[HALLINAN, C. J. and ZEKIA, J.]
(January 12, 1955)

EVRIPIDES CHRISTODOULOU of Ktima, *Appellant.*

v.

THE QUEEN, *Respondent.*

(Criminal Appeal No. 1993)

Criminal Law—Motive—Prosecution's evidence to rebut complete absence of.

The appellant was convicted of murder. Evidence was admitted tending to show that the deceased had had an amorous intrigue with the appellant's wife including the existence of a correspondence between them, but there was no evidence that the appellant knew of this correspondence.

Held: The fact of this correspondence but not its contents was admissible to rebut any allegation that the defence might make that there was a complete absence of motive. Such evidence was not likely to create a prejudice against the appellant out of proportion to its evidential value.

Note: The portion of the judgment which deals with the points mentioned in the head-note is at pages 28 and 29.

Appeal dismissed.

Appeal by accused from the judgment of the Assize Court of Paphos (Case No. 2387/54).

S. Pavlides, Q.C.
J. Clerides, Q.C.
E. Ieropoullos } for the appellant.

C. Tornaritis, Q.C., Attorney-General
M. Munir, Solicitor-General
R. R. Denkrash, Crown Counsel } for the respondent.

The judgment of the Court was delivered by:

HALLINAN, C. J.: The appellant in this case was convicted of murder. The trial Court found that the appellant while driving his motor-car had pursued, deliberately run over and killed a young man called Takis Angelou Tembriotis, of Ktima, on the 29th August, 1954.

There are four grounds of appeal, and it seems convenient to discuss them in the following order: the first, that the evidence is insufficient to support the conviction; secondly—and this was a point of law—that certain evidence was wrongfully admitted; thirdly, that there was a miscarriage of justice because in certain respects the case was unfairly presented by the prosecution; and lastly, that the trial Court failed to consider whether the appellant should have been found guilty of an offence less than murder.

The evidence in respect of the charge has been concisely marshalled under four heads: the evidence of eye-witnesses as to the collision and to the events immediately before and after; secondly, the evidence, more or less expert, of witnesses who examined the scene of the collision and of the certain physical objects such as the motor-car and the bicycle; thirdly, the evidence with regard to the conduct and movements of the appellant for some hours preceding the fatality; and lastly, evidence as to motive.

Counsel on both sides agree that upon this appeal we need not consider the statements made by the appellant immediately after the collision as they did not materially affect the findings of the trial Court.

Now, counsel for the appellant, in the course of his able and exhaustive examination of the evidence, has invited us to reject the evidence of the prosecution and the findings of the trial Court under each of the four heads that I have mentioned. It indeed would be astonishing if a court consisting of experienced judges reached conclusions on each of these four heads upon evidence which was insufficient to support such conclusions. One cannot but think, listening to counsel for the defence going through every detail of the evidence and challenging it under each head, that he was in fact inviting this Court to re-try the case. We should like to repeat two passages to which the Attorney-General has referred us in the reports of the Court of Criminal Appeal in England. First, the remark of Mr. Justice Avery in the case of William Cotton (15, Criminal Appeal Reports, 142) that:

> "This Court sits only to determine whether justice has been done and not for the re-trial of criminal cases";

and secondly, a passage from the judgment of Mr. Justice Darling, as he then was, in Seddon's case (7, Criminal Appeal Reports, 207) at page 210:

> "The powers of the Court do not amount to a re-hearing of the case; we interfere only if there has been a wrong judgment on a point of law, or if the verdict of the jury, having regard to all the evidence of a case, is unreasonable in point of fact, or if on a general view of the case in law and fact it appears that there has been a miscarriage of justice".

