[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES AND HADJIANASTASSIOU, JJ.]

1968
June 25, 26, 27, 28, July 2, Nov. 29

IOANNIS P. IOANNIDES,

Appellant,

v.

THE REPUBLIC,

Respondent.

IOANNIS P. IOANNIDES
v.
THE REPUBLIC

(*Criminal Appeal No.* 3005)

Criminal Law—Premeditated murder—Premeditation—Requisites—Question of fact—The Criminal Code Cap. 154, *section* 203 *as amended by the Criminal Code (Amendment) Law* 1962 (*Law No.* 3 *of* 1962)—*Homicide—Section* 205—*Sentence—No mitigating circumstances—Maximum sentence* (i.e. *life imprisonment*) *imposed.*

Evidence in criminal cases—Confessions—Voluntariness challenged—Side trial within trial on the issue—Admissibility of confessions—Principles applicable—Discretionary power of the trial Court in the interests of justice—Confession induced by promise of favour or help on the part of the police—Confession made to the investigating officer under such promise, inadmissible—Issue of credibility at the trial within trial—Findings by the trial Court resting on credibility of the witnesses—Reversed by the Court of Appeal in view of the circumstances surrounding such confession.

Confessions—Confessions to persons in authority—Must be free—Onus of proof—Discretionary power of the trial Court—Principles restated—See also above under Evidence in criminal cases.

Premeditated murder—See above under Criminal Law.

Homicide—See above under Criminal Law.

The appellant was convicted and sentenced to death by the Assize Court of Larnaca, on June 3, 1968, for the premeditated murder of his wife on the night of the 13th February, 1968, contrary to section 203 of the Criminal Code, Cap. 154 as amended by the Criminal Code (Amendment) Law 1962 (Law No. 3 of 1962). The killing was admitted by the appellant, *inter alia,* in his sworn evidence at the trial. Thus, the main issue before the Supreme Court in this appeal was

whether such killing amounted to premeditated murder under section 203 or homicide under section 205 of the Criminal Code, as amended by the said Law No. 3 of 1962. The finding of the trial Court on the ingredient of premeditation rested mainly on two confessions made by the appellant to the investigating police officer (exhibits 9 and 11 on the record) and which the trial Court, overruling objections raised by the defence, admitted in evidence as free and voluntary.

The appellant took the present appeal against his conviction on grounds which may be put in three groups :

(*a*) that the statements of the appellant (exhibits 9 and 11) produced at the trial as voluntary confessions were wrongly admitted.

(*b*) that the trial Court proceeded to assess the credibility of the appellant in unequivocal terms at an early stage of the trial (when dealing with his evidence in the side issue of the admissibility of the statements) in a manner which sealed the fate of the appellant's defence regarding premeditation as this rested mainly on appellant's own evidence.

(*c*) that the element of premeditation has not been duly or sufficiently established by the prosecution, the findings of the trial Court in this connection resting partly on evidence which had been wrongly admitted.

The appellant's version regarding his said two confessions was that they were made as a result of promises of help or favour held out to him by the investigating police officer in order to induce him to confess. The admissibility of these confessions were the subject of two side-trials at the trial. Several witnesses (including the appellant) were heard on that issue. The trial Court, rejecting the evidence of the defence and believing the evidence adduced by the prosecution, found that the confessions were free and voluntary ; and exercising their discretionary powers in that connection, admitted both statements (exhibits 9 and 11) as part of the prosecution case.

The Supreme Court, after reviewing the circumstances under which the said statements were taken, reversed by majority (Josephides J. dissenting) the findings of the trial Court in this connection, allowed the appeal, quashed the conviction of premeditated murder under section 203 of the Criminal Code and substituted therefor a conviction of homicide under section 205.

Held, per VASSILIADES, P. : (1) The position regarding admissibility and weight of confessions made by accused persons to the investigating police officers is discussed in a number of cases as well as text books on the English law which is the origin of our criminal law in Cyprus. I take it to be that admission is a matter of judicial discretion, exercised in the interests of justice and in fairness to the person on trial. It is equally open to the Court to admit or reject a confession, in the interests of justice, *even if voluntary*, depending on the circumstances surrounding the confession in the particular case. (See : Cross on Evidence, 3rd edn. pp. 445-446 ; *Chan Wei Keung* v. *The Queen* [1967] 2 W.L.R. 552, P.C., *Regina* v. *Burgess* [1968] 2 W.L.R. 1209, at p. 1213 ; *Kokkinos* v. *The Police* (1967) 2 C.L.R. 217).

