[BOURKE, C.J., ZEKIA AND ZANNETIDES JJ.]

REGINA,

v.

NICOS SOFOCLEOUS (No. 1).

(*Criminal Appeal No.* 2081).

Criminal Procedure—Interpretation of evidence to accused—Criminal Procedure Law, Cap. 14, *section* 63 (1).

Section 63 (1) of the Criminal Procedure Law, Cap. 14, provides that " Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language which he understands :

Provided that when he is defended by an advocate interpretation may, with the consent of the advocate and the approval of the court, be dispensed with ".

The majority of the witnesses for the prosecution at the preliminary inquiry and at the trial of the accused before the Special Court gave their evidence in the English language and there was no interpretation into Greek for the benefit of the appellant, a Greek Cypriot, who had no knowledge of English except for a few common words. The appellant was defended by counsel before the committing Justice and at his trial. Interpretation was not dispensed with at the trial in accordance with the proviso to sub-section (1) of section 63.

Held : (1) The provision of section 63 (1) of the Criminal Procedure Law, Cap. 14, as to the interpretation of the evidence which is not understood by the accused person, was mandatory unless dispensed with in accordance with the proviso to that section.

Observations of Lord Reading, C.J. in *R.* v. *Lee Kun* (1916), 85 L.J.K.B., 515 cited with approval.

(2) The absence of interpretation was an irregularity which vitiated the proceedings.

(3) Had the appellant been given the benefit of interpretation at the preliminary inquiry so that he might understand the evidence to be given and the case to be made against him at his trial, it might possibly have been considered that no substantial miscarriage of justice had occurred.

Conviction set aside.

New trial ordered.

Case referred to :

R. v. *Lee Kun* (1916) 85 L.J.K.B. 515 ; (1915) 11 Cr. App. R. 293.

Appeal against conviction.

The appellant was convicted by the Special Court in Nicosia (Case No. 465/57) on the 8th February, 1957, of the

offence of discharging a firearm at a person, contrary to Regulation 52 (*a*) of the Emergency Powers (Public Safety and Order) Regulations, 1955 to (No. 14) 1956, and was sentenced by Shaw, J. to death.

Sir Panayiotis Cacoyiannis (*A. Myrianthis* with him) for the appellant.

M. Griffith-Jones for the Crown.

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

BOURKE, C.J.: The appellant was convicted by the Special Court of the offence of discharging a firearm at a person contrary to Regulation 52 (*a*) of the Emergency Powers (Public Safety and Order) Regulations, 1955 to (No. 14) 1956, and was sentenced to death. At the time of the offence he was seventeen years of age. At his trial a considerable body of evidence was heard over a period of four days; sixteen witnesses testified for the prosecution and the appellant elected to make an unsworn statement in which he protested innocence and briefly confirmed the contents of an earlier statement given to the Police. At the preliminary inquiry fourteen witnesses were heard.

An unusual and disturbing feature of the case is that from beginning to end of the whole proceedings the appellant did not understand what was said in evidence by the witnesses testifying against him. The appellant speaks the Greek language and has no knowledge of English except for a few common words. With the exception of the witnesses Neoptolemos Adamides and Paul Pelaghias before the committing Justice and Neoptolemos Adamides at the trial, who testified in Greek, all the other witnesses heard at the committal proceedings and the trial gave their evidence in the English language and, as is not disputed, there was no interpretation into the Greek language for the benefit of the appellant.

The sole ground of appeal on a point of law is stated as follows in the notice of appeal:

> "Contrary to section 63 of the Criminal Procedure Law Cap. 14 the evidence of all witnesses who gave evidence at the trial was, with the exception of the evidence of Neoptolemos Adamides, given in the English language which was not understood by the appellant who is a Greek Cypriot and was not interpreted to him in the Greek language which he understands as required by the provisions of the said section of the Criminal Procedure Law Cap. 14. Interpretation was not dispensed with in accordance with the proviso to sub-section 1 of the said section".

It is submitted that as a result the appellant suffered prejudice. Section 63 (1) of the Criminal Procedure Law, Cap. 14, reads as follows:

" Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language which he understands :

Provided that when he is defended by an advocate interpretation may, with the consent of the advocate and the approval of the Court, be dispensed with ".

It is also pertinent to refer to the relevant portion of section 91 of the same Law, which governs the procedure at preliminary inquiries. Paragraph (*b*) thereof reads :

" The Judge shall proceed to take the evidence of the witnesses for the prosecution, in the manner in sections 94 and 95 of this Law provided, in the presence of the accused and, whenever any evidence is given in a language not understood by the accused, the provisions of section 63 of this Law shall be applied :

Provided that, if the accused does not conduct himself properly, the provisions of sub-section (2) of section 62 of this Law shall apply *mutatis mutandis* to this paragraph ;".

As to the preliminary inquiry there is no allegation of any irregularity raised as a ground of appeal nor was any submission put forward before the trial Court that the procedure was defective and the order of committal was bad. The appellant was represented before the committing Justice by Mr. Myrianthis and at his trial by Sir Panayiotis Cacoyiannis and Mr. Myrianthis who have also appeared on this appeal. There is nothing upon the written record of the committing Justice to show that the necessary consent and approval were given under section 63 (1) to dispense with interpretation ; but there is no suggestion or reason to conclude that there was non-compliance with the law and the presumption is that the appellant's advocate did consent under the provision to the sub-section and the Justice gave his approval. The fact remains that the evidence at that stage of twelve of the fourteen witnesses who testified in English was not translated for the appellant.

On the hearing of this appeal we permitted two affidavits to be read, namely, that of the appellant and that deposed to by his senior counsel. There is no reason to disbelieve that the appellant's language is Greek and that he does not understand English sufficiently to comprehend what was said in that language at his trial. It is not in dispute that at the trial and preliminary inquiry there was no interpretation of the evidence of the English-speaking witnesses. The appellant deposes in paragraphs 4 to 6 of his affidavit as follows :

" 4. During the said trial several witnesses gave evidence. They were examined, cross-examined and re-examined before the Special Court. All the said

witnesses, with the exception of Neoptolemos Adamides, gave their evidence during examination, cross-examination and re-examination in the English language without any translation or interpretation of such evidence in the Greek language.

5. With the exception of a few common words I have no knowledge whatsoever of the English language and I did not understand nor was I able to understand what the said witnesses stated before the Court during the trial of my case nor was what had been stated by such witnesses explained to me or understood by me. I never gave my consent nor was I asked to give my consent for the non-interpretation of the evidence of the said witnesses nor did I know whether or not I was entitled to such interpretation or translation.

6. During the preliminary inquiry of the same case before the Special Court of Limassol which took place on 9th and 10th January, 1957, all the witnesses who gave evidence on oath with the exception of Neoptolemos Adamides and Paul Pelaghias deposed in the English language and no translation or interpretation of their evidence was made to me ".

By his affidavit the appellant's counsel, Sir Panayiotis Cacoyiannis, testified to the length of the trial which took place on the 4th, 5th, 6th and 7th of February, judgment being delivered on the 8th February ; paragraph 3 of the affidavit reads :

" During the said trial several witnesses gave evidence who, to my best recollection and belief, with the exception of Neoptolemos Adamides, gave their evidence in their examination, cross-examination and re-examination in English. To the best of my recollection and belief the evidence of all witnesses who gave their evidence in English was not translated or interpreted to the appellant nor the advocates of the appellant asked for such translation or interpretation nor the consent of the advocates was sought or expressed to such non-translation or non-interpretation nor His Lordship the trial Judge expressed his approval that translation or interpretation of the evidence be dispensed with ".

There is nothing upon the record of the trial to indicate that there was any consent or approval given to the dispensing with interpretation and admittedly there was no expressed consent or approval. Is it reasonable and sufficient for the purposes of the proviso to section 63 (1) that the respective elements required of consent and approval should be taken to be implied in all the circumstances of the trial ? No such proposition was argued before this Court ; but it was submitted that there should be no interference unless it could be said that there was grave

prejudice caused. It is undoubtedly surprising, to say the least of it, that the appellant's experienced advocate who, as learned Crown Counsel points out, must have known that the appellant spoke only Greek, should not have been alert to protect his client's interests by applying for interpretation. On the other hand, Sir Panayiotis has stated at the Bar of this Court that as it happened it never occurred to him to apply; he overlooked the matter and did not consent to dispense with interpretation. It is suggested that the learned and very careful and experienced Judge also overlooked section 63 (1) or he would have enquired as to the attitude of defence counsel and would have expressed the necessary approval if he thought interpretation could safely be dispensed with. Crown Counsel has said that it would appear that the Judge did not address his mind to the question; he suggested that it may have been thought that the appellant spoke sufficient English to be able to follow and understand the evidence of the English-speaking witnesses. However that may be, we feel that had the learned Judge realised that the appellant did not understand the evidence given in the English language at the preliminary inquiry and that interpretation had been dispensed with before the committing Justice, it would have been most unlikely that he would have approved of a similar course being taken at the trial in a serious case such as this.

In the case of R. v. *Lee Kun*, 85 L.J.K.B. (1916) 515, which has been referred to by Sir Panayiotis, a Chinaman who was ignorant of the English language was convicted of murder and sentenced to death. He was represented by counsel at his trial. No application was made at the trial for translation of the evidence given in English. On appeal it was argued that a conviction of a prisoner who has been unable to appreciate the evidence given against him is bad whether he is defended by counsel or not. In the result, having regard to the particular facts and circumstances of the case, and whether there was irregularity or not, it was held that no miscarriage of justice had actually occurred and the appeal was dismissed. But it is evident from the judgment that the Court of Criminal Appeal was influenced in its decision by the fact that the evidence had been interpreted for the appellant at the preliminary proceedings before the committing Magistrate. It was recognised also that practice at the time varied considerably and that—" there is no authority in English law for the proposition that the omission to translate the evidence, in the circumstances under consideration, is an irregularity, or is an irregularity which vitiates the proceedings ". In Cyprus of course the position differs in that we have the mandatory provision of section 63 (1) of Cap. 14 as to interpretation of the evidence which is not understood by an accused; then there is the proviso

creating an exception where an accused is defended by an advocate and enabling interpretation to be dispensed with provided the advocate consents and the Court approves. We quote the following passage from the judgment in *Lee Kun*'s case and commend its wisdom to all upon whom it falls to follow and apply the provisions of section 63 (1) :

> " We have come to the conclusion that the safer, and therefore the wiser, course, when the foreigner accused is defended by counsel, is that the evidence should be interpreted to him, except when he or counsel on his behalf expresses a wish to dispense with the translation, and the Judge thinks fit to permit its omission. The Judge should not permit it unless he is of opinion that, because of what has passed before the trial, the accused substantially understands the evidence to be given and the case to be made against him at the trial. To follow this practice may be inconvenient in some cases, and may cause some further expenditure of time ; but such a procedure is more in consonance with that scrupulous care of the accused's interests which has distinguished the administration of justice in our criminal Courts, and therefore it is better to adopt it. No injustice will be caused by permitting the exception above mentioned. Speaking generally, Police Court proceedings will have taken place and the evidence will there have been translated to the accused, before he has to stand his trial upon the indictment, so that at the trial he knows the case to be made against him. He can instruct his counsel upon it, and he may leave his defence in counsel's hands without having the evidence again translated to explain to him that which he already knows ; and there seems no reasonable objection to such a course. If there should be a substantial departure from the evidence recorded in the depositions, the Judge would take care, even if counsel omitted to ask it, that the variation or addition should be translated to the accused, so that he might throw any further light upon the case. The importance of the translation of any new or additional evidence cannot be doubted ; such evidence may have a special significance to the accused, and may enable him to recollect facts till then forgotten, or to give additional information to his counsel for the purpose of cross-examination. Further, he may wish to make a statement dealing with the evidence against him instead of himself giving evidence, and he should have all information for that purpose. Or, again, the variation from or addition to the evidence originally given at the Police Court may have a bearing upon the sentence. We think, therefore, that any substantial variation from the story originally told in the depositions, or any additional evidence, should be translated

to the accused, even though he may be indifferent upon the matter or might not wish it ".

Turning to the question as to whether there has been an irregularity in the instant case, we feel impelled to the conclusion that the answer must be in the affirmative. We are not prepared in face of what is before us to assume, nor are we invited to assume, that because at a trial the advocate for the accused remains silent on the point and the Judge says nothing one way or the other, there has in fact been consent on the part of the advocate and approval by the Court to a dispensing with interpretation that is otherwise required by law. In the present case the official record is transcribed from the verbatim shorthand notes of the trial and it discloses that there was no reference from beginning to end as to consent to or approval of a dispensing with interpretation. There is no contest about it that nothing whatsoever was said on the subject. By his affidavit the appellant's advocate deposes that he did not express consent and that the trial Judge did not express approval. Sir Panayiotis is emphatic from the Bar that he did not consent and that he overlooked the provisions of section 63 (1) of Cap. 14. Moreover, we are of the opinion that had the learned Judge really directed his mind to the question of approval, he would have been at characteristic pains to enquire and discover that the evidence taken at the preliminary inquiry, with the exception of that of the two witnesses who testified in Greek, had not been translated for the appellant, and to note that some additional evidence was being led at the trial. It may well be that there is substance in what Crown Counsel, who did not appear at the trial, has suggested that the learned Judge was left under the impression, since most unfortunately no reference was made to the absence of interpretation by counsel for the defence, that the appellant sufficiently understood the evidence that was being given in the English language. As to the submission by Mr. Griffith-Jones that no substantial miscarriage of justice has occurred, it is possible that we might have been persuaded to agree had, as in *Lee Kun's* case, the appellant been given the benefit of interpretation at the preliminary inquiry so that he might understand the evidence to be given and the case to be made against him at his trial. As it is, we cannot accept the submission; we think that the justice of the case demands the order which we propose to make.

The appeal is allowed and the conviction and sentence are set aside. In virtue of the provisions of section 142 (1) (*d*) of the Criminal Procedure Law we do order a new trial before the Special Court composed of another Judge.

Conviction quashed.
New trial ordered.