MICHAEL IOANNOU LIATSOS,

Appellant,

v

THE POLICE,

Respondents

(*Criminal Appeal No.* 2978)

Evidence in criminal trials—Accomplice—Corroboration—Meaning and effect of corroborative evidence—Corroborative evidence does not mean completing evidence, which, in itself, is insufficient, or insufficient in extent or unacceptable—It means strengthening evidence which in itself is sufficient in extent, and is reasonably acceptable in quality, but is lacking in the degree of certainty required by the Court's conscience for a safe conviction in a criminal case—It is here that the corroborative evidence comes into play to give the support required—See Zacharia *v* The Republic 1962 *C.L.R.* 54 *at p.* 62 *per Vassiliades J. followed—See, also, hereebelow*

Evidence in criminal cases—Wrongful admission of evidence not resulting to a substantial miscarriage of justice—Proviso to section 145 (1) (*b*) *of the Criminal Procedure Law, Cap.* 155, *applied and conviction left undisturbed—Proviso applicable in cases where the trial Court would without doubt have convicted even if it had chosen not to rely on such inadmissible or wrongfully admitted evidence—See, also herebelow*

Evidence in criminal cases—Accomplice—Corroboration—Wife's evidence may in a proper case amount to corroboration of the evidence given by her husband, the accomplice of the accused—But evidence of this kind should be treated with great care

Corroborative evidence—Meaning and effect—Wife's evidence as corroboration of her husband's evidence—See above

Miscarriage of justice—Wrongful admission of evidence not resulting to a substantial miscarriage of justice—Proviso to section 145 (1) (*b*) *of Cap.* 155, supra—*See above*

Accomplice—Evidence by—Corroboration etc. etc.—See above

Criminal Law—Offences contrary to sections 208 (1), 209 (9) *and* 209 (o) *of the Customs Management Law, Cap.* 315, *as amended*

by the Customs Management (Amendment) Law 1961 (*Law No.* 26 *of* 1961) : *Possession of smuggled goods, evading payment of customs duty, possession of "privileged goods", respectively—"Privileged goods" in section* 2 *of Cap.* 315 (*as amended*) supra, *and in Appendix M to the Treaty of Establishment of the Republic dated the* 16*th August*, 1960.

Customs—The Customs Management Law, Cap. 315 (*as amended by Law* 26/61, supra)—*Offences contrary to sections* 208 (1), 209 (*a*) *and* 209 (o) *of Cap.* 315, supra—"*Privileged goods*", *section* 2—*See above.*

Words and Phrases—"Privileged goods" in section 2 *of Cap.* 315 (*as amended*) supra *and in Appendix M to the treaty of Establishment of the Republic of the* 16*th August*, 1960.

Husband and wife—Wife's evidence corroborating that of her husband, an accomplice of the accused—See above.

Evidence—See above under Evidence in Criminal trials, Evidence in criminal cases.

This is an appeal whereby the appellant appeals against his conviction on the 12th December, 1967, by the District Court of Nicosia, in respect of three offences as follows : (*a*) Possession of smuggled goods, contrary to section 208 (1) of the Customs Management Law, Cap. 315, as amended by the Customs Management (Amendment) Law, 1961, (Law No. 26 of 1961) ; (*b*) evading payment of customs duty contrary to section 209 (*a*) of Cap. 315 as amended by Law 26/61 (*supra*) ; (*c*) possession of privileged goods contrary to section 209 (o) of Cap. 315, as amended by Law 26/61 (*supra*).

All three offences were found to have been committed by the appellant in respect of the same set of facts, on the evidence, mainly, of the witnesses Sofocli and Loizou. The learned trial Judge accepted the evidence of these two witnesses ; but he, rightly, treated them as accomplices and, having decided that corroboration of their evidence was required, he found such corroboration in the evidence of the wife of Sofocli, Georghoulla—who corroborated only the evidence of her husband—and in the police evidence regarding the movements of the appellant, immediately prior to his arrest.

It was argued by counsel for the appellant that the trial Judge erred in relying on the evidence of the aforesaid two accomplices, in that such evidence was found by the Judge to be unreliable, and, thus, there could be no question of it being safely acted upon even if corroborated by other evidence. It has, further, been submitted that, in any case the trial Judge erred in treating the evidence of the wife of Sofocli as corroboration of the evidence given by her said husband.