(2)—(*a*) Considering the circumstances surrounding the taking of the first statement (exhibit 9), I am persuaded that the finding of the trial Court that the appellant's said confession was free and voluntary should not be sustained. In my opinion it is not satisfactory (*Antoniou* v. *The Republic*, 1964 C.L.R. 116 at p. 132 ; *Meitanis* v. *The Republic* (1967) 2 C.L.R. 31 ; *Polycarpou* v. *The Republic* (1967) 2 C.L.R. 198 ; *Kokkinos' case supra*).

(*b*) In any case, I take the view that in the circumstances, the discretionary power of the trial Court to admit or decline admission of a confession, even where it has been shown to have been voluntary, should have been exercised against admission. (Principles laid down in *Petri* v. *The Police* (reported in this Part at p. 40 *ante* at p. 74 applied).

(3)—(*a*) After his said confession to the investigating officer at about 10.15 p.m. of the 14th February, 1968, the appellant led the police to the spot where he had concealed the knife with which he had killed his wife. On return to the Police Station at about 11 p.m. on that night the investigating officer took a further statement. That is appellant's second confession, with a lot of detail regarding the crime, which was likewise admitted by the Assize Court after a side-trial, as exhibit 11. There were two aspects of such a statement which called for careful consideration before admission :

(i) The first aspect was its evidential value. It came from a person whose credibility had just been found unacceptable to the Court. It could well contain untruths intended to alleviate the culprit's position ; or, it could

contain suicidal statements capable of sealing his fate and render impossible any defence other than one based on mental grounds. In fact this statement, if true and correct in its detail, presents its maker in a strikingly cynical manner, as a cold-blooded murderer of the worse type. Moreover, a statement taken under such strenuous circumstances before the accused person had any chance of legal, medical or other assistance, would be likely to complicate, rather than facilitate and assist, the course of justice.

(ii) The second aspect was that the statement in question was supposed to give full particulars of the way the crime was committed. Surely, some of those particulars, if not most, could be checked for verification ; and if found true, independent evidence could be secured to establish them at the trial, if required. Evidence which might render either the production of the statement unnecessary for the prosecution, or any objection to its admissibility, useless for the defence. In any case the statement would be in the hands of the prosecution, if the accused chose to come to the witness box.

(*b*) By admitting the statement, the trial Court placed the defence in a most difficult situation. They were faced with the dilemma : Either to let such a statement remain unchallenged by the accused, or to put him in the witness-box to contradict or explain it. The former course in this case would be fatal ; the defence was thus forced into the latter, notwithstanding accused's already damaged credibility.

(*c*) I am strongly inclined to the view that the trial Court did not pay sufficient attention to any of these aspects of the confession exhibit 11, when they decided to admit it as evidence for the prosecution in this trial.

(4) I am, therefore, of the opinion that in the circumstances of this case, neither of those two statements of the appellant, exhibits 9 and 11, should have been admitted.

(5)—(*a*) Without this statement (*exhibit* 11) the question of premeditation, which is an issue of fact, turns on the point of time in the course of events, at which the appellant took the knife in his hand for the purpose of killing his wife. But what is left on this point, after the exclusion of the two statements exhibits 9 and 11, is the evidence of the appellant at

the trial. A very important witness in this connection was police constable A.P. who was not available at the trial as he had in the meantime emigrated to America.

(*b*) Now, the damaged credibility of the appellant at the side-trials and the emigration of the said witness A.P., a police constable, pending trial, throw a shade of doubt in my mind on the finding of the trial Court that the appellant took the knife from the exhibits-room of the police station as the prosecution suggests.

(*c*) Under that shade of doubt on a finding so closely connected with premeditation, I have reached the decision, not without considerable difficulty, that the finding of premeditation is vitiated and should be set aside.

Held, per TRIANTAFYLLIDES, J. : (1) When the voluntariness of a confession is being tested, I do not think that such issue can safely be determined, solely, as a naked issue of credibility. All the surrounding circumstances have to be looked into, and even if the scales of credibility are weighed against the appellant and in favour of the police, a Court may, still, decide that on the whole it is not safe to admit a confession.

