

1967
Feb. 17

[VASSILIADIS, P., TRIANTAFYLIDIS AND JOSEPHIDIS, JJ.]

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IOANNIS
SOCRATIS
alias
"KOKKALOS"
v.
THE POLICE

IOANNIS SOCRATIS *alias* "KOKKALOS",
Appellant,

v.

THE POLICE

Respondents.

(Criminal Appeal No. 2880)

Criminal Law—Carrying a knife contrary to sections 82 (2), 84 (b) and 85 of the Criminal Code, Cap. 154—Conviction and sentence of imprisonment—Accused convicted and sentenced in his absence—In view of the gravity of the offence his presence at the trial ought to have been secured—Proper course was to issue warrant of arrest—See, also, below.

Criminal Procedure—Trial in criminal cases—Trial of, accused in his absence—The Criminal Procedure Law, Cap. 155, section 87—When presence of accused necessary—Nature and gravity of the offence—A case where a warrant of arrest ought to have been issued—See, also, under Criminal Law, above.

Trial in Criminal Cases—Presence of the accused at the trial—When necessary—See above.

The facts sufficiently appear in the judgment of the Court.

Cases referred to :

- Niazi Ahmed v. The Police*, 19 C.L.R. 127 ;
- Kapodistrias v. Petrides*, 22 C.L.R. 181.

Appeal against conviction and sentence.

Appeal against conviction and sentence by appellant who was convicted on the 24th January, 1967, at the District Court of Nicosia, sitting at Morphou (Criminal Case No. 3039/67) on one count of the offence of carrying knife, contrary to sections 82 (2), 84 (b) and 85 of the Criminal Code, Cap. 154 and was sentenced by Pitsillides, D.J., to six months' imprisonment.

E. Odysseos, for the appellant.

S. Georgiades, Counsel of the Republic, for the respondents.

COURT (*To counsel for the Police*) : Are you supporting this conviction Mr. Georghiades ?

Mr. Georghiades : In view of the judgments of the Supreme Court in the *Niazi* case reported in vol. 19 p. 127 and *Kapodistriasis* case reported in vol. 22, p. 181 of the Cyprus Law Reports I shall not support the conviction.

COURT : Do you wish to say anything Mr. Odysseos ?

Mr. Odysseos : I would like to draw attention to the fact that the appellant has already served part of his sentence. He was arrested the following day after the conviction and has been in prison ever since, *i.e.* for a period of 22 days.

COURT : You will no doubt raise this matter before the appropriate Court in case of conviction, Mr. Odysseos.

The following judgment was delivered by :

VASSILIADES, P.: Quite rightly, in our opinion, learned counsel for the respondents stated, in answer to the Court that he would not support the conviction in the light of the cases to which he has referred. There is ample precedent resting on the principle that the accused in a criminal case is entitled to be heard. And although in the present case, the accused had the opportunity of being heard, and it was all through his own fault that he was not before the Court at the hearing of the case, we are clearly of the opinion that in view of the nature of the charge, this being a case where a sentence of imprisonment was likely to be imposed, the proper course was to have the accused brought before the Court under a warrant of arrest, for the purposes of trial ; and, in case of conviction for the purposes of sentence. His conviction will, therefore, be quashed ; and an order for a new trial before another Judge, be made.

Appeal allowed ; conviction quashed ; order for new trial made accordingly.

Order in terms.

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