In dismissing the appeal the Court —

Held, (1) it may, of course, happen that the evidence of an accomplice is of such a low quality as not to be reasonably acceptable, and in such a case there could not arise any question of its being corroborated. Principles laid down in *Zacharia* v. *The Republic* 1962 C.L.R. 52, at p. 62 regarding corroboration per Vassiliades J. (as he then was), applied.

(2) (*a*) In the present case we are not of the view that what the trial Judge has said about the evidence of the two accomplices-witnesses is to be construed as denoting that he regarded such evidence as being so unreliable that it could not be acted upon even if corroborated; we think that he was only trying to explain as fully as possible, why he had decided not to act on the uncorroborated evidence of the said two witnesses, who were accomplices.

(*b*) It may be however that in doing so he has used terms, in relation to the first one (Sofocli) which could be taken as indicating that he looked upon his evidence as being of rather a low quality; so ex *abundante cautela*, we have decided to approach this case on the assumption that Sofocli's evidence could not be relied upon.

(3) (*a*) There remains, nevertheless, the evidence of the second accomplice (Loizou). Nothing that the trial Judge has said about this witness or anything else on record, could properly lead us to the conclusion that his evidence should not have been relied upon once it was sufficiently corroborated.

(*b*) We are of the view that on the basis of Loizou's evidence as corroborated by the police evidence regarding the movements of the appellant on the night of the crime, the trial Judge would without doubt have convicted the appellant as he has done even if he had chosen not to rely at all on Sofoclis' evidence.

(c) Thus reliance by the trial Judge on the latter's evidence could not, in any case, be held to have resulted in a substantial miscarriage of justice and, in view of the proviso to section 145 (1) (b) of the Criminal Procedure Law, Cap. 155, this appeal cannot succeed on such a ground. (See *Polycarpou* v. *The Republic* (1967) 2 C.L.R. 198).

Appeal dismissed. Appellant's imprisonment to run from his conviction.

Per curiam : Because of our conclusion regarding the inevitability of the conviction of the appellant, even without reliance being placed on the evidence of Sofocli the question of whether or not the trial Court correctly treated as corroboration of the evidence of Sofocli the evidence of his wife ceases to be of any practical importance, and we need not enter into it. We would like, however, to state in this respect, that we do agree with the trial Court that such evidence could be treated as corroboration of her husband's evidence : but we would add that it is necessary in such a case to treat evidence of this kind with great care, in the light of *R.* v. *Allen and Evans*, 48 Cr. App. R. 314.

Cases referred to :

R. v. *Allen and Evans* 48 Cr. App. R. 314 ;

Polycarpou v. *The Republic*, (1967) 2 C.L.R. 198 ;

Zacharia v. *The Republic*, 1962 C.L.R. 52, at p. 62 per Vassiliades, J.

Appeal against conviction.

Appeal against conviction by Michael Ioannou Liatsos who was convicted on the 12th December, 1967 at the District Court of Nicosia (Criminal Case No. 17470/67) on three counts of the offences of possession of smuggled goods, evading payment of customs duty and possession of privileged goods, contrary to sections 208 (1), 209 (*a*) and 209 (*o*) of the Customs Management Law, Cap. 315 (as amended by Law 26/61) and was sentenced by Stavrinakis D.J., to one year's imprisonment on each of the possession offences, the sentences to run concurrently, and no sentence was passed on him in relation to the offence of evading the payment of customs duty.

L. Clerides with *E. Liatsos*, for the appellant.

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

Cur. adv. vult.

The judgment of the Court was delivered by :

TRIANTAFYLLIDES, J. : The appellant appeals against his conviction, on the 12th December, 1967, by the District Court of Nicosia, in respect of three offences as follows :—

(*a*) Possession of smuggled goods, contrary to section 208(1) of the Customs Management Law, Cap. 315, as amended by the Customs Management (Amendment) Law, 1961, (Law 26/61).

(*b*) Evading payment of customs duty contrary to section 209(*a*) of Cap. 315, as amended by Law 26/61.

(*c*) Possession of privileged goods contrary to section 209 (*o*) of Cap. 315, as amended by Law 26/61.

All three offences were found to have been committed by the appellant in respect of the same set of facts.

He was sentenced to one year's imprisonment, in relation to each of the two possession offences—the sentences to run concurrently—but, in the circumstances, no sentence was passed on him in relation to the offence of evading the payment of customs duty.

The appellant did not appeal against sentence.

The appellant was arrested by the police on the night of the 6th September, 1967, in the following circumstances :

At about 20.45 hours his car, AY 270, was seen by the police being driven along the old Famagusta-Nicosia road, between the 5th and 6th milestones, from the direction of Famagusta towards Nicosia.