(2) In this particular case, and bearing in mind all the relevant circumstances, I am of opinion that the trial Court should have rejected the appellant's confessions.

(3) And once the confessions are no longer admissible evidence, I think that one would not be prepared to hold, with any degree of certainty, that there exists on record sufficient material to warrant a verdict of premeditated murder.

(4)—(*a*) But I would have reached the same conclusion even on the assumption that the said confessions were free and voluntary confessions constituting reliable evidence.

(*b*) The trial Court found that the time which intervened between the formation by the appellant of his intention to kill his wife—just before 11 p.m.—until the carrying into effect of such intention was a " very short time ", about ten minutes. Bearing in mind the course of events during this period of ten minutes, as well as the appellant's voluntary answer to the formal charge to the effect that he did not kill his wife with premeditation, but because he was " beside himself " (ἀναστατωμένος), I have reached the conclusion

that this is a case in which the appellant could not have been found— beyond reasonable doubt and with the certainty required in a criminal case—to have been in a calm and deliberate condition of mind, after forming the intention to kill his wife, so that he could have reflected upon such intention and relinquished it, and so that his crime could be held to be a premeditated one in the sense envisaged by the law (see *Aristidou* v. *The Republic* (1967) 2 C.L.R. 43).

Held, per STAVRINIDES, J. : In my opinion it was unsafe, having regard to the evidence before the trial Court, to admit the statements Exhibits 9 and 11 (*supra*) as voluntary ; and on this ground I agree that the finding of premeditation cannot stand.

Held, per HADJIANASTASSIOU, J. : (1) It was not necessary that the trial Judges should have been convinced that the allegations of inducement such as favour or hope or threats were true. If they had doubts that means that the prosecution had failed to discharge the onus cast upon them to establish positively that the confessions were free and voluntary ; and such confessions ought not to have been admitted in evidence (see : *Ibrahim* v. *Rex* [1914] A.C. 599, at p. 609 per Lord Sumner ; *Reg.* v. *Thompson* [1893] 2 Q.B. 12 ; *Reg.* v. *Sfongaras* (1957) 22 C.L.R. 113 ; *Kokkinos* v. *The Police* (1967) 2 C.L.R. 217).

(2) Having regard to the totality of the evidence, I am of the view that there is room for doubt in this connection and that, therefore, the confession exhibit 9 was wrongly admitted in evidence as free and voluntary.

(3) It follows that the second statement exhibit 11, made by the appellant to the investigating officer shortly after the first confession, is also inadmissible because it was made as a result of the said first confession exhibit 9, and, therefore, it is, also, tainted with illegality.

(4) Having excluded both confessions (*exhibits* 9 and 11) made by the appellant and in view of the remaining evidence and, particularly, in view of the fact that a very important witness, police constable A.P., who could help the Court on the crucial issue of premeditation, was not available at the trial, I have serious doubts on the issue of premeditation. I would not, therefore, allow the verdict of premeditated murder to stand.

Held, per JOSEPHIDES, J., (*dissenting*) : (1) The authorities show that those who seek to disturb the decision of a trial Judge who had seen and heard the witnesses on a question of fact face a heavy task—especially in the case of a unanimous judgment of a Court composed of three Judges as in the present case.

(2) In convicting the appellant the trial Court relied on his two confessions to the police (*exhibits* 9 and 11). The voluntariness of these confessions was challenged at the trial and the Assize Court held two trials within trial to decide this question. Undoubtedly the trial Court directed themselves correctly on the law as to the admissibility of confessions by referring to recent decisions of this Court and by directing themselves on the lines laid down by us in the case of *Petri* v. *The Police* (reported in this Part at p. 40 *ante*) because they found it necessary to enter into the question of credibility of the witnesses, including the appellant. In touching the question of the credibility of the appellant they restricted themselves exclusively to matters arising on the side issues, and they did not go further than what was absolutely necessary for the purposes of their rulings : *Petri's* case, *supra*, at p. 70 .

(3) I have not been persuaded that, on the evidence adduced before the Assize Court, their findings that both confessions were voluntary are unreasonable or wrong ; nor am I satisfied that the reasoning behind such findings is unsatisfactory.

