

[STRONGE, C.J., THOMAS AND SERTSIOS, JJ.]

REX

v.

CHRISTOFANIS CHRISTO POURI AND FIVE OTHERS.

1932.
May 19.—
REX
v.
POURI.

Criminal Law—Evidence—Accomplices—Single Witness—Corroboration of one accomplice by another—Extent of corroboration required by Clause 205 of the Cyprus Courts of Justice Order, 1927—Cross-examination of one accused to incriminate another.

Five of the appellants were convicted by the Assize Court at Limassol of setting fire to the Commissioner's house. Only one witness deposed that he saw appellants throwing wood on the fire then burning at the gate of the house. Other witnesses, alleged to be accomplices, saw them inside the yard of the house and close to the fire.

At the trial two of the accused gave answers in cross-examination tending to incriminate other accused jointly charged with them.

Held : (1) Clause 205 of the Courts Order, 1927, requiring the testimony of a single witness to be corroborated, draws no distinction between accomplices and non-accomplices. If there are two witnesses one of whom is an accomplice either can corroborate the other, and where both witnesses are accomplices, one may corroborate the other so as to comply with the requirements of Clause 205 and allow the Court to convict on such evidence ;

(2) that under English law the uncorroborated evidence of an accomplice is admissible in evidence ; the long established rule of practice in England requiring the Judge to warn the jury of the danger of convicting on such evidence does not apply in Cyprus where the Court is composed of Judges only.

(3) An accused person in cross-examination by the prosecuting officer may not be asked questions tending to incriminate a co-accused, as such questions do not relate to matter in issue or matters relevant thereto.

Tornaritis & D. Nicolaidis for appellants Nos. 1 to 5.

Poulacheris for appellant No. 6.

Pavrides, Crown Counsel, for the Crown.

Tornaritis : The conviction was erroneous in law in that :

(1) There was no proper corroboration as required by Clause 205 of the Courts Order, 1927.

(2) There is nothing in the judgment of the Assize Court to show that it treated the witnesses as accomplices.

(3) There is nothing to show that the Court considered the evidence of the accomplices corroborated. The only evidence of arson is that of a single witness.

Inadmissible evidence was admitted, *i.e.*, that of co-accused against each other : draws distinction between the law in England and that in force in Cyprus—The Criminal Evidence Act, 1898, and Clause 144 of the Courts of Justice Order,

1932.
 May 19.
 REX
 v.
 POURI.

1927. One accused cannot give evidence against the others because Clause 144 does not give them a right to cross-examine him.

Poulacheris : One accused cannot give evidence incriminating co-accused. Cites *Russell on Crimes* (8th Edn.), page 2113 ; *R. v. Sullivan* (1874) I.R. ; *Taylor on Evidence* (11th Edn.), page 895. In the absence of any statute enabling evidence of a prisoner to be given against a co-accused it should not have been received, and, if it materially affected the Court's decision, the conviction should be quashed.

Pavrides : In the interpretation of Clause 205 the applicants are asking the Court to read into it the words "and which should implicate the accused." In the case *R. v. Antoni* (1), it was held that the corroborative evidence need not necessarily implicate the accused. Cites *Roscoe's Criminal Evidence* (14th Edn.), page 153.

There is nothing in the law in force in Cyprus as to accomplices : it goes to weight and not to admissibility. *R. v. Thompson* (2).

Irregular cross-examination of accused to incriminate co-accused : Courts of Justice Order, 1927, Clause 144. Submit that the case of *Rex v. Paul* (3) should be followed in Cyprus. If accused goes into witness-box, he is entitled to be cross-examined ; *R. v. Brown and Kennedy* (1928). There is in any event sufficient evidence to implicate the accused without this evidence.

The judgment of the Court was delivered by the Chief Justice.

JUDGMENT :—

STRONGE, C.J. : The effect of Clause 205 of the Cyprus Courts of Justice Order is that the testimony of a single witness if disputed must be corroborated. For the purposes of the section it makes no difference whether the single witness whose evidence is so disputed is an accomplice or not. Whether, therefore, the disputed testimony of the single witness in a criminal case is that of an accomplice or that of a person who is not an accomplice the Court cannot in either case in the absence of corroboration validly convict the accused owing to the fact that the requirements of Clause 205 have not been complied with. As, however, the clause draws no distinction between corroboration of, or by an accomplice and corroboration in the case of non-accomplices, it would seem to follow—so far as the requirements of the clause are concerned—that if there are two witnesses one

(1) 7 C.L.R. 63.
 (2) 12 Cr. App. R. 72.
 (3) (1920) 2 K.B. 183.

of whom is an accomplice either can be regarded as corroborating the other and that even if both such witnesses are accomplices and one corroborates the other the provisions of the section are complied with and the Court may convict on such evidence.