At about 20.50 hours, at a spot again between the 5th and 6th milestones of the said road, the police stopped a lorry, AD 383, loaded with N.A.A.F.I. spirits and driven by one Georghios Sofocli of Akhna. The police boarded the lorry and they gave instructions to the driver to continue driving towards Nicosia.

Then, at about 20.55 hours, and between the 4th and 5th milestones of the same road, the car of the appellant was seen coming at a low speed from the direction of Nicosia ; the person at the wheel of that car raised his right hand and made a signal to the driver of the lorry, who tried to signal back by blowing his horn but he was not allowed to do so by the police.

Immediately afterwards the car of the appellant turned back and was seen proceeding again towards Nicosia ; upon that it was stopped and it was found that the driver

of the car was the appellant himself. He was arrested and, after being cautioned, he said that he had no idea and that he was just then coming from Famagusta.

According to the evidence of Sofocli and of another prosecution witness, Petros Loizou—who was arrested soon after the appellant, on the same night, while waiting in a car parked near the Pallouriotissa cemetery on the old Famagusta–Nicosia road—the appellant was, on that night, driving his car, on the road in question, in execution of a common design involving transporting the load of the lorry of Sofocli from his house at Akhna and handing it over to Loizou in return for the agreed amount of £1,000. Loizou has testified, also, that while he was waiting in the car near the Pallouriotissa cemetery, the appellant had come there and asked if everything was all right and then he had left in order to give instructions to the lorry-driver, Sofocli ; that was soon before they were all arrested.

The learned trial Judge accepted the evidence of Sofocli and Loizou ; but he, rightly, treated them as accomplices and having decided that corroboration of their evidence was required, he found such corroboration in the evidence of the wife of Sofocli, Georghoulla—who corroborated only the evidence of her husband—and in the police evidence regarding the aforementioned night-time movements of the appellant, immediately prior to his arrest.

It is convenient, at this stage, to deal with the two main submissions made by counsel for the appellant in arguing this appeal :

It has been submitted that the trial Court erred in relying on the evidence of Sofocli and Loizou, in that such evidence was found by the Court to be unreliable, and, thus, there could be no question of it being safely acted upon even if corroborated by other evidence.

It has, further, been submitted that, in any case, the trial Court erred in treating the evidence of the wife of Sofocli as corroboration of the evidence of her husband.

The part of the Judgment of the trial Court relating to the evidence of Sofocli and Loizou reads as follows :—

> " I have considered the evidence of both accomplices and I have come to the conclusion that it would be unsafe to act upon their evidence without corroboration for the following reasons :
>
> *A. Evidence of G. Sofocli.* The evidence of this witness relating to the first occasion on which he met

the accused is not very convincing and it seems that the witness was withholding something. It is improbable that the cases were placed in the barn by the accused without first obtaining permission to do so or without making some sort of arrangements for the unloading of the goods. It is an operation that would have entailed the use of a lorry and in all probability the services of a driver and porters. It is not likely therefore that the witness did not know about the operation beforehand.

B. Evidence of Petros Loizou. This witness is a person with previous convictions involving dishonesty and did not impress me as a person to be implicidly trusted by the Court. Furthermore his complicity to the offences gives an idea of his nature and character. His evidence must therefore be approached with the utmost care and it will be dangerous to accept it without corroboration."

It is on the basis of the above observations of the trial Judge that counsel for appellant have submitted that the evidence of Sofocli and Loizou could not have been properly relied upon for the purpose of convicting the appellant.

It may, of course, happen that the evidence of an accomplice is of such a low quality as not to be reasonably acceptable, and in such a case there could not arise any question of it being corroborated. It is useful in this respect to bear in mind what Vassiliades, J. (as he then was) had to say in *Zacharia* v. *The Republic*, (1962, C.L.R., p. 52, at p. 62) regarding corroboration : -

"In connection with evidence, it does not mean completing evidence, which, in itself, is incomplete ; or insufficient in extent ; or unacceptable. It means strengthening evidence which in itself is sufficient in extent, and is reasonably acceptable in quality, but is lacking in the degree of certainty required by the court's conscience for a safe conviction in a criminal case. It is here that the corroborative evidence comes into play to give the support required."