(4) But assuming that the appellant's confessions were wrongly admitted, I would still be of the view that, on the whole of the other evidence adduced, the trial Court would or must inevitably have come to the same conclusion, once they were entitled so to do. I would, therefore, apply the proviso to section 145 (1) (b) of the Criminal Procedure Law, Cap. 155, on the ground that no substantial miscarriage of justice has actually occurred.

Appeal allowed—Conviction of premeditated murder set aside ; substituted by a conviction for homicide. Appellant sentenced to life imprisonment.

Cases referred to :

Antoniou v. *The Republic*, 1964 C.L.R. 116 at p. 132 ;

Meitanis v. *The Republic* (1967) 2 C.L.R. 31 ;

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

Kokkinos v. *The Police* (1967) 2 C.L.R. 217 ;

Petri v. *The Police* (reported in this Vol. at p. 40 *ante*) ;

Chan Wei Keung v. *The Queen* [1967] 2 W.L.R. 552, (P.C.) ;

Regina v. *Burgess* [1968] 2 W.L.R. 1209 at p. 1213 ;

Dervish Halil v. *The Republic*, 1961 C.L.R. 432 ;

Aristidou v. *The Republic* (1967) 2 C.L.R. 43 ;

Reg. v. *Wallett* [1968] 2 W.L.R. 1199 ;

Simadhiakos v. *The Police*, 1961 C.L.R. 64 at p. 88 ;

Moustakas v. *The Republic*, 1961 C.L.R. 239 at p. 241 ;

Charalambos Zacharia v. *The Republic*, 1962 C.L.R. 52 at p. 67 ;

Onassis and Callas v. *Vergottis* (1968) " The Times ", November 1 ;

Ibrahim v. *Rex* [1914] A.C. 599 at p. 609 ;

Reg. v. *Thompson* [1893] 2 Q.B. 12 ;

Reg. v. *Sfongaras* (1957) 22 C.L.R. 113.

Appeal against conviction.

Appeal against conviction by Ioannis P. Ioannides who was convicted on the 3rd June, 1968, at the Assize Court of Larnaca (Criminal Case No. 822/68) on one count of the offence of premeditated murder contrary to sections 203 (1) (2) and 204 of the Criminal Code, Cap. 154 (as amended by Law No. 3/62) and was sentenced by Georghiou, P.D.C., Orphanides and Kourris, D.JJ., to death.

G. Cacoyiannis with *L. Papaphilippou*, for the appellant.

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

Cur. adv. vult.

The following judgment was read on the 2nd July, 1968, by :

VASSILIADES, P. : Having reached in conference a majority decision to the effect of allowing the appeal, we have fixed the case for today for announcing the result. Our reasons for arriving at our conclusions, and eventually

at the result of the appeal, will probably take some time to formulate and state in the form of judgment; and there will be more than one judgment in this case.

The result, reached by majority, is that the appeal shall be allowed ; and the conviction for premeditated murder shall be substituted by a conviction for homicide under section 205 of the Criminal Code, as amended by the Criminal Code (Amendment) Law 1962. We shall now proceed to hear counsel on both sides for the purpose of sentence.

Mr. Cacoyiannis heard.....

Mr. Georghiades heard.....

Court to accused : Have you anything to say why sentence should not be passed on you for the crime of unpremeditated homicide of which you now stand convicted?

Appellant : No, Your Honours, I have nothing to say.

Sentence : We have considered the question of sentence on the material put before the Court until this morning. We have now reconsidered the matter in the light of what was stated from both sides regarding sentence.

In deciding what is the appropriate sentence on the appellant before us, for the crime of which he stands now convicted, we took into consideration on the one hand the seriousness of the crime and the cruel way in which it was committed ; and on the other hand, so much of the background and of the surrounding circumstances which have led to the commission of the crime as we had before us. I say so much of the background as has come to light, because this is a case where a great deal of its background is not before us, particularly appellant's relations with his wife, now the unfortunate victim of this crime.

Be that as it may, however, we now have to impose sentence for a crime punishable with life imprisonment and, considering that we find no mitigating circumstances for this cruel homicide, we are of the view that the maximum punishment should be imposed on the appellant. He is, accordingly, sentenced to life imprisonment.

