1982 December 23

[TRIANTAFYLLIDES, P., DEMETRIADES, SAVVIDES, JJ.]

STEPHANOS KYPROU TOUMBA,

Appellant.

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 4353).

Criminal Law—Evidence—Conviction—Credibility of witnesses—Two conflicting versions—Appellant's version rejected—Trial Judge failing to consider all the evidence and relying on vague evidence—Appellant should have been given the benefit of doubt.

In the afternoon of the 30th January, 1982 Prosecution witnesses 5 and 8, who were soldiers serving in a National Guard Camp at Lakatamia, exercising duties of Unit Policemen had an oral permit from the duty officer of the Camp (P.W.3) to carry out a peripheral patrol outside their camp, including THOI Club at Lakatamia. Whilst there the appellant, who was a member of the Military Police, and P.Ws.6 and 7 arrived and after the appellant checked P.Ws.5 and 8 in order to find out whether they had a written permit from their Commanding Officer to be outside their camp and they said that they were there on oral orders the appellant uttered insults both against their officer as well as against P.W.5. As a result the appellant was prosecuted and was convicted of, inter alia, the offence of insulting a superior, contrary to section 52(1) of the Military Criminal Code and Procedure Law, 1964.

The Military Court believed the version of P.Ws.5 and 8 as true and found the appellant guilty as charged. The Court found that P.Ws.5 and 8 impressed them as truthful witnesses because they were answering questions with ease and in a natural way. It rejected the evidence of P.Ws.6 and 7 because it found that their intention was to help their colleague, the accused, so that he would not be charged.

In rejecting the version of the accused and P.Ws.6 and 7 the Military Court failed to consider the evidence of P.W.2, a captain in the Military Police, who said that a Unit Policeman can only exercise police duties within a camp and same do not extend outside it, and to compare this evidence with that of P.W.1, the Assistant Commander of the camp, in which P.Ws.5 and 8 served, and P.W.3, the duty officer of the camp on the day the alleged incident took place, whose allegations as to the orders given to P.Ws.5 and 8 and as to the nature of the duties of a Unit Policeman were too vague. *It, also, failed to examine the possibility* that P.Ws.5 and 8 were not telling the truth because they wanted to cover their unauthorised presence at the club.

Upon appeal against conviction:

Held, that considering all the above the appellant ought to have been given at least the benefit of doubt and for this reason he will be discharged and acquitted.

Appeal allowed

Appeal against conviction and sentence.

Appeal against conviction and sentence by Stephanos Kyprou Toumba who was convicted on the 24th September, 1982 by the *Military Court sitting at Nicosia (Case No. 217/82) on one count* of the offence of insulting a superior contrary to section 52(1) of the Military Criminal Code and Procedure Law, 1964 on one count of the offence of insulting a soldier contrary to section 82 of the Military Criminal Code and Procedure Law, 1964 and on one count of behaving in a manner incompatible with military discipline contrary to section 101 of the Military Criminal Code and Procedure Law, 1964 and was sentenced to three months' suspended imprisonment on counts 1 and 2, to run concurrently, no sentence was passed on count 3.

E. Efstathiou with *S. Efstathiou,* for the appellant.

P. Ioulianou, for the respondent.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Demetriades.

DEMETRIADES J. The appellant, a sergeant in the National Guard, was found guilty by the Military Court on the following three counts, with which he was charged before it:

(a) Insulting a superior, contrary to section 52(1) of the Military Criminal Code and Procedure Law of 1964.

(b) Insulting a soldier, contrary to section 82 of the Military Criminal Code and Procedure Law of 1964.

(c) Behaving in a manner incompatible with military discipline, contrary to section 101 of the Military Criminal Code and Procedure Law of 1964.

As a result, the Military Court imposed on the appellant a suspended sentence of imprisonment of three months on the first and the second count to run concurrently, and imposed no sentence on the third count as it found that such count is included in the first and second count.

In giving its reasons for finding the accused guilty of the charges brought against him, the Military Court said that it was an admitted fact that P.Ws. 5 and 8, who were soldiers serving in a National Guard camp at Lakatamia and who, at the material time exercised duties of Unit Policemen, had, in the afternoon of the 30th January, 1982, an oral permit from P.W.3 to carry out a peripheral patrol outside their camp, including THOI Club at Lakatamia; that whilst they were there the accused and P.Ws. 6 and 7, who were all in mufti, arrived in a civilian car and that after the accused checked P.Ws. 5 and 8 in order to find out whether they had a written permit from their Commanding Officer to be outside their camp, and P.Ws. 5 and 8 told him that they were there on oral orders and that if he so wished he could go and verify their allegations with the Officer in charge at the time of the camp, the accused uttered insults both against the Officer in charge, as well as against P.W.5.

As it appears from the record of the proceedings before the Military Court, P.W.5 said that he and P.W.8, who both belonged to the Police of the Camp, were given orders orally to carry out a patrol peripherally of their camp in order to find out whether there were soldiers outside the camp without a permit and for security purposes. In their round, he said, it could be said that THOI Club was included.

After he and his colleague checked the club, he went out where he met the accused who was in mufti. The accused, after showing to him his Military Police identidy card, asked him for his identidy card in order to record his particulars. This took place, as P.W.5 said, after the accused asked him whether he had a written permit to be outside the camp and after the accused and P.W.8 reached the car in which the accused and his colleagues

arrived. This witness is further recorded to have informed the accused that he had an oral order to be there and that if the accused had doubts about it he could check his allegations with the officer in charge of the camp at the time.

As a result of an argument that followed regarding the handing by P.W.5 of his identidy card and the type of permit he and P.W.8 possessed, the accused, as was alleged by these two Prosecution Witnesses, uttered the insults for which he was charged.

The accused gave evidence from the box and denied that he had insulted the superior officer of the two Prosecution Witnesses, or P.W.5. His two colleagues were summoned and gave evidence as his witnesses. They, also, denied that accused uttered any insults.

The Military Court believed the version of P.Ws. 5 and 8 as true and found the accused guilty as charged. The Court found that P.Ws. 5 and 8 impressed them as truthful witnesses because they were answering questions with ease and in a natural way. It rejected the evidence of P.Ws. 6 and 7 because it found that their intention was to help their colleague, the accused, so that he would not be charged.

In rejecting the version of the accused and P.Ws. 6 and 7 the Military Court failed to consider the evidence of P.W.2, a captain in the Military Police, who said that a Unit Policeman can only exercise police duties within a camp and same do not extend outside it, and to compare this evidence with that of P.W.1, the Assistant Commander of the camp, in which P.Ws.5 and 8 served, and P.W.3, the duty officer of the camp on the day the alleged incident took place, whose allegations as to the orders given to P.Ws. 5 and 8 and as to the nature of the duties of a Unit Policeman were too vague. It, also, failed to examine the possibility that P.Ws. 5 and 8 were not telling the truth because they wanted to cover their unauthorised presence at the club.

Considering all the above, we find that the accused ought to have been given at least the benefit of doubt and for this reason we discharge and acquit him on all three counts.

Appeal allowed.

Conviction and sentence quashed.

Appeal allowed. Conviction and sentence quashed.