We do not consider it necessary to consider in this judgment every point and every comment made by counsel for the defence when arguing the ground as to whether the evidence is insufficient to support the conviction. The kernel of the prosecution's case, and therefore the one which it was most vital for the defence to shake, is the evidence of the eye witnesses to the events immediately preceding the collision. These witnesses were the Turkish woman Rasime Sherifali and her daughter Rahmile, and a sanitary inspector who will be

referred to in this judgment as Mustafa. Rasime saw a cyclist coming down Barrows Street from the direction of Pano Pervolia Street in Paphos at about 8 o'clock in the morning, and behind him a motor-car, which was in fact the motor-car driven by the appellant. The vital part of this witness's evidence is thus summarized in the judgment of the trial Court:

> "At the time she saw them they were both on the asphalt part of the road. Barrows Street has a strip of asphalt running down the midle about 10 feet wide. At each side of the road there is a wide berm, at parts 3 to 4 inches lower than the asphalt. This berm is of considerable width—some 3 to 4 feet wide, and along the side of the road there is a pavement with width of about 3 feet. This witness, when she saw the car coming so fast towards her, got afraid for the safety of her grandchildren who were playing there on the berm and called to them to come onto the pavement. Just as she called to the children the cyclist got off the asphalt part of the road. When he had got past the door of the house where she was standing he came onto the berm of the road and at that time the car was about ten yards behind the cyclist.
>
> "When the car came to the same spot it also left the asphalt and went onto the berm behind the cyclist. A short distance along the road from that house there was a heap of shingle on the non-asphalt part of the road filling the left side of the road and extending for a few inches onto the asphalt.
>
> "This witness saw the cyclist go over the shingle followed by the car which, in passing over it, made a considerable noise. She saw the cyclist thus reach a heap of sand near a pit for mixing lime for building. The car, near the pit, knocked over an oil drum and then caught up with the cyclist, running into him from behind and at the same time she saw a cloud of dust rise up which obscured the view. After the cloud of dust had abated she saw the car stop and then reverse and come and stop by the wall of Avni's house, on the other side of the street."

Rahmile, the married daughter of Rasime, hearing her mother call to the children, came out of the house and saw the cyclist going over the shingle. Thereafter her evidence substantially agrees with the evidence of Rasime already summarized. Mustafa, just before the collision, was coming into Barrows Street from the direction opposite to that in which the motor-car and cyclist were travelling. He saw the motor-car and cyclist on their left side of the road and saw the cyclist pass over the shingle. Again his evidence, up to the moment of impact, substantially corroborates and follows the evidence of Rasime.

The defence sought to discredit the evidence of Rasime as regards what happened after the moment of impact by showing how in certain respects her evidence was inconsistent with the evidence of the two Avnis, father and son, who lived near by, and the evidence of the police as demonstrated in the photographs and such real evidence as tyre marks. In the same way and to a less extent it was sought to discredit the evidence of Rahmile. The evidence of Mustafa was chiefly attacked because he had not given a reasonable explanation of how he came to be in Barrows Street at the material time.

The finding of the trial Court concerning the evidence of these witnesses was as follows:—

> "We carefully followed their demeanour in Court and noticed how well their evidence stood up to cross-examination, though, naturally, there are here and there some discrepancies such as one would expect from witnesses, we are quite satisfied that the respective versions of what they saw were true and substantially accurate."

Regarding the attack on the evidence of the two women the Court said this: "The evidence of the two Turkish women eye-witnesses is not so valuable regarding what they saw from a distance or through a cloud of dust as it is of what they saw close to and to which their attention was directed." It is quite clear that when the trial Court stated that it accepted the evidence of these eye-witnesses it accepted so much of the evidence as is set out in the Court's judgment. The inconsistencies and discrepancies in the evidence, such as they are, were brought to the attention of the trial Court by counsel for the defence in a lengthy and very careful address at the conclusion of the evidence. Again in this appeal counsel have drawn our attention to the evidence of the two women concerning events immediately after the collision which he submits are in conflict with the evidence of other witnesses with the real evidence and with the facts. After carefully considering all the submissions of counsel for the defence regarding the evidence of these eye-witnesses, we have come to the conclusion that there was nothing in the evidence which should have prevented the trial Court from reaching the conclusions that it did upon this part of the evidence.

