[VASSILIADES, TRIANTAFYLLIDES AND JOSEPHIDES, JJ.]

KEMAL DJEMAL,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 2821)

Criminal Law—Firearms—Appeal from the conviction for the possession of a stengun without the required permit contrary to section 3 (1) (b) of the Firearms Law, Cap. 57 (as amended)—Stengun not produced before the Court—Indentification of accused and nature of the article accused was seen holding at the material time—Conviction quashed on the ground of insufficiency of evidence that the article seen in Appellant's hands was the prohibited firearm described in the charge.

Evidence in criminal cases—Benefit of doubt—Appeal from conviction for possessing a stengun without the required permit contrary to section 3 (1) (b) of the Firearms Law, Cap. 57 (as amended)—No sufficient evidence that the article seen in appellant's hands was the prohibited firearm described in the charge—Room for a legal doubt as to the nature of such article.

Findings of fact—Conviction for possessing a stengun without the required permit, contrary to section 3 (1) (b) of the Firearms Law, Cap. 57 (as amended)—Finding regarding the nature of the article appellant was seen holding, at the material time, set aside.

Possession—See under "Evidence in criminal cases", above.

Appeal against conviction.

Appeal against conviction by appellant who was convicted on the 23rd May, 1966, at the Assize Court of Limassol (Criminal Case No. 3101/66) on one count of the offence of possessing a firearm contrary to section 3 (1) (2) (*b*) of the Firearms Law, Cap. 57, as amended by Law 11 of 1959, and was sentenced by Loizou, P.D.C., Malachtos & Beha, D.JJ., to two years' imprisonment.

E. Y. Avdjioglou, for the appellant.

A. Frangòs, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court which was delivered by :

VASSILIADES, J.: This is an appeal from a conviction by the Assize Court of Limassol, for the possession of a stengun without the required permit, contrary to section 3 (1) (*b*) of the Firearms Law, Cap. 57, as amended by section 2 of Law 11/59.

The appeal is taken upon a notice prepared by counsel, wherein the grounds of appeal are set out in detail. They may be summarised in :

(*a*) that the conviction is " unreasonable having regard to the evidence adduced " ; and,

(*b*) that the inferences of the trial Court upon which the conviction partly rests, are drawn from facts which are equally consistent with innocence ; and the accused was thus entitled to the benefit of doubt.

The facts of the case as derived from the record, are that while a Police mobile patrol, consisting of a Sergeant and two Policemen in a landrover, were patrolling the Turkish quarter of Limassol, at about 8 a.m. of March 3, 1966, they noticed someone standing on the verandah of a building abutting on the street and holding, as they stated, a stengun in his hands. Apparently noticing the approaching Police vehicle, the person with the gun-looking article tried to conceal his weapon by his side. But when the landrover slowed down near the building, the person in question pointed his weapon at the Policeman. The Sergeant thereupon directed the driver to drive away in order to avoid a serious incident, as the Police were also armed. They had a loaded sterling and two revolvers in their car.

Two of the Policemen knew the accused already ; and as they had approached him within a distance of about five yards, they could well identify him as the person on the verandah with the sten-like article in his hands. On arriving at their Station, the Police patrol made a note of the event in the Station Diary.

About a month later, on April 2, 1966, one of the three Policemen in question, saw the appellant cycling in some other part of Limassol town ; and arrested him. The appellant denied that he was in any way connected with the incident of March 3.

Both at the trial, and at the hearing of the appeal, the case was contested on the issues of identification of the person ; and of the nature of the article which such person was holding, at the material time.

The trial Court accepted the evidence of the three Policemen ; and found that the person seen on that verandah,

on March 3, was the accused. As to the weapon, the Court say that in the circumstances of this case, they had no doubt that " the firearm involved was a real stengun. This in our view—the Court add (p. 17G)—is the only reasonable inference and conclusion that we can reach in the circumstances. We are also satisfied that it is a firearm of the type described in paragraph (*b*) of sub-section (1) of section 3 of the Law". Connecting these findings with the appellant's denial, which the Court disbelieved, they found accused guilty as charged ; and sentenced him to two years' imprisonment.

It was contended on the part of the prosecution that the evidence was sufficient for the trial Court to make the findings they did ; and there was nothing on the record to justify disturbing such findings.

Counsel for the appellant, on the other hand, submitted that the evidence of identification was not sufficiently reliable, as it came from Policemen who were interested in the result ; and who, according to their own evidence, had only seen the person on the verandah for a few seconds. Although armed, counsel submitted, the Police made no attempt to seize the gun at any time ; and were not able to produce the firearm described in the charge, the exact nature of which, is material for such a conviction.

We are of opinion that short as the period of time during which the Police-witnesses saw the appellant, they had ample opportunity to identify a person known to them, whom they had approached within a few yards, in broad daylight. We do not think that the finding of the trial Court regarding the identification of the appellant can be reasonably challenged. As regards appellant's denial at the time of his arrest, considering the circumstances under which this young man of 19 was arrested, about a month after the offence, one may think that his spontaneous denial need not necessarily be treated as a lie ; it might be a matter of confusion ; or of natural reaction, in the circumstances.

Now as regards the nature of the article which the appellant was seen holding, there can be no doubt that it must have looked like a stengun ; and that the Police must have thought that it was a real one. Their immediate reaction points clearly in that direction. But, the fact remains that the gun is not before the Court ; and that the Police have made no attempt (at least as far as the evidence goes) either on the day of the offence, or subsequently, to trace and seize the prohibited firearm ; dangerous, as they thought, it was.

Learned Counsel for the prosecution tried to explain this away, by reference to the conditions prevailing in the island ;

and particularly the conditions in Limassol at the material time. In normal times, Counsel conceded, quite rightly in our opinion, one would perhaps expect the Police to try and arrest the offender in such circumstances, and seize his gun. If it was thought that reinforcements were necessary in order to deal with the matter, one would expect to see action in that direction. Counsel agreed that normally, the building where the offender was seen, would have to be searched ; and the offender arrested there and then ; or, sought later under a judicial warrant at his house ; or at his usual place of work, as soon after the offence as this could be done. But, not so, learned Counsel submitted, in the conditions prevailing at Limassol at the time.

We find ourselves unable to accept this, as a satisfactory explanation. If the area where the crime was committed could be patrolled by armed Police, as an area controlled by the forces of the State, surely the Police should be able to do more than what was actually done in this case, for the seizure of the dangerous firearm and the arrest of a known offender, a person regularly living and working in such area ; a young man of 19, who had the audacity to point such a gun at a Police patrol.

But the case does not turn, in our opinion, on the reaction of the three Policemen in question ; or on the action which their superiors took, or failed to take, regarding the crime. It turns, we think, on whether there is sufficient evidence upon which the Court could safely arrive at their finding, regarding the nature of the weapon, when it had not been produced before them. Accepted entirely as the police evidence was accepted in this case by the trial Court, regarding the weapon, it cannot go beyond a firm belief on the part of the witnesses who saw the article in appellant's hands, that it was a stengun. There is no evidence of any firing ; or any other fact, which could establish sufficiently that the article seen in appellant's hands, was really the prohibited firearm described in the charge. We take the view that no question of inference or conclusion arises in such circumstances ; it is a matter of cogency of the evidence. And, in the circumstances of this particular case, we think that there is room for a legal doubt as to the nature of the article ; and, in our opinion, the appellant is entitled to the benefit of such doubt.

We, therefore, reach the conclusion that the appeal must be allowed on that ground ; and the conviction be quashed. There will be judgment and order accordingly.

Appeal allowed. Conviction quashed.