

1962
Apr. 13, 16,
July 10
STAVROS
GEORGHIOU
KOUSOULIDES
v.
THE REPUBLIC

[WILSON P., ZEKIA, VASSILIADES & JOSEPHIDES, JJ.]
STAVROS GEORGIU KOUSOULIDES (No. 2).
Appellant,
v.
THE REPUBLIC,
Respondent.
(*Criminal Appeal No. 2444*)

Evidence—Corroboration—Nature and extent required—Corroboration need not be direct evidence that accused committed the crime—Sufficient if merely circumstantial connecting accused with crime.

Held : (1) The corroboration need not be direct evidence that the accused committed the crime ; it is sufficient if it is merely circumstantial evidence of his connection with the crime.

Dictum in *R. v. Baskerville*, 12 Cr. App. R. 81 at p. 91, applied.

(2) The corroborative evidence before the trial Court was strong and convincing and they were fully justified in accepting the substance of the evidence of the accomplices and acting thereon.

Appeal dismissed.

Cases referred to :

R. v. Baskerville 12 Cr. App. R. 81, 91 ;

Lazaris Demetriou v. The Republic 1961 C.L.R. 309 ;

Charalambos Zacharia v. The Republic, reported in this Volume at p. 52, *ante*.

Appeal against conviction.

The appellant was convicted on the 13/11/61 at the Assize Court of Limassol (Cr. Case No. 8856/61) on one count of the offence of arson contrary to ss. 315(a) and 20 of the Criminal Code, Cap. 154 and was sentenced by Michaelides, P.D.C., Limnatis and Demetriou, D.J.J. to four years' imprisonment.

Lefcos N. Clerides for the appellant.

K. C. Talarides for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :

VASSILIADES, J. : This is an appeal against a conviction for arson, by the Assize Court of Limassol.

The grounds upon which the appeal is made, may be summarised in :

- (a) that the trial-court wrongly accepted ; and
- (b) erroneously acted upon the evidence of two accomplices, one of whom was jointly charged with the appellant for the arson in question.

Learned counsel for the appellant strenuously argued that the evidence of this co-accused, should be looked upon with grave suspicion, and should not have been accepted by the trial-court ; while the evidence of the other accomplice, equally unreliable, counsel submitted, does not really implicate the appellant in the crime charged.

The case for the prosecution is that the fire which caused extensive damage to the building, and practically destroyed the equipment, of the hairdressing saloon of the complainant, in the town of Limassol, the night of the 2nd to 3rd July, 1961, was set by the other accused in this case, Andreas Nicou Superman, at the instigation of the appellant. It was a rival shop, which the appellant, who is also a hairdresser, wanted to eliminate, the prosecution say.

The case for the appellant is that he had nothing to do with the arson in question ; for reasons of revenge, he says, and presumably, in order to alleviate their own position, the perpetrators of the crime are falsely implicating him. When counsel for the prosecution put it to the appellant in the witness-box, that he had incited the other accused (Superman) to set the rival shop on fire, for a money reward, appellant's reply was : "It is a great lie". (Page 107 of the typed record).

The co-accused, Superman, a 22-year old taxi-driver, stated from the witness-box, the circumstances under which he was introduced to the appellant by the other accomplice, Patarias (P.W.6) for the purposes of this arson. And how the crime was arranged and finally carried out, soon after midnight, the night of the 2nd to the 3rd July, 1961.

In addition to his confession, there was ample evidence connecting the co-accused (Superman) with the crime ; after

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dealing with such evidence, the trial-court in their judgment, say : "On the above evidence we are satisfied that it was accused 2 who actually set fire to the premises in question, and we, therefore, find him guilty as charged, and convict him accordingly". (Page 128, D. of the record).

The issue which the trial-court had next to determine, was the complicity of the appellant in the commission of the crime. And this is the subject matter of the present appeal.

As already stated, the case for the prosecution in this connection rests mainly on the evidence of witness Patarias (P.W.6) whom the trial-court have treated as an accomplice, and weighed his testimony in the light of corroboration. "Undoubtedly P.W.6., Patarias, is an accomplice, and has to be treated as such", the Assize Court say in their judgment, at p. 131 B. of the record.

The required corroboration from independent witnesses was found, to the satisfaction of the trial-court, in the evidence of witness Suleiman (P.W.27) as to motive ; and in the evidence of witnesses Constantia Dimitriou (P.W.7) ; Mary Hogget (P.W.11) ; and Michalakis Sykas (P.W.14). Moreover, there was the evidence of Police-Sergeant Paschalides (P.W.28) as to appellant's reply when informed by the Sergeant of the reason for his arrest one day after the crime. (*Vide* judgment at p.130 E.F. & G).

In addition, the trial-court had before them the evidence of the co-accused, Superman, who could not corroborate the other accomplice, Patarias (P.W.6), but whose testimony from the witness-box was evidence in the case, standing on the same footing as that of any other accomplice, upon which the trial-court could act, if satisfied, (after warning themselves as to its nature) that it was substantially true ; or sufficiently corroborated by independent evidence, as to render it safe enough to be acted upon.

The nature and extent of the corroboration required, where the trial-court is not prepared to act on the uncorroborated evidence of an accomplice, were considered by this Court in the appeal of *Lazaris Demetriou v. The Republic*, reported in 1961 C.L.R. 309, and in the recent appeal of *Charalambos Zacharia v. The Republic*, reported in this volume at p. 52. After quoting from the judgment in the leading case of *R. v. Baskerville* (12 Cr. App. R.p.81 at p. 91) this Court

followed the view that "the corroboration need not be direct evidence that the accused committed the crime : it is sufficient if it is merely circumstantial evidence of his connection with the crime". (*Zacharia v. The Republic, supra*, at p. 60).

In the present case, after dealing with the evidence of the accomplice Patarias, (P.W.6) called by the prosecution ; and the co-accused, Superman, who came to the box in his own defence ; as well as with the corroborative evidence before them, the Assize Court say in their judgment (at p. 131 G. of the record) : "We have believed the evidence of Patarias and of accused 2, and the other Prosecution witnesses". And the Court add : "We must also state that even if the points on which the evidence of Patarias and of accused 2, is corroborated, were regarded not sufficiently material, we would still, having cautioned ourselves, act upon their evidence".

Notwithstanding the strenuous efforts of learned counsel for the appellant, to attack these findings, we are unanimously of the opinion that the record before us presents no reason why the trial-court's findings should be disturbed. We think that the corroborative evidence in the case is so strong and convincing that the trial-court were fully justified in accepting the substance of the evidence of the accomplices, and acting thereon.

The appeal, therefore, fails and must be dismissed.

The sentence to run from date of conviction.

Appeal dismissed.

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