In considering the relevancy of the evidence based on an inspection of the *locus in quo* and the physical objects which have been produced, it is necessary to look at the evidence of the appellant as to what happened in Barrows Street. His evidence has been concisely summarized by the trial Court in the following passage:

> "When he turned the corner into Barrows Street, he saw a man on a bicycle, about 30 yards or so ahead of him, going in the same direction and in the middle of the road. He said that he kept to the correct side of

the road, as usual; that he sounded his horn; the cyclist rode on, going more over to the right side of the road. The accused said that he proceeded on, the left side wheels of his car about 25 to 30 cms. off the asphalt on the left side berm of the road, and that he was going at about 25 m. p.h. That he saw shingle scattered about on the road and that the left wheels of his car passed over the shingle. He said that there was a woman further down at the edge of the road and that then the cyclist was about 4 to 5 yards ahead of him, to his right. He said that he saw the cyclist turn his head to the left once or twice and then, he said —...."All of a sudden, he crossed the road in front of me and the collision took place."— "He said that he remembers swerving to the left and then to the right. He said that he applied his brakes, stopped his car 2 to 3 yards away from the corner of the far side of the hospital street turning."

The witnesses most concerned with the presentation and interpretation of the real evidence were the L.R.O. clerk Darbaz, who prepared the plan showing the whole area from the houses of the appellant and the deceased in Koritza and Cunningham Streets to the scene of the collision in Barrows Street; the evidence of Police Constable Baltayian, who took photographs and made the sketch plan, Exhibit 10, at the actual scene of the collision; the evidence of Inspector Saadetian, who examined the *locus in quo* and all objects involved in the collision; and the evidence of Mr. Ioannides, a retired Police Inspector, who was called by the defence to give his interpretation of the real evidence.

From a careful perusal of the judgment of the trial Court it would appear that certain of its conclusions from the evidence were common ground or not seriously disputed:— it held that there were no brake marks near the point where the appellant alleges his car was when the cyclist attempted to cross the road; and that the first and only brake marks (shown at D on the sketch plan Ex. 10) occur beyond the turning from Barrows Street to Hospital Street. There is no dispute also that the pool of blood and some bone were found (at points A & K of the sketch plan Ex. 10) where Barrows Street turns into Hospital Street, and this was the place where the deceased was found lying.

Three matters concerning the real evidence upon which the Court reached conclusions were disputed by the defence. First as to tyre marks. Police Constable Baltayian gave evidence of tyre marks which corresponded to the appellant's motor-car continuing in a straight line (near the edge of the asphalt) first between the heap of shingle and the lime pit (point E on sketch plan Ex. 10) and again between the lime pit and the mulberry trees (point G of the sketch plan Ex. 10). The defence called

Dr. Liassides who deposed that he had driven his car off the asphalt before reaching the lime pit and on to the heap of shingle in Barrows Street after the collision and before the police made their inspection of the *locus in quo*. It is difficult to see why this witness should have driven off the asphalt until after he had passed the lime pit. It is most unlikely that his tyre marks off the asphalt would run parallel to the asphalt. We cannot say that it was unreasonable for the Court to accept P. C. Baltayian's evidence on this point.

Secondly, the trial Court found that the motor-car had struck an oil drum before the impact. The defence have pointed out that the oil drum was not shown on the sketch plan or in the photograph, nor was it seen by Inspector Saaditian or by an advocate, Mr. Mavronicolas, called by the defence. Sgt. Kaminarides and Mr. Mavronicolas state that Baltayian had taken a photograph on the day of the collision looking up Barrows Street showing the shingle and beyond to the mulberry trees. It is submitted that this would have shown the oil drum if it were there. The photograph was not produced but another was taken showing a similar view the next day. There are numerous dents in this oil drum which make it impossible to say where exactly it was hit. In our view the trial Court on the evidence of the witnesses called by the Crown who were present when the collision occurred or shortly after, and also on the evidence of P. C. Baltayian, who noted the drum in his rough notes at the time of his inspection, and of Sgt. Kaminarides who all stated they saw the drum, the trial Court had sufficient evidence to find as it did that the motor-car collided with the oil drum.

Lastly, with regard to the relative position of motor car and bicycle at the time of impact the trial Court said:

> "We are aware that opinions given bu so-called experts in these matters are not usually conclusive and that there is always a wide margin of error. Without, however, wishing to set ourselves up as experts, we would, having the nature of the damage to the bicycle in mind, prefer to believe that it was struck from behind, but we would not care to specify from what angle."

