

1979 June 19

[TRIANAFYLLIDES, P., HADJIANASTASSIOU, DEMETRIADES, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

PAVLOS STAVROU PAVLOU,

Respondent.

(*Criminal Appeal No. 4000*).

5 *Criminal Procedure—Acquittal—Appeal against acquittal—Wrong application of law to the facts—Section 137(1)(a)(iii) of the Criminal Procedure Law, Cap. 155—Acquittal of criminal trespass—No definite findings of fact by trial Judge—Not possible for Court of Appeal to decide safely whether or not the law was correctly applied to the facts of the case—Retrial ordered—Section 145(3)(a)(ii) of Cap. 155.*

10 The respondent in this appeal was tried of the offence of criminal trespass, in that he entered the house of the complainant with intent to annoy, and was acquitted on the ground that the requisite intent, an essential element of the offence in question, had not been established.

15 *Upon appeal by the Attorney-General of the Republic against the aforesaid acquittal on the ground that the trial Judge misapplied the law to the facts of this case (see section 137(1)(a)(iii) of the Criminal Procedure Law, Cap. 155):*

20 *Held*, that even though this Court might possibly draw some inferences as to what view the Judge has taken regarding the credibility, on certain points, of the witnesses who testified before him, he has made no definite findings of fact as regards what exactly has happened; that as a result of this situation it is not possible for this Court to decide safely whether or not he has applied correctly the law to the facts of this case; and that, therefore, the verdict will be set aside and a retrial of the

respondent before another Judge is hereby ordered (see section 145(3)(a)(ii) of Cap. 155).

Appeal allowed. Retrial ordered.

Cases referred to:

Stavrinou v. The Republic (1969) 2 C.L.R. 97; 5

Protopapas v. The Police, 1962 C.L.R. 27;

Eracleous v. The Police (1972) 2 C.L.R. 102.

Appeal against acquittal.

Appeal by the Attorney-General of the Republic against the judgment of the District Court of Limassol (Korfiotis, D.J.) given on the 29th December, 1978, (Criminal Case No. 15691/78) whereby the respondent was acquitted of the offence of criminal trespass contrary to section 280 of the Criminal Code Cap. 154. 10

A.M. Angelides, Counsel of the Republic, for the appellant.

P. Pavlou, for the respondent. 15

TRIANTAFYLLIDES P. gave the following judgment of the Court. This is an appeal by the Attorney-General of the Republic against a judgment of the District Court of Limassol, in criminal case No. 15691/78, by means of which the respondent, who was the accused in the said case, was, on December 29, 1978, acquitted of the offence of criminal trespass, contrary to section 280 of the Criminal Code, Cap. 154. 20

It was stated in the particulars of the charge that the respondent, on October 3, 1978, in Limassol, entered a house in the possession of a certain Yiota Georghiou Panayiotou with intent to annoy. 25

According to the evidence of the prosecution witnesses at the trial the appellant entered the said house in a very angry mood and insulted the mother of the complainant, because, allegedly, the complainant and some friends of hers had behaved in an improper manner towards his wife. 30

In his own testimony the respondent told a different story, denying that he had entered the house of the complainant with intent to annoy or that he had behaved there in the complained of manner. 35

The trial Judge acquitted the respondent on the ground that

the requisite intent, which is an essential element of the offence in question, had not been established.

It is common ground between the parties to this appeal that the trial Judge expounded correctly the applicable principles of law, and particularly those relating to the matter of the proof
5 of the requisite intent in a case of this nature; he referred, *inter alia*, to *Stavrinou v. The Republic*, (1969) 2 C.L.R. 97, and, also, to *Protopapas v. The Police*, 1962 C.L.R. 27, which was, too, an instance of criminal trespass, like the present one; and we
10 might, usefully, refer, also, to the later case of *Eracleous v. The Police*, (1972) 2 C.L.R. 102.

The appellant Attorney-General complains, however, that the trial Judge misapplied the law to the facts of the present case, and, consequently, this appeal has been made under section
15 137(1)(a)(iii) of the Criminal Procedure Law, Cap. 155.

Our main difficulty in dealing with this case is that even though we might possibly draw some inferences as to what view the Judge has taken regarding the credibility, on certain points, of the witnesses who testified before him, he has made no definite
20 findings of fact as regards what exactly has happened; as a result of this situation it is not possible for us to decide safely whether or not he has applied correctly the law to the facts of the present case.

We have, therefore, decided to set aside his verdict and to
25 order, in the exercise of our powers under section 145(3)(a)(ii) of Cap. 155, a retrial of the respondent, which has, necessarily, to take place before another Judge.

*Appeal allowed.
Retrial ordered.*