REASONS FOR JUDGMENT

The following reasons for the judgment of the Court delivered on the 2nd July, 1968 (published hereinbefore) were delivered on November 29, 1968, by :

VASSILIADES, P. : The appellant was convicted by the Assize Court of Larnaca, on June 3, 1968, for the preme-

ditated murder of his wife ; and was sentenced to death. The trial proceeded on an information containing a single count for the crime under section 203 of the Criminal Code (Cap. 154) as amended by section 5 of the Criminal Code (Amendment) Law, 1962, (No. 3/1962). The appellant was convicted accordingly ; and was sentenced as provided in sub-section (2) of section 203, with the execution fixed for August 1, 1968.

Soon after his conviction and sentence as above, the appellant took the present appeal on the grounds stated in the notice prepared and signed by his advocates, which may be put in three groups :

(*a*) that two statements of the appellant (*exhibits* 9 and 11 on the record) produced at the trial by the prosecution as voluntary confessions made to the investigating police officer, were wrongly admitted as evidence in support of the prosecution.

(*b*) that the trial Court proceeded to assess in unequivocal terms the credibility of the appellant at an early stage of the trial (when dealing with his evidence in the side issue of the admissibility of the statements) in a manner which sealed the fate of appellant's defence regarding premeditation, as this rested mainly on appellant's own evidence ; and

(*c*) that the element of premeditation has not been duly or sufficiently established by the prosecution, the findings of the trial Court in this connection resting partly on evidence which had been wrongly admitted.

After hearing argument from learned counsel on both sides for four days (25th to 28th June, inclusive), we reserved our judgment for further consideration, stating that we would give this case priority owing to the nature of the charge and sentence.

The Court having reached, in conference, a majority decision to the effect of allowing the appeal, we had the case fixed forthwith on July 2, 1968, when we announced the result and stated that we would give our reasons later. And after substituting the conviction for premeditated murder by one for homicide under section 205 of the Criminal Code (as amended by law 3 of 1962) we heard counsel on the question of sentence and proceeded to pass sentence on the appellant. He was sentenced to life imprisonment.

We now propose to give our reasons for allowing the appeal against conviction.

The appeal turned mainly on (*a*) the admissibility and (*b*) the evidential value of appellant's two statements to the Police, exhibits 9 and 11. They were both produced by the prosecution as voluntary confessions ; and were received by the Assize Court accordingly, notwithstanding the objection of the defence and the evidence of the appellant as to the circumstances in which the statements were obtained. Once admitted, they, inevitably, became a material part of the evidence upon which the trial Court reached their verdict.

The factual background of the case, as far as the appeal is concerned, is as follows :— The appellant, a young man of 22 years of age, was serving his second year as a special constable in the Police Force. He was posted at the rural Station of Kalavasso village in the District of Larnaca ; and was living at the material time, with his wife in a house some 170 yards away from the Station.

Both the appellant and his wife (a young woman of about the same age) came from the village of Kaminaria, in the mountainous part of Limassol District. They got engaged in April, 1967, and were married a few months later, in September of the same year. About a week after their wedding, the couple came to live at Kalavasso where the young husband was posted as a special constable.

There was no evidence of any ill-feeling between the parties prior to the crime ; and no evidence of circumstances where one could find sufficient motive for such a tragic development. On the contrary, the version of the appellant was to the effect that relations between the couple were good ; and that he loved his wife as " any husband would ".

When, occasionally, on night-duty at the Station, the appellant had to stay there. And that was the case for the night of the 13th to the 14th February, 1968. According to appellant's open statement, exhibit 8, after a short afternoon rest at his house on the 13th February, his wife served him with a hot meal, after which the appellant went to the Station. There, the sergeant gave him a message in consequence of which the appellant went to Limassol. He returned soon after 6 p.m., passed from his house where he told his wife that he would be spending the night on duty at the Station, where he remained—he stated—until next morning.

According to the police evidence, in the evening of the 13th February, the sergeant left the Station together with the two other policemen soon after 8 o'clock, leaving the appellant alone there. The following morning, the first person to get to the Station was one of the policemen. He found the appellant " lying on the spring of the bedstead, leaning on the folded mattress and covered with blankets." This was soon after 7 a.m. ; and the policeman did not yet know of the crime. There was no conversation between them on that occasion.

A little later, at about 7.20 a.m., the dead body of appellant's wife was seen by a neighbour, lying on the floor near the open back door of appellant's house. The sergeant was immediately notified at his house. He sent forthwith a policeman to the Station while he hurried to the scene of the crime. The policeman had already seen the body in the frightful condition in which it was found.