Mr. Ioannides, who was called by the defence, endeavoured to show from inspection of the bicycle and the motor-car that the bumper of the car hit the bicycle on the left side of the back wheel and that the bumper did not first hit the back tyre and rim of the cycle. From a consideration of the evidence and an inspection of the bicycle we consider that the evidence of this witness is quite unacceptable and that the trial Court was right in its finding.

The real evidence and the inferences to be drawn therefrom support and are consistent with the evidence of the eye-witnesses to the collision and the events im-

mediately preceding the collision. Moreover, this evidence tends to render the appellant's account as to how the collision occurred improbable. If, as the appellant alleges, he had blown his horn and the cyclist had looked round and seen the motor-car approach, it is most improbable that the cyclist, even if he attempted to cross before the car approached, would attempt to do so when the car was actually upon him. If then he had attempted to cross when the car was still some distance, say 20 or 30 yards off, the appellant should have had sufficient thinking time to apply his brakes at any rate at the point of impact; whereas, beyond controversy, the brakes were not applied for some 30 yards after the collision. The fact that the motor-car hit the cyclist from behind and continued straight on for 33 yards before applying his brakes, supports the Crown's submission that his conduct was deliberate.

The Crown called the evidence of the deceased's mother and brother, of his cousin, Nicos Socratous, and Savvas Roussos, to show that the appellant an hour or so before the collision had passed down Cunningham Street and had peered into the house where the deceased lived; afterwards had parked his car outside his own house and kept the house where the deceased lived under observation. There is an open space of 175 yards between the appellant's house in Koritza Street and the deceased's house in Cunningham Street. The appellant admitted that he had left his house at 7 that morning, but he denied that he had gone past the deceased's house. He says that he went down the track which joins Koritza and Cunningham Streets and turned left, whereas to reach the deceased's house he would have to turn right. He further admits following this route when going into Barrows Street on the occasion of the collision. He called the oculist, Dr. Frangos, to testify as to his defective vision. The oculist's evidence only shows that the appellant had abnormally long sight with a slight astigmatism. He also called Dr. Nicolaides and that doctor's nurse, Paraskevou, to corroborate his allegation that on both occasions when he left Koritza Street in his car on that morning he did so in order to visit the clinic of Dr. Nicolaides who was attending to a wound in his foot. The evidence of the doctor and the nurse is most unconvincing, and the trial Court would certainly have been justified on the evidence in coming to the conclusion that if the appellant had visited the doctor's clinic early that morning and had subsequently set out ostensibly to visit it again, these excursions to the clinic were little more than a pretext to cloak his real design. Unfortunately the trial Court has stated its conclusions on this part of the evidence in a sentence which is not free from ambiguity. The trial Court, after considering the evidence as to the appellant's movements that morning, concluded: "We accept their evidence as substantially correct in view of our finding on the cause of the collision itself." Of

course, if the trial Court had concluded from the evidence of the eye-witnesses to the collision and upon the real evidence that the appellant had deliberately run down and killed the deceased, and because of this conclusion decided that the evidence regarding the appellant passing the deceased's house earlier in the morning and keeping the deceased's house under observation was true, then the Court's acceptance of this latter evidence puts the case no further; for, having decided the facts in issue (namely, that the appellant had deliberately killed the deceased) in favour of the Crown, it is mere surplusage to find facts which corroborate the facts in issue.

However, the meaning and effect of a judgment must be gathered from reading it as a whole. Just before concluding the judgment the trial Court states:

> "We were satisfied that the accused knew the deceased at any rate by sight; that he could see reasonably well with his glasses on, that he always wore; that he was waiting for the deceased to come out from his house on the morning of the 29th August. We think that he had already formed the intention of going after him in his car, whether the deceased was walking or riding a bicycle and if opportunity would arise, of running into and killing him".

