1944
Jan. 7

MICHAEL RODOSTHENOUS KARMENOS AND ANOTHER v. REX.

[JACKSON, C.J., AND HALID, J.]

1. MICHAEL RODOSTHENOUS KARMENOS
2. RODOSTHENIS CONSTANTINOU } *Appellants,*

v.

REX, *Respondent.*

(*Criminal Appeal No.* 1776.)

Joinder of Counts—Cyprus Courts of Justice Order, 1927, *Clause* 166.

The accused, a father and son, were both concerned in an incident during which the son killed three persons and wounded five others, and the father wounded one person and attempted to wound another. The two accused were charged in one indictment with all these several offences and were convicted, the son being *inter alia* found guilty of three murders.

Held : The joinder of two counts of murder in one indictment is undesirable, even in cases where two murders form substantially one transaction. No prejudice was caused to the appellants in this case notwithstanding that several counts were joined.

Appeal from conviction of the Assize Court of Limassol.

M. Houry for the appellants.

C. Glykys, Assistant Crown Counsel, for the Crown.

The facts are sufficiently set forth in the judgment of the Court which was delivered by :—

JACKSON, C.J. : In this case the two appellants are father and son. The father, Rodosthenis Constantinou, was convicted by the Assize Court at Limassol, on 20th October, 1943, on two counts. The first of these counts charged him with unlawfully wounding a certain Thoukis Kalavassides, the Mukhtar of Ayios Demetrios, by stabbing him with intent to do him grievous harm. The second count charged him with attempting to stab another person with a similar intent. On the first count he was sentenced to imprisonment for life and on the second to imprisonment for five years. He appeals against both these convictions and against the sentence on the first.

The son of that appellant, Michael Rodosthenous Karmenos, was convicted on three counts of the murder of three persons in the village of Ayios Demetrios, a husband and wife and their daughter, and was sentenced to death. He was also convicted of unlawfully wounding five other persons with intent to do them grievous harm, and on these counts he was sentenced to imprisonment for life. He appeals against his conviction on the three counts charging him with murder.

At the trial there was a third accused, who was also a son of Rodosthenis Constantinou and was acquitted on all counts. The trial opened with 15 counts against all three of the accused, three for murder, six for attempted murder, five for unlawful wounding with intent to cause grievous harm and one for an attempt to cause grievous harm.

It was part of the case for the prosecution that all these counts related to acts following closely upon one another, within a quarter of an hour or twenty minutes in all, and having a common purpose, namely, the removal of possible witnesses at an expected charge of house-breaking against the younger of the two appellants.

Mr. Houry, who appeared at the request of the Court, for all the accused at the trial and represents the two appellants in this appeal, raised two objections at the beginning of the trial and before the accused were charged.

He spoke of a difficulty which he felt in representing more than one of the accused, because a question would arise as to the admissibility of certain evidence for the prosecution which was favourable to one of the accused and unfavourable to the other, and he said it would be difficult for him to decide whether to object to that evidence or not. In the end he did object to it and it was admitted and favoured the elder of the two appellants, who was acquitted on the charges to which that evidence related. And as the admissibility of that evidence against the younger appellant is one of the grounds of his appeal, we shall deal with it later in our judgment.

The other objection which Mr. Houry raised at the outset of the trial was that he was prejudiced by the multiplicity of counts in his defence of all the accused. After some discussion, and after all the accused had pleaded " Not Guilty " to all the charges, and the case had been opened for the Crown, counsel for the Crown, to meet Mr. Houry's difficulty, said that no evidence would be offered on the six counts for attempted murder and all the accused were acquitted on those counts. There remained three counts for murder, five for unlawful wounding and one for attempt to cause grievous harm.

Mr. Houry agreed that the matter was simplified but appeared to be still troubled by the first of his difficulties, namely, the admissibility of certain evidence favourable to one of the accused whom he was defending and unfavourable to another. It does not appear that he specifically maintained his objection to the inclusion of three charges for murder. Nevertheless multiplicity of counts and consequent prejudice is one of the grounds of appeal in the case of each of the two appellants.

It is beyond doubt that the joinder of counts in the information against the appellants did not invalidate their conviction and it is not suggested in the grounds of appeal that it did. The joinder was within the terms of section 166 of the Cyprus Courts of Justice Order, 1927, and the trial Court, in the exercise of its discretion under that section, and regarding the subject matter of the different counts as " practically one continuous act ", declined to direct a separate trial on one or more of the counts. But the question is, were the appellants prejudiced by this joinder ?

It is perfectly clear that the elder appellant, Rodosthenis Constantinou, was not. He was convicted on only two counts, unlawful wounding and attempt to stab.

The younger appellant was convicted on eight counts, three for murder and five for unlawful wounding, and we are bound to draw attention to the statement of the Court of Criminal Appeal in *Rex* v. *Davis* (Criminal Appeal Reports XXVI at p. 98) that the joinder of two murders in one indictment, though it does not invalidate a conviction for both of them, is undesirable. And, from the preceding passage in that judgment, we take this statement to refer even to cases in which the two murders form substantially one transaction. It is true that conditions in Cyprus differ from those in England. The types of crime differ and in Cyprus there are no

1944
Jan. 7

MICHAEL RODOSTHENOUS KARMENOS AND ANOTHER v. REX.

juries. Nevertheless the joinder of several counts for murder in one information may sometimes prejudice the defence and must always open the door to argument that the defence was prejudiced, and for that reason we draw attention to the statement of the Court of Criminal Appeal that such joinder is undesirable.