At the Station, the policeman in question pretended ignorance of the crime. On the sergeant's instructions, he told the appellant that they were to clean up the Station lest they had a surprise inspection by a superior officer. Soon after, the sergeant arrived who, also pretending ignorance of the crime, instructed the two men (the policeman and the appellant) to proceed by car to another village some distance away, on police duty. His object was to get the appellant out of the way, but keep him under his control.

Passing outside appellant's house in the police landrover, both men—the appellant and his companion—continued acting their role of ignorance of the crime. The same pretended ignorance continued until they returned to the Station at about 10 o'clock, passing again outside appellant's house.

In the meantime the sergeant informed the District headquarters by telephone ; and had a C.I.D. (Criminal Investigation Department) Inspector at the village by 8.55 a.m. to investigate into the murder. On his return the appellant was instructed to remain at the Station ; and he did so until he was interrogated by the C.I.D. Inspector at about 1 o'clock. This interrogation took the form of an open statement from the appellant, which the Inspector took down in writing. He started doing so at 1.30 p.m. and concluded it at 4 p.m.

This statement was produced at the trial, where it was admitted as exhibit 8. It is a long statement, apparently prompted by questioning ; it refers extensively to the victim ; to blood-stained clothing ; and it ends with the statement that the appellant first heard of his wife's death from the investigating officer.

From the contents of this exhibit (*exhibit* 8) and from the circumstances in which it was obtained, there can be no doubt that the police suspected the appellant for the murder of his wife right from the discovery of the body early in the morning of February 14 ; that the appellant was virtually placed under police control—albeit not formally arrested—forthwith ; that suspicion was very strong in the investigating officer's mind when he obtained appellant's statement (*exh.* 8) ; and that until then, the appellant was denying complicity in the crime.

In these circumstances, the question arises in connection with the nature of appellant's subsequent confession : what was the object of the investigating officer in refraining from arresting formally the appellant until a later stage? Both the investigating Inspector and the appellant knew at the time, that the latter was a close relation of a Police Chief Inspector at the District headquarters. It was the case of the appellant, based on his sworn evidence, that this relationship was the path through which the investigating officer led the appellant to the confession.

The trial Court rejected this evidence. It accepted the police version, which was that the appellant was not arrested until 10.15 in the evening of the 14th February. He was then informed of the reason of his arrest and was formally cautioned. In reply (according to the Inspector) he said : " I did not kill her ". He was immediately taken to the cell of the Station and ordered to change into his civilian clothes. As the sergeant was leaving the cell, the appellant by a sudden change of heart and mind, said : " Tell the other policemen who are in the charge-room to leave the Station, because I want to tell you something ". He was cautioned again. And when his request was complied with, and " all the policemen went away ", the appellant made the first confession which the Inspector took down in his notebook and got it signed by the appellant.

The admissibility of this confession was the subject of a side-trial. The issue whether it was " free and voluntary " in the legal sense of this expression, as contended by the prosecution, or it was prompted by " unfair and

oppressive use of police power" in the form of advice and promises of help by the investigating officers, as alleged by the defence, was strongly contested. Several witnesses were heard (including the defendant) whose evidence covers more than 20 pages of the record. The trial Court reserved their ruling for the following day, when they overruled the objection and admitted the confession as exhibit 9.

The Court gave extensively their reasons for that decision. They stated their circumstances which formed the back-ground of appellant's statement ; and proceeded to deal with the evidence before them in the side-trial. In doing so, the Court inevitably came to assess the credibility of the witnesses, including that of the appellant. Having been warned by counsel for the defence, against the danger of doing so at that early stage in the proceedings, the trial Court say in their ruling that they found themselves unable " to decide the issue of the voluntariness of the statement, without entering into the question of the credibility of the witnesses, because there was a difference in the version of the prosecution and that of the defence." It is added, however, that in deciding the credibility of the witnesses on the side-issue, the Court would leave their minds " unaffected on other vital issues involving the credibility of the accused and the witnesses for the prosecution." As if that were simply a matter of a reminder.

In actual fact the Court's assessment of the evidence at that stage, naturally went much further—

> " Having considered the evidence carefully—the Court say in their decision—and having watched the witnesses when giving evidence, we were impressed with the way the witnesses of the prosecution gave their evidence, and we have come to the conclusion that they have been telling the truth, and we accept their evidence."