The trial Court appears to have accepted as proved the actions of the appellant driving past the deceased's house and of the appellant remaining on the verandah of his house while his car was parked outside. When this conduct is set beside the extraordinary conduct of the appellant in Barrows Street immediately before the collision, the Court finds that this conduct in Koritza Street and Cunningham Street earlier in the morning is consistent with that of a man who was seeking an opportunity to run down and kill the deceased. In other words, the Court accepted the evidence of the prosecution witnesses about the appellant passing the deceased's house and of the appellant being on his verandah with the car outside, and then, taking into account the rest of the evidence, accepted the statements of the prosecution witnesses that the appellant peered into the deceased's house as he passed, and while on his verandah kept looking across at the house of the deceased, for his intent was clear not only from his action in passing the deceased's house, and staying on the verandah of his own house, but from his later conduct immediately before the collision.

The last head of evidence which remains to be considered in reviewing the insufficiency of the evidence is that regarding motive. We accept the submission of the appellant's counsel that if the case for the Crown, apart from the evidence as to motive was too weak to convict, the evidence of motive in this case could not cure that weakness. But in our view the case for the prosecution, apart from any evidence as to motive, was a strong one;

and it is well-established that the Crown can prove its case without proving motive.

Evidence was adduced to suggest motive on two matters: First, that the wife of the appellant and the deceased were in correspondence. There is no evidence that this fact was known to the appellant. The inference from this evidence is that the deceased and the wife of the appellant may well have been conducting an amorous intrigue. The other evidence of suggested motive concerns an incident that took place at a dance at a place called "Mousalla" on the 31st July. It is common ground that while the appellant and his wife with other persons were attending this dance the deceased, without the permission of the appellant, took the appellant's wife and danced with her, and the appellant said: "Only in Paphos this sort of thing can happen. People can take a man's wife to dance without asking permission." The prosecution witnesses, Roussos and Agamemnon Ioannou, a school teacher, stated that the appellant was so angry at the deceased's conduct that he wanted to throw a bottle at the deceased, and that when his wife returned to the table he spoke to her in such a way that she was crying. This part of the prosecution's evidence was denied by Mrs. Kolnakou, who was present and whose son is married to the natural daughter of the appellant. The trial Court rejected the version of the appellant and Mrs. Kolnakou and accepted that of the prosecution witnesses. We see no reason why the trial Court should not have so found.

Counsel for the appellant has submitted that as a matter of law the trial Court erred in admitting the evidence that the deceased and the wife of the appellant were in correspondence. It is submitted that since there was no evidence of the appellant being aware of this correspondence, there was no nexus to connect the intrigue between the deceased and the appellant's wife on the one hand and the suggested motive of the appellant's jealousy and anger on the other. The existence of the intrigue without evidence that the appellant knew of it was, it is submitted, too remote a circumstance for the Court to draw an inference that the appellant's will may have been moved by such circumstances to murder the deceased.

We agree with counsel for the appellant that there is a gap between the fact that an intrigue existed between the deceased and the appellant's wife and the inference that this was the circumstance which motivated the appellant to kill the deceased. But, in considering the type of circumstantial evidence admissible with regard to motive it must be remembered that even if the prosecution fails to prove a motive it may wish to rebut an allegation of the defence that there was complete absence of motive. Counsel for the appellant has referred us to this passage in Wills on Circumstantial Evidence, 6th Edition, 62: "The entire absence of surrounding circumstances which on the ordinary principles of human nature reasonably may be

supposed to have acted as an inducing cause, is justly regarded, whenever upon the general evidence the imputed guilt is doubtful, as affording strong presumption of innocence."

On issues as to motive, evidence may be led for three purposes: Evidence by the Crown to prove motive; evidence by the defence to prove the absence of motive; and evidence by either party to rebut the evidence of the other. In the case of *Ellwood* (1 Cr. App. Reports, p. 181) Channel, J., in his judgment states: "There is a great difference between absence of proved motive and proved absence of motive." Now, in the present case the Crown, even if the evidence of motive which it led was weak, and even if taken at its lowest value, it served to rebut any allegation that the defence might make that there was a complete absence of motive.

