

A

GIRDHARI

v.

LAUTOKA TOWN COUNCIL

[SUPREME COURT, 1974 (WILLIAMS J.), 26th March]

B

Appellate Jurisdiction

Criminal law—principles of criminal liability—mens rea—whether offence of abandoning litter one of strict liability—Lautoka By-Laws 1972 regs 2, 3, 6 and 7 (a)

Interpretation—criminal law—litter offence—meaning of abandon—Lautoka By-Laws 1972 regs 2, 6 and 7 (a)

C

The appellant admitted scattering onion skins on the pavement near his stall in Lautoka, but said that he intended to clear them up.

The appellant contended that the charge should have read “abandoning onion skins” rather than “depositing” them on the pavement, and that it was not an offence of strict liability.

D

Held : 1. The statutory meaning of abandon included “to deposit” in Regulation 2.

2. The offence was not one of strict liability, but once it had been shown that the litter had been deposited, the onus was on the appellant to prove that he deposited the onion skins in circumstances making him innocent of any guilty intent at the moment of depositing. It was not sufficient for the appellant merely to declare that he intended to clear up at the end of the day. This did not discharge the onus under Regulation 7(a).

E

Cases referred to :

Alphacell Ltd. v. Woodward [1972] 2 All E.R. 475 ; [1972] A.C. 824.

Sweet v. Parsley [1969] 1 All E.R. 347 [1970] A.C. 132.

Lim Chin Aik v. R. [1963] 1 All E.R. 223 [1963] A.C. 160.

F

Appeal against conviction in the Magistrate's Court for depositing litter in a public place.

R. Krishna for the appellant.

B. C. Patel for the respondent.

WILLIAMS J. : [26th March 1974]

G

The appellant was convicted in the Magistrate's Court at Lautoka for depositing litter in a public place contrary to Regulations 3 and 6 of the Lautoka By-Laws 1972 (found in Part IV, P.11 of the 1972 volume).

The learned Magistrate accepted the prosecution evidence that the appellant at his stall in the Lautoka Market peeled onion on to the pavement and that onion skins were scattered around. He also accepted the defendant's statement on oath that he intended to clear up the skins. Nevertheless the Magistrate convicted him saying that the regulations created a strict liability and therefore the defendant's intention was irrelevant.

H

A Mr Krishna for the appellant submitted to the Magistrate that the charge should read "abandoning onion skins" rather than "depositing" them on the pavement. The Magistrate observed that the word "deposit" best described the defendant's action and under the regulations "abandons" embraces the word "deposit". Regulation 3 reads:—

"No person shall abandon or cause to be abandoned, any litter in or upon any Street.....,"

B and does not use "deposit". Therefore the draftsman, who ought to follow the wording of the section when framing his charge, should have used "abandon" and not "deposit". However, by Regulation 2, the statutory meaning of abandon includes "to throw, to drop, to deposit, to scatter, to leave, etc." and so the charge is not defective in using "deposit". But in using "deposit" the draftsman limits the prosecution to proof of that specific act whereas use of "abandon" covers all the modes embraced in Regulation 2.

C The appellant appeals on the grounds that Regulation 3 does not create an offence of strict liability and that his intention was relevant.

By strict liability or absolute offence is meant statutory offences which exclude any intention on the defendant's part. Lord Diplock, in *Sweet v. Parsley* [1969] 1 A.E.R. 347 at 360 put it thus:—

D "The expression 'absolute offence' is an imprecise phrase currently used to describe an act for which the doer is subject to criminal sanctions, even though when he did it he had no 'mens rea'"

E In submitting that the offence is not absolute Mr Krishna, for the appellant, urged that the word 'abandons' in Regulation 3 connotes a mental attitude. There would be weight in the argument if 'abandons' had its ordinary meaning of discarding completely, disowning, leaving, refuting all responsibility for." However, Regulation 2 gives the following meaning to abandons:—

"abandon—includes to throw, to deposit, to spill, to scatter, to leave, to cast or otherwise part with possession".

F Although the ordinary meaning of "abandon" indicates a mental attitude such as turning away from, leaving a thing and never returning to it, the statutory meaning is much wider. In my view, a person abandons something within the meaning of regulation 2 simply by dropping it, depositing it, etc. and thereby parting with possession, provided it is a substance or thing which comes within the meaning of litter in Regulation 2. I feel that the regulations are intended to relieve the prosecution of proving mens rea when bringing charges under Regulation 3, and it seems that such intention is demonstrated by Regulation 7 (a) which places the onus upon a defendant of showing that he did not abandon, (the litter). I will refer to Regulation 7 (a) later.

G Mr Krishna also argued that use in Regulation 3 of the phrase "..... or cause to be abandoned....." imported a mental element by reason of the word 'cause'. One may knowingly, unwittingly or accidentally 'cause' something to happen. Viscount Dilhorne said in *Alphacell v. Woodward* [1972] 2 A.E.R. 475 at 484.

H "If the insertion of 'knowingly' before 'causes' meant only that the acts which produced the result must be intentional, then that insertion would not, in my view, add anything to the meaning to be given to the subsection."