They referred to the evidence of Inspector Ropalis (the investigating officer) as " not only reliable but also truthful." While regarding that of the appellant, the Court say that he did not make a good impression upon them ; and that they discarded "his version on the point that promises and threats were held out to him to induce him to make a statement." In fact the accused in his evidence had only stated that he relied on the promises held out to him. The Court expressly say so towards the end of their ruling.

The version of the appellant regarding promises of favour and help from the investigating officers, was closely connected with his relationship to Police Chief Inspector Chryssanthos ; and the investigating officer's association with the latter. The trial Court made no reference to this material factor in their findings regarding the admissibility of the confession. Inspector Ropalis admitted in his evidence that when he was taking appellant's open statement (*exh.* 8) at about noon, the appellant referred to his uncle Chryssanthos. But the Inspector denied saying anything to the appellant about his uncle.

Appellant's version was that after the statement when they went downstairs to the kitchen, the Inspector told him : "Your uncle Chryssanthos is my best friend. You know that. You will admit that you have killed her, and you have committed this, and I and your uncle do not want any evil to happen to you." This was also denied by the Inspector ; who, however, admitted that he did not have the appellant arrested until 10.15 that night. It was then that, within a matter of minutes after arrest, the appellant confessed that he had killed his wife ; and led the Inspector to the spot where he had concealed the knife.

This finding of the trial court regarding the absence of any promise of help or favour from the investigating officers seen in the light of appellant's close relationship to Chief Inspector Chryssanthos, was attacked by counsel for the appellant, as unnatural and inconsistent with undisputed facts. The original strong suspicion as to appellant's guilt, may well have developed into a certainty in the investigating officer's mind, in the course of that day. It is now an established fact that the appellant did kill his wife. But no direct evidence was in sight until late that evening. A confession would be most useful ; and it would be—as the police must have thought—the truth. Was it unnatural that it was encouraged as the appellant states ?

The trial Court, rejecting the evidence of encouragement, found that the confession was free and voluntary. And exercising their discretionary power in that connection, admitted it as part of the prosecution case.

Having heard exhaustively both sides on this issue, I am persuaded that this finding of the trial Court should not be sustained ; it is not satisfactory, in my opinion (*Antoniou* v. *The Republic*, 1964 C.L.R. 116 at p. 132 ; *Meitanis* v. *The Republic* (1967) 2 C.L.R. p. 31 ; *Polycarpou* v. *The Republic* (1967) 2 C.L.R. p. 198; *Kokkinos* v. *The Police* (1967) 2 C.L.R.

p. 217). In any case, I take the view that in the circumstances, the discretionary power of the trial Court to admit or decline admission of a confession, even where it has been shown to have been voluntary, should have been exercised against admission, (*Petri* v. *The Police* reported in this Part at p. 40 *ante* at p. 74). What was said in this connection, in the Petri case may well be repeated here with equal emphasis :—

> " This Court has time and again warned trial Judges against the danger of exercising their discretion in favour of admitting such statements, made in circumstances which apparently place the maker of the statement (a person facing a criminal prosecution) at an unfair disadvantage before a police investigator."

And further down in the same page—

> " This case presents one more instance of the need for caution, with which trial Judges should approach the issue of the admissibility of such statements when the prosecution seeks to produce them as part of their case. Furthermore, the proper exercise of the judicial discretion in this respect, would tend to discourage unfair and oppressive abuse of police power by overzealous investigating officers."

After his confession to the investigating officer, the appellant led the police to the spot where he had concealed the knife. That was a piece of real and strong evidence implicating the accused. On return to the Station, notwithstanding the very late hour of the night (it was 11 p.m. according to the exhibit) the investigating Inspector took a further statement from this young constable who had murdered his wife. That is appellant's second confession, with a lot of detail regarding the crime, which was likewise admitted by the Assize Court after a side-trial, as exhibit 11.

There were two aspects of such a statement which called for careful consideration before admission. The first was its evidential value. It came from a person whose credibility had just been found unacceptable to the court. It could well contain untruths intended to alleviate the culprit's position ; or, it could contain suicidal statements capable of sealing his fate and render impossible any defence, other than one based on mental grounds. In fact this statement, if true and correct in its detail, it presents its maker in a strikingly cynical manner, as a cold-blooded murderer of the worse type. Moreover, a statement taken under

such strenuous circumstances, by a police officer, before the accused person had any chance of legal, medical or other assistance, would be likely to complicate, rather than facilitate and assist, the course of Justice.