It seems to us expedient that considerable latitude should be allowed in criminal cases for admitting evidence of circumstances tending to suggest a motive. Of course, if the admission of such evidence tends to create prejudice against an accused person out of all proportion to its evidential value, a Court in its discretion should exclude it. But we do not consider that the admission of the evidence regarding the letters in this case was likely to create a prejudice out of proportion to its evidential value. If, as a matter of law, evidence of this sort were to be excluded, one could easily imagine an accused person being embarrassed in his defence: For example, if A and B are jointly charged with the murder of X and it is part of A's defence that the murder was committed not by him but by B, surely A must be allowed to adduce evidence that there was an intrigue between X and the wife of B. even though A is unable to prove that B was aware of this intrigue.

The Attorney-General has referred us to several cases where circumstantial evidence was admitted although there was no clear nexus between the circumstances put in evidence and the inference which it was sought to draw from the circumstances. In particular, the Attorney-General has referred us to the case of *R. v. Clewes* (172 E.R., 678). In that case A was indicted for the murder of H. It was suggested by the prosecution that A had murdered H because he had procured H to kill P and was afraid that his action in doing so would be discovered. Evidence was admitted that A had expressed enmity against P and that H was the person by whom P had been murdered; here there was no evidence but only an inference that A had procured H to kill P.

For the considerations we have mentioned and upon the authorities that have been cited we are of opinion that the evidence as to the letters exchanged between the deceased and the wife of the appellant was rightly admitted.

We are now in a position to deal with the ground of appeal that the evidence was insufficient to support the conviction. We have considered the conclusions of the trial Court under each head and find them reasonable. The only difficulty is the ambiguity of its findings concerning the conduct of the accused in keeping the deceased's house under observation. Even if these conclusions are interpreted in a manner most favourable to the appellant and the trial Court in returning its verdict is taken as relying solely on the evidence of the eye-witnesses to the collision and the events immediately prior thereto, together with the inferences to be drawn from inspection of the real evidence, we consider that there was sufficient evidence to support the conviction.

We now come to the ground of appeal that the trial was unsatisfactory and resulted in a miscarriage of justice.

There are three matters of complaint regarding the evidence about the *locus in quo*. The police are alleged to have suppressed a photograph that we have already referred to in this judgment when discussing the presence or absence of the oil drum. We are unable to understand, having regard to the findings of the trial Court concerning the oil drum (findings based on sufficient evidence), how this photograph even if it existed and was produced could make any material difference. The defence also alleges that certain objects on the ground were photographed from above and that these photographs were suppressed; this matter was fully considered in the judgment of the trial Court which found, as it was entitled to find, that the taking of such photographs had not been proved. It was not clear to the trial Court and it is not clear to us upon appeal how these photographs, even if they existed, could have materially altered the verdict of the trial Court. The defence has severely commented on the alleged shortcomings of the sketch plan (Exhibit 10) prepared by P. C. Baltayian. We agree with the opinion of the trial Court that the purpose of this plan was to illustrate the evidence given by the witnesses as to the physical features of the *locus in quo* and as to the position of the various objects shown thereon; the plan appears to be sufficiently accurate and amply fulfils the purposes for which is was made. The defence have not been able to show us whether the trial Court was in any way misled by anything on this sketch plan. Some play has also been made on behalf of the appellant with the fact that the red reflector of the deceased's bicycle which was found on the asphalt near the pool of blood was not seen by the Inspector of Traffic, Mr. Saadetian, or P. C. Baltayian and was not produced at the preliminary inquiry. It is sufficient to say that the vigilance of defence counsel adequately made up for any deficiency or failure on the part of the police with regard to this exhibit and that the facts regarding this piece of evidence were before the trial Court.

The other allegations of unfairness were laid not at the door of the police but of the Crown in conducting the prosecution. It is submitted that the Attorney-General in opening the case presented it as one in which the appellant had a very strong motive, that this strong motive was never established and the trial was conducted in an atmosphere of suspicion to the prejudice of the appellant. We have read the record of the Attorney-General's opening address and he does not appear to have laid any great stress on the evidence as to motive which he was to lead. Moreover it must be remembered that the tribunal in this case was not a jury who might be prejudiced by popular emotion but a Bench of experienced judges. We cannot accept that in reaching their conclusions they were influenced by any considerations other than those arising from facts established by the evidence.