1932.
May 19.
—
REX
v.
FOURI.

Neither in Clause 205 nor anywhere in the Statute Laws of Cyprus is there to be found any provision stating that the uncorroborated testimony of an accomplice must never be believed or acted upon. True that Clause 205, if the accomplice is a sole witness and his evidence is disputed, requires his evidence to be corroborated not because it is the evidence of an accomplice but because it is the evidence of a single witness.

In England there is no rule that the uncorroborated evidence of an accomplice must never be believed or acted on. Had such a rule existed in that country the Court of Criminal Appeal in *Rex v. Baskerville* (1) would certainly have approved instead of disapproving as they did a judge's directing a jury to acquit in every case of such uncorroborated testimony. There does, indeed, exist in England what in *Rex v. Bovy* (2) is termed a rule of prudence and discretion made by the Courts that the uncorroborated testimony of an accomplice should in every case be treated with great caution and that a judge is bound to warn a jury of the danger of convicting on the uncorroborated testimony of an accomplice, but notwithstanding such warning it is nevertheless open to the jury to convict on such unconfirmed testimony and their verdict will in such a case rarely be interfered with. Now, assuming that this rule of prudence and discretion is approved by the Courts in Cyprus no need for such a warning exists as the functions of the Court are not divided between Judge and Jury as in England and the Court consisting of Judges alone must be presumed to be aware of the danger of convicting in such a case, but the Court is, nevertheless, at liberty, as is the jury in England, to so convict.

The next consideration is what is the extent of corroboration of a single witness required by Clause 205. In England it has been decided in regard to the evidence of accomplices (*Rex v. Baskerville* (1), *Rex v. Wyman* (3)) that such evidence is not corroborated unless there is other evidence which affects the accused by connecting or tending to connect him with the crime, that is to say, the corroborating evidence must not merely tend to show that the crime was committed but that it was the accused who committed it. Requirements of a similar kind are to be found in Sections 144 and 145 of

(1) (1916) 12 C.A.R. 81.

(2) (1916) 12 C.A.R. 17.

(3) (1918) 13 C.A.R. 163.

1929.
 May 19.
 REX
 v.
 POURI.

the Cyprus Criminal Code requiring in the case of certain crimes the evidence of a single witness to be corroborated in material particulars by evidence implicating the accused. Clause 205, however, does not state that the corroboration shall be by evidence implicating the accused. What it does state is that the evidence of the single witness shall be corroborated by some material—i.e., important or weighty—evidence which, in the opinion of the Court, is sufficient to establish the accuracy of the evidence of the witness. And this language has received judicial interpretation in *Rex v. Neoli Antoni* (1) deciding that the corroborative evidence required by the clause need not actually implicate the accused in the commission of the crime. There remains to be considered in regard to this clause the further question whether the decision of the trial Court is open to review and if so in what circumstances? In our judgment unless it can be shown that the trial Court has held as sufficient in its opinion to establish the accuracy of the witness evidence which could not reasonably be considered as doing so the Court of Appeal should not interfere merely because its view as to the sufficiency or insufficiency of such evidence differ from those of the Court of first instance.

In the course of trial accused 6 and accused 3 gave answers in cross-examination tending to implicate co-accused persons and it is objected by counsel for the applicants that such evidence was inadmissible. The English cases *R. v. Hadwen* (2), *R. v. Macdonald* (3) and *R. v. J. Paul* (4) relating to the evidence of accused persons all hinge on the particular words "for the defence" used in Section 1 of the Criminal Evidence Act, 1898, and consequently are of no assistance here. The present law in Cyprus as to the evidence of accused persons is to be found in Clause 144 of the Courts of Justice Order, 1927, and it provides that the prosecuting officer may after the accused has given evidence on oath ask him questions which shall be confined to the matter in issue and matters relevant thereto. So far as an accused person is concerned the sole matter in issue in his case is his guilt or innocence and cross-examination of an accused in order to incriminate another fellow prisoner charged jointly with him cannot in our judgment be said to be cross-examination as to the matter in issue or matters relevant thereto. In our view, therefore, this evidence by an accused person incriminating a fellow prisoner jointly charged with him was inadmissible.

-
- (1) 7 C.L.R. 63.
 (2) (1902) 1 K.B. 882.
 (3) (1909) 2 C.A.R. 322.
 (4) (1920) 2 K.B. 183.