In the present case we are not of the view that what the trial Judge has said about the evidence of Sofocli and Loizou is to be construed as denoting that he regarded such evidence as being so unreliable that it could not be acted upon even if corroborated ; we think that he was, only, trying to

explain, as fully as possible, why he had decided not to act on the uncorroborated evidence of the said two witnesses, who were accomplices. It may be, however, that in doing so he has used terms, in relation to Sofocli, which could be taken as indicating that he looked upon his evidence as being of rather a low quality ; so, *ex abundanti cautela*, we have decided to approach this case on the assumption that Sofocli's evidence could not be relied upon.

There remains, nevertheless, the evidence of Loizou, which has been summarized as follows in the Judgment of the trial Court :—

> " Petros Loizou stated that he was approached by two persons and furnished with a list of alcoholic drinks, valued at about £3,000.– for which he offered £1,000.–. On the 5th or 6th of September, 1967, he went to Alamo Casino and there he met the accused with whom he agreed to buy the goods set out on the list for £1,000.–. From there they went to a small forest (' Dasaki ') where they met G. Sofocli and from there they all drove in Sofoclis' car to the latter's house at Akhna. There they loaded the lorry with cases containing alcoholic drinks and after that the witness drove to ' Dasaki ' and from there to Nicosia accompanied by the two other persons. On coming to Nicosia he got money and then accompanied by the same two persons, proceeded to the cemetery. Whilst there accused came and asked them if everything was alright and then he left in order to give instructions to the lorry driver. Later on they were all arrested."

Nothing that the trial Court has said about this witness, or anything else on record, could properly lead us to the conclusion that his evidence should not have been relied upon once it was sufficiently corroborated. We are of the view that on the basis of Loizou's evidence, as corroborated by the evidence regarding the comings and goings of the appellant, on the night of the 6th September, 1967, along the old Famagusta-Nicosia road, the trial Judge would without doubt have convicted the appellant as he has done, even if he had chosen not to rely at all on Sofocli's evidence. Thus, reliance by the trial Judge on Sofocli's evidence could not, in any case, be held to have resulted in a substantial miscarriage of justice and, in view of the proviso to section 145 (1) (*b*) of the Criminal Procedure Law, Cap. 155, this appeal cannot suceed on such a ground (see *Polycarpou* v. *The Republic*, (1967) 2 C.L.R. 198).

Because of our conclusion regarding the inevitability of the conviction of the appellant, even without reliance being placed on the evidence of Sofocli, the question of whether or not the trial Court correctly treated as corroboration of the evidence of Sofocli the evidence of his wife ceases to be of any practical importance, and we need not enter into it. We would like, however, to state, in this respect, that we do agree with the trial Court that such evidence could be treated as corroboration of her husband's evidence ; but we would add that it is necessary in such a case to treat evidence of this kind with great care, in the light of *R.* v. *Allen and Evans* (48, Cr. App. R., p. 314).

Before concluding this judgment we should dwell, shortly, upon two further topics :

First, we think that counsel for the appellant quite properly did not press the submission that the goods concerned were not privileged goods ; such submission appears to us quite untenable on the basis of the evidence adduced in this Case and in view of, *inter alia*, the definition of privileged goods in section 2 of Cap. 315, as amended by Law 26/61, and of Appendix M to the Treaty of Establishment of the Republic dated the 16th August, 1960. Further, in the light of section 239 of Cap. 315, as amended by Law 26/61 and in view of the circumstances in which the goods concerned, were been handled, the conclusion that they were smuggled goods and that it was intended to evade the payment of customs duty in respect thereof was fully warranted.

Secondly, we find no substance in the contention of the appellant that, assuming that all the goods in respect of which he was charged were not proved to be N.A.A.F.I. goods then his conviction is bad.

Such contention can only be treated as relating to his conviction for possession of smuggled goods, because in the particulars of the relevant count reference is being made to lists of specific items, whereas in the particulars of the counts for evading the payment of customs duty and for possession of privileged goods no specific items are referred to.

As the value of the goods, in respect of which the appellant has been convicted of possession of smuggled goods, is not a necessary ingredient of the offence in question, we do fail to see how the non-establishment of the fact that any part of such goods were N.A.A.F.I. goods could affect the

validity of the conviction of the appellant, once there can be no doubt at all that, to say the least, a large part of the goods concerned were established to be N.A.A.F.I. goods.

For all the above reasons this appeal fails and is dismissed accordingly ; but we have decided to make an order that the appellant's imprisonment should run from the date of his conviction.

Appeal dismissed. Appellant's imprisonment to run from the date of his conviction.