in this case, at least the constructor of this system was there when a certain Andreas Chrysostomou,

employee of the appellant Board, went there for some other work, saw the construction and told the constructor that they are in order and he could go ahead to connect it.

We need not comment on the factual findings as the matter can be decided by reference to regulation 8(4) of the Nicosia Sewage, Regulations 1973, published in Supplement No. 3, Part I, to the official Gazette of the Republic, at p.503, Notification No. 144, dated 22.6.1973, which provides that the holder of a permit shall, after the construction of the building sewer and the private building sewer, notify the Board of the fact that the sewer of the building and the private building sewer are ready for connection with the public building sewer or the public sewer not being entitled to proceed with such connection until he is granted for the purpose the written consent of the Board. In the present case no such written consent was ever granted or obtained by the respondent as prescribed by the regulation.

The legal position created, therefore, is that the respondent, who under the Common Law principle of *ignorantia juris non excusat* and which has been incorporated into our Criminal Code Cap. 154, by section 7, that "ignorance of the law does not afford any excuse for any act or omission which otherwise would constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence", cannot exonerate herself by her alleged ignorance of the regulation and this leads us to the conclusion that this appeal should succeed as the ignorance of the regulation regarding the requirement of the written consent of the Board could not be a defence, particularly so in respect of an offence created by section 45(1)(b) of the Law which imposes strict liability. The said section reads as follows:

"45(1) Any person who:-

- (b) Connects, causes, allows or suffers to be connected any private sewer or other installation or facilities intended or used for the disposal of sewage of a building with a public building sewer or a public sewer without a permit in that behalf first obtained from the Board or breaks any condition imposed in such a permit.

Shall be guilty of an offence and be liable to imprisonment not exceeding six months or to a fine not exceeding C£200,- or both such imprisonment and fine”.

5 It is obvious from the language of the provision creating the offence and the nature of mischief at which the provision is aimed that this is an offence where the element of mens rea is not required. The question as to the considerations which are relevant in determining whether a statutory provision does or does not impose strict liability was dealt with by this Court
10 in the case of *Hailis v. The Police* (1982) 2 C.L.R., p. 99, where reference is made to a number of English authorities where the matter was dealt with at some length and we do not think that we should repeat them. Suffice it to say that the position is aptly summed up in Halsbury’s Laws of England, 4th Ed.,
15 Vol. 11, para. 18, to be found in the said judgment.

Moreover the alleged mistaken belief of the respondent that her action was not criminal could not be a defence in the circumstances, although it might offer considerable mitigation, nor could the judgment of the trial Court be upheld, as argued
20 on behalf of the respondent, on the ground that there had developed a practice to permit the connection of the private building sewer to the public building sewer by oral permission. In fact no such practice has been established to exist by evidence. On the contrary, an insistence to the granting of a written consent
25 transpires from the evidence already referred to in this judgment

For all the above reasons and determining this appeal under section 145(3)(a)(i), we set aside the judgment of the trial Court and we find her guilty and convict the respondent on Count 1 as charged and acquit and discharge her on Count 2.

30 Nothing said in mitigation.

Court—In the circumstances, the sentence on the respondent will be C£5.- fine. In addition an order is hereby made that the respondent does demolish the connection of her private building sewer with the public building sewer within one month
35 from to-day, unless the written approval of the Sewage Board of Nicosia in respect thereof is obtained in the meantime.

Appeal allowed.