In my view the use of the word 'cause' does not demonstrate the offence requires proof of mens rea. A

Regulation 7 (a) places upon the defendant the burden of proving that the litter was not abandoned. Mr Krishna argues that if the offence is absolute nothing the defendant could say would save him once he had deposited the onion skins on the pavement, and Regulation 7 (a) would be meaningless. Therefore there is clearly a mental element in the offence. If I accept the submission in that sense, it could mean that Regulation 3 includes "mens rea" and that would place upon the prosecution the onus of proving mens rea, thereby contradicting Regulation 7 (a) which places the onus on the defendant to show the absence of "mens rea". B

Whilst I accept Mr Krishna's contention that Regulation 7 (a) demonstrates that this is not an absolute offence I feel that it also shows that the prosecution do not have to prove mens rea. In my view Regulation 7 (a) compromises between offences which require full mens rea and absolute offences. In *Sweet v. Parsley* (supra) Lord Reid stated at p.351. C

"The choice would be more difficult if there were no other way open, then either mens rea in the full sense or an absolute offence; for there are many kind of case where putting on the prosecutor the full burden of proving mens rea creates great difficulties and may lead to unjust acquittals. But... Parliament has not infrequently transferred the onus as regards "mens rea" to the accused, so that once the necessary facts are proved, he must convince the jury that, on balance of probabilities, he is innocent of any criminal intention." D

The effect of Regulation 7 (a) is that Regulation 3 relieves the prosecution of proving mens rea, and once the deposit of, in this case onion skins is proved, the offender's guilt is established subject to his right of proving an absence of mens rea. E

How is the defendant to discharge that onus during his trial? Mr Krishna submitted that since the Magistrate accepted the defendant's testimony that he intended to clear up the onion skins the defendant had discharged the onus. Mr Patel (for the respondent) submits that statements of good intentions do not discharge the onus. He logically inquires as to whether litter can be left for hours provided the offender says he is going to sweep it up? If the onus is so easily discharged the market could, without contravening the regulations, be covered in refuse by persons who profess an intention to sweep it up. The object of the regulations would be defeated. It is the duty of courts to construe regulations so as to give effect to their intention provided this is not contrary to the obvious meaning of the words and does not amount to an absurd construction. In *Lim Chin Aik v. Regina* [1963] 1 A.E.R. 223 at 228. Lord Evershed said. F

"Where the subject matter of the statute is the regulation for the public welfare of a particular activity... it can be and frequently has been inferred that the legislature intended that such activities should be carried out under conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea. Thus sellers of meat may be made responsible for seeing that the meat is fit for human consumption and it is no answer for them to say that they were not aware that it was polluted. If that were a satisfactory answer, then as Kennedy L. J. pointed out in *Hobbs v. Winchester Corpn.* the distribution of bad meat (and its far reaching consequences) would not be effectively prevented." G H

A Although Lord Evershed was there dealing with the creation of offences of absolute liability he was indicating the need to give effect to the intention of the legislature in the interpretation of its legislation.

B Surely the absence of a guilty intent is not to be proved by a mere verbal declaration of intention proffered after commission of the act complained of. In my view its absence should be apparent from surrounding circumstances existing at the time the rubbish etc. is deposited, proof of which rests on the person charged. Regulation 2 explains the kind of substance material and articles which can constitute litter such as household and garden waste, sand, gravel, derelict motor vehicles, machines, furniture and so forth. By reference to such substances I might illustrate my conclusions in hypothetical illustrations.

C When sand or gravel is deposited in a public place there is, prima facie, an offence. The onus under Regulation 7 (a) is not discharged by a subsequent statement that the person charged intended to move it. But if he proved it was outside his premises and had been deposited for building purposes, laying a path etc; he would show an intention not to part with possession but to retain it and that the material is deposited by reason of necessity. The onus would be discharged.

D A derelict car left at the roadside is litter and it is no use the person who left it there presenting an unsupported statement that he had always intended to move it. He should prove circumstances which demonstrate not only his intention to move it but that when he left it there he was innocent of any guilty intention. For example, that when he was towing it to a scrap yard the towing vehicle broke down, that he had to leave the derelict vehicle and that he was making other arrangements.

E If a man dumps household or garden waste at the roadside can be guiltless of any offence by stating an intention to clear it up, the roads and paths could become filthy. He could discharge the onus under Regulation 7 (a) by pointing out that the rubbish was in a container and placed for collection by the refuse department. He would be showing that at the time he parted with possession he was innocent of any guilty intention.

F It will be noted that the kind of material etc. which Regulation 2 sets out as potential litter is that which the public would have little or no use for. This, I think, adds weight to my view that the moment the article is dropped, deposited etc. there is evidence to support a charge under Regulation 3, provided it is "litter material" under Regulation 2. Thus dropping a full carton of cigarettes could scarcely be regarded as abandoning litter, but it would constitute an offence if the carton were empty. Likewise dropping onion skins on the pavement provides sufficient evidence of an offence. Once on the ground, like the rest of market waste, it is litter. The onus is on the defendant to prove that he deposited the onion skins in circumstances making him innocent of any guilty intent at the moment of depositing; e.g. like the derelict motor vehicle its presence was not due to his fault, like the garbage which was deliberately placed in the road in a container as a step in the lawful process of its removal and disposal, or like the sand and gravel it was deposited as an act of possession rather than parting with possession.

H Before the Magistrate the defendant did not endeavour to prove that the act of depositing onion skins occurred without guilt on his part; he simply declared that he intended to remove them and leave his stall tidy at 4.30 p.m. It was a statement of an intention to clear up after he had committed the offence. It does not discharge the onus under Regulation 7 (a).

Although the Magistrate was wrong in law when he described the offence as of strict liability, he was not wrong when he said the defendant's intention to clear up the skins was not relevant. The Magistrate was referring to the defendant's intention after the offence had been committed which was the only intent to which the defendant had referred. **A**

In the circumstances I feel this is a proper case for the application of the proviso to section 300 of the Criminal Procedure Code as amended by section 39 of Act 13 of 1969.

The appeal against sentence and conviction are dismissed. **B**

Appeal dismissed.