Lastly, it was submitted that the trial was rendered unfair and the Court prejudiced by the fact that the evidence of the woman Vassilia Haralambous was called by the Court and not called by the Crown as part of their case. This woman Vassilia made a statement to the police on the day after the collision: she lived near the scene of the accident, she heard the sound of the horn of a car and her child told her that a car had knocked down a dog. She heard shouts and ran to the scene of the collision. She saw the injured man on the ground and she saw the appellant holding a piece of paper and writing something. The Crown considered her evidence immaterial and did not call her at the preliminary inquiry. The defence asked the prosecution for a copy of the woman's statement to the police which request was refused by the prosecution on the authority of *Bryan and Dixon*, 31st Criminal Appeal Reports, p. 146. The witness was available for the defence but they did not call her; it has been laid down in the case of *Adel Mohammed Dabba* v. *The Attorney-General, Palestine*, 1944 (2) A.E.R., p. 139, that it is a matter for the discretion of the prosecutor whether he calls or does not call a witness. The appellant apparently wanted this woman's evidence because she said that she had heard the sound of a horn but the defence did not cross-examine the prosecution witnesses on this point, and the woman, when called by the Court, said she could not remember hearing it. Her statement to the police was produced and put in at the trial. In the circumstances, we are unable to see how the prosecution in refusing to call this woman, or to make available for the defence before the trial her statement to the police, did anything which is contrary to law or to the practice in criminal trials or unfairly prejudiced the appellant in his defence.

The last ground of appeal is that the trial Court failed to address their minds to any alternative verdict in this case entailing lesser criminal liability than murder. It is only necessary and proper for the Court to consider the alternative verdict of manslaughter if such an alternative

1955
Jan. 12

EVRIPIDES CHRISTODOULOU
v.
THE QUEEN

verdict might reasonably arise out of the evidence which the Court accepts; this is clear from the judgment of Lord Chancellor in *Mancini* v. *The Director of Public Prosecutions*, 1941 (3) A.E.R. 272. In the present case once the Court had rejected the appellant's version as to how the collision occurred, they were left with the evidence of the two Turkish women and of Mustafa, and with the inferences to be drawn from the real evidence concerning the *locus in quo* and the physical objects involved in the collision. In our view upon the evidence which the trial Court accepted as true there was no reasonable ground upon which the Court could base itself in returning a verdict of manslaughter. There was no room to find that the collision was due to accident and negligence. The appellant's car was almost new and mechanically sound. The appellant's eye-sight was normal for a man of his age and there was no other traffic on the road except the deceased on his bicycle in front of him. There is no evidence that his mind had been distracted in any way; on the contrary the evidence which the Court accepted revealed what could only be described as a deliberate pursuit of the deceased until he was run over.

We have now considered all the grounds of appeal. In our view the appellant received a fair trial and was ably defended by his counsel who have raised every possible point in his defence both at the trial and here upon appeal. We are satisfied that he was convicted upon sufficient evidence and no ground has been established for upsetting his conviction.

The appeal is therefore dismissed.

1955
Jan. 15

GEORGHIOS KYRIAKIDES
v.
THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND TOWNSMEN OF NICOSIA TOWN.

[HALLINAN, C. J. and GRIFFITH WILLIAMS, J.]
(Jan. 15, 1955)

GEORGHIOS KYRIAKIDES of Nicosia, *Appellant*,

v.

THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND TOWNSMEN of Nicosia Town, *Respondents*.

(Case Stated No. 97)

"Place of Public Resort"—Meaning of in Nicosia Municipal Corporation Bye-law 1938, Bye-law 2.

The appellant cooked "kebab" in a private building; members of the public did not consume it on the premises but bought "kebab" and took it away. The appellant was convicted under the Nicosia Municipal Corporation Bye-law 1938, Bye-law 124A (1) (b) of cooking food in a place of public resort and within 100 feet of the street without a licence.

Held: Upon a case stated, the definition of "place of public resort" in Bye-law 2 does not include premises privately owned to which the public resort merely for the purpose of buying an article and carrying it away.

Appeal allowed.