As to whether prejudice was actually caused to the defence by the joinder of nine counts against the younger appellant in this case, we are satisfied, after the most careful consideration of the evidence and the very full argument in this appeal, that it was not. The trial Court, in its considered judgment most carefully sifted and separated the evidence against this appellant on each of the three major counts. They were very much better equipped to do so than a jury would have been. And they expressly separated the evidence that they believed from the evidence that they disbelieved. The trial Court was evidently very fully on its guard against the possibility of prejudice to the defence by the joinder of counts and we are wholly satisfied that none was caused.

In our opinion this ground of appeal must fail in the case of both the appellants.

As the remaining grounds are different in the case of each of the appellants, we deal now with the remaining grounds in the case of the elder appellant, Rodosthenis Constantinou. These are insufficiency of evidence and excessive severity of sentence.

As to the evidence, this was carefully reviewed in the judgment of the trial Court and was amply sufficient to justify their conclusion in the case of this appellant if they believed this evidence, as, in our opinion, they were fully justified in doing.

As for the sentence, it is the maximum provided by the law. The appellant committed a savage attack with a knife on the Mukhtar of the village while he was trying to defend himself against an equally savage attack on him with a knife by the appellant's son. It is a severe sentence, but we find no error in principle in the exercise of the discretion of the trial Court. In effect the sentence is equivalent to a sentence of 20 years' imprisonment which is reviewed after 15 and we see no sufficient reason to intervene.

For these reasons the appeal of Rodosthenis Constantinou must be dismissed.

In the case of the other appellant, Michael Rodosthenis Karmenos, the second and third grounds of appeal relate to the admission of evidence of certain statements which the trial Court believed to have been made by two of the deceased. These statements were admitted in evidence by the trial Court, after very full and careful argument, as being complaints or statements admissible under section 7 of the Criminal Evidence and Procedure Law, 1929, and not as part of the *Res gestae* or dying declarations. We are of opinion that the trial Court was entirely right in so admitting them.

We see no reason to think that the Court misinterpreted the meaning of the statement which this appellant made on being first charged by the police with the murders of three persons and the stabbing of five others. He then said: "I did it for the sake of my honour. We quarrelled among ourselves," and the trial Court commented on the fact that the appellant had declined to give evidence on oath and to offer any other explanation of this admission than the one that would naturally be attached to it.

As for the evidence, there was ample evidence upon which the trial Court was justified in reaching its conclusion. All the arguments, which have been so forcibly put before us by Mr. Houry for disbelieving some of the evidence, were also put to the Court below, and we have no reason to think that the Court was misguided in their judgment of it.

We have been much assisted by the remarkable industry of Mr. Houry in presenting the case for both the appellants, at the request of the Court, but we feel no doubt that the appeal of Michael Rodosthenis Karmenos, like that of the other appellant, must be dismissed.

[JACKSON, C.J., AND HALID, J.]

NICOS COSTA NICOLAIDES, *Appellant.*

v.

THE POLICE, *Respondents.*

(*Criminal Appeal No.* 1778.)

Form of Charge—Cyprus Courts of Justice Order, 1927, *Clause* 82—*Courts of Justice Law*, 1935, *Section* 40 (1) (*c*)—*Public Place—Cyprus Criminal Code Order in Council*, 1928, *Section* 162.

The appellant was living in a room in an hotel of which the windows faced the windows of a girls' school. When in a state of undress he noticed he was being observed by a girl looking into his room from one of the opposite windows; he thereupon made indecent gestures to her. He was convicted of committing an act of indecency in a public place under section 162 of the Cyprus Criminal Code Order in Council, 1928.

Held: In a charge under section 162 of the Cyprus Criminal Code the particular public place and the acts alleged to constitute the indecency charged should be specified. In ordinary circumstances an hotel bedroom is not a public place within the meaning of the section.

Appeal from a conviction by the District Court of Nicosia.

Appellant in person.

M. Michaelides for the respondents.

The facts of the case are fully set forth in the judgment of the Court which was delivered by:

JACKSON, C.J.: In this case we feel no doubt that the charge did not comply with clause 82 of the Cyprus Courts of Justice Order, 1927. It was not so framed that the accused would know what facts were alleged to constitute the offence with which he was charged. The particular "public place" should have been specified (*Police* v. *Csapo*, C.L.R. XV (II) 101), and so also should the acts alleged to constitute the indecency charged.

Nevertheless although this particular point must be decided in favour of the appellant, we have still to consider whether the wrong decision of the District Court in this respect resulted in any substantial miscarriage of justice. We are satisfied that it did not. The defendant asked for, and was given full particulars of the offence charged before any evidence in support of it was heard and it is clear that he was in no way prejudiced in his defence. We think therefore that, so far as concerns this particular ground of appeal, the case falls within the principles of section 40 (1) (c) of the Cyprus Courts of Justice Orders and Laws, 1927–1935, and that the mistaken decision of the trial Court on this particular