The second aspect was that the statement in question was supposed to give to the investigating C.I.D. Inspector within the first 24 hours of the murder, full particulars of the way in which the crime was committed. Surely some of those particulars, if not most, could be checked for verification ; and if found true, independent evidence could be secured to establish them at the trial, if required. Evidence which might render either the production of the statement unnecessary for the prosecution, or any objection to its admissibility, useless for the defence. In any case the statement would be in the hands of the prosecution, if the accused chose to come to the witness box.

By admitting the statement, the trial Court placed the defence in a most difficult situation. They were faced with the dilemma : either to let such a statement remain unchallenged by the accused, or to put him in the witness-box to contradict and explain it. In this case, the former course would be fatal ; the defence was thus forced into the latter, notwithstanding accused's already damaged credibility. The result was that the trial Court in the end preferred the unsworn midnight statement to the investigating officer, to appellant's sworn evidence before the court ; and acted on the former.

I am strongly inclined to the view that the trial Court did not pay sufficient attention to any of these aspects of exhibit 11, when they decided to admit it as evidence for the prosecution in this trial. I am of the opinion that in the circumstances of this case, neither of those two statements, exhibits 9 and 11, should have been admitted.

The position regarding admissibility and weight of such statements is discussed in a number of cases as well as in text books on the English law which is the origin of our criminal law in Cyprus. I take it to be that admission is a matter of judicial discretion, exercised in the interests of justice and in fairness to the person on trial. It is equally open to the court to admit or reject a confession, in the interests of justice, even if voluntary, depending on the circumstances surrounding the confession in the particular case. (Cross on Evidence, 3rd Ed. p. 445/446 ; *Chan Wei Keung* v. *The Queen* [1967] 2 W.L.R. p. 552 (P.C.); *Regina* v. *Burgess* [1968] 2 W.L.R. p. 1209 at p. 1213 ;

Kokkinos v. *The Police* (1967) 2 C.L.R. p. 217 ; *Petri* v. *The Police* (reported in this Part at p. 40 *ante*). The Judge has the control of the trial ; and may admit or reject evidence from either side, at his discretion, judicially exercised, in the interests of justice. Provided that if the admissibility of the evidence is contested, the Judge must give his reasons for admitting or rejecting it. As I have already said and for the reasons which I have attempted to state, the two exhibits in question should be excluded.

What is left, after the exclusion of these two statements, on the question of premeditation (which is, practically, the only issue in this appeal) is the evidence of the appellant. And narrowed down still further, the question is whether the appellant took the knife from the exhibits-room in the police station, before leaving for his house, as contended by the prosecution ; or, he found the knife in the pocket of the other policeman's overall as he was going to his house and used it when he saw his wife with her knickers down, as the appellant states.

A very important witness in this connection was constable Andreas PapaMiltiades, one of the policemen at Kalavasso Station at the material time, who had been using the overall which the appellant was wearing at the time of the crime ; and who, according to the appellant, had also used the knife to cut paper at the station. This witness whose name is in the list of witnesses on the information, was not available at the trial as he had emigrated to America in the meantime. How did this happen, this Court does not know ; what we do know is that this important witness was not available when required.

After directing themselves (duly and correctly, I think) on the law regarding the element of premeditation in the crime under section 203 of the Criminal Code (as amended by Law 3/1962) the trial Court went to find the point of time when the appellant formed the intention to kill. "At about 11.00 p.m.— (the Court say in their judgment at p. 185, F.G.), according to the evidence of the accused, he put on the overall of his colleague PapaMiltiades. Therefore, we may infer that the accused formed the intention to kill his wife some time between 8.00 and 11.00 p.m. though from the evidence we cannot specify the exact time. As a result, we find that accused some very short time before 11.00 p.m. decided to kill his wife and put his intention into effect by certain preparations consisting of . . . . . " And the judgment proceeds to describe appellant's conduct

immediately prior and during the commission of the crime ; concluding with the words : "We can safely find that from the time the accused formed the intention to kill his wife to the time he carried it into effect by the stabbings, a time of about ