

ANDREAS PANDELI ATALIOTIS,

Appellant,

v.

THE POLICE,

Respondents.

ANDREAS
PANDELI
ATALIOTIS
v.
THE POLICE

(*Criminal Appeal No. 2684*)

Criminal Procedure—Appeal—Default of appearance at the hearing of the appellant and his counsel—Due to the omission of the appellant's agent to inform counsel of the day of the hearing—Although notice of the hearing of the appeal was duly served on the appellant's agent and address for service at Nicosia—Criminal Procedure Law, Cap. 155, section 143 (3)—Discretion of the Court to dismiss the appeal in default of appearance of the appellant and of his counsel—Factors to be considered.

Criminal Procedure—Address for Service.

Observations of the High Court as to the arrangements which should be made by, and generally, as to the duties and responsibilities of, those and especially advocates who give or accept a lawyer's office or any other place as address for service.

Both the appellant and his counsel, of Limassol, were absent on the day of the hearing of this appeal, due to the omission of the appellant's agent at Nicosia to inform counsel appearing for the appellant that the appeal would be coming on for hearing on that day, although notice of the hearing was duly served on the said agent. The High Court having ascertained the cause of the appellant's default and after considering the circumstances of the case as they appear from the record, including the nature of the charge and all proceedings thereon.

Held : That there is no sufficient reason for not disposing of the appeal under section 143 (3) of the Criminal Procedure Law, Cap. 155, by dismissing the appeal both regarding conviction and sentence.

Appeal dismissed.

Per curiam : We take the view that advocates from other districts, when they give a lawyer's office or any place in Nicosia as address for service, they must be sure that they have made sufficient arrangements for the agent here to take the responsibility involved. On the other hand, any person in charge of an office given as an address for service for Court documents connected with proceedings, presumably with his knowledge and consent, must bear in mind that there are certain responsibilities involved, which he must bear.

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ANDREAS
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Appeal against conviction and sentence.

The appellant was convicted on the 24th October, 1963, at the District Court of Limassol on one count of the offence of driving motor car dangerously contrary to ss. 5 (1) and 13 of the Motor Vehicles and Road Traffic Law, Cap. 332, as amended by Law 2 of 1962 and was sentenced by Malachtos, D.J., to pay a fine of £10 and he was further disqualified from holding or obtaining a driving licence for a period of six months from the date of the order.

No appearance for the appellant.

S. A. Georghiades for the respondents.

WILSON, P. : We have caused enquiries to be made in the absence of counsel for the appellant. We have ascertained that the notice required to be served on the appellant has had to be served on his advocate's agent here in Nicosia on the 15th November, 1963. The information we now have is that appellant's advocate, who comes from Limassol, says he was not informed by his agent here in Nicosia that the appeal would be coming on to-day.

Counsel for the respondents is present in Court. Have you anything to say Mr. Georghiades ?

Mr. Georghiades : No, Your Honour.

WILSON, P. : In these circumstances, Mr. Justice Vassiliades will deliver the judgment of the Court.

VASSILIADES, J. : This is an appeal from a conviction and sentence of the District Court of Limassol in a road traffic case. The appellant was charged of dangerous driving in the town of Limassol on the 2nd May, 1963. Upon a plea of not guilty the case proceeded to trial.

The Court after taking the evidence for the prosecution, and after hearing the accused who elected to come to the witness box, found the accused guilty of the charge and convicted him accordingly.

The judgment of the trial Court, now before us on the record shows that the issue on which the case turned was the identity of the appellant as the driver of the car which was involved in the dangerous driving charged. There was ample evidence to show dangerous driving round a street-corner in the town of Limassol.

The evidence of the appellant consisted in denying that he was driving his car at the material time. This evidence was rejected by the trial Judge who, accepting

the evidence for the prosecution, on the issue of identification and the other facts of the case, convicted the appellant. The Court then proceeded to pass sentence upon him which, in the circumstances of this case as they are set out in the judgment, appears to this Court to be quite appropriate for the offence proved.

The appeal is against both conviction and sentence. And, as far as it can be seen from the notice of appeal, the grounds thereof, are that the evidence adduced was not sufficient to support the conviction ; and, as far as sentence is concerned, that it is manifestly excessive.

This appeal was filed in due course, and according to the established practice under the provisions of the Criminal Procedure Law, the appellant gave an address for service of all notices connected with his appeal. When the appeal was put on the list and this day was fixed for the hearing of the appeal, the Registry gave notice in the ordinary course which was duly served on the 15th November, 1963, at the address for service. Therefore, as far as procedure is concerned, the appellant was duly notified of to-day's hearing, and the case may now be dealt with under section 143 of the Criminal Procedure Law, Cap. 155.

The Court, however, before proceeding with the matter, caused enquiries to be made by the Registrar to ascertain whether there was any accidental cause which prevented either the appellant or his advocate from appearing in Court this morning. The result of the enquiry is that it is now alleged that the advocate of the appellant in Limassol has not received the notice for to-day's hearing from the agent where it was in fact duly served.

We take the view that advocates from other districts, when they give a lawyer's office or any place in Nicosia as address for service, they must be sure that they have made sufficient arrangements for the agent here to take the responsibility involved. On the other hand, any person in charge of an office given as an address for service for Court documents connected with proceedings, presumably with his knowledge and consent, must bear in mind that there are certain responsibilities involved, which he must bear.

In the circumstances of this case, as they appear from the record before us, including the nature of the charge and all proceedings thereon, we think that there is no sufficient reason for not disposing of the appeal under section 143 (3) by dismissing the appeal both regarding conviction and sentence, and we make order accordingly.

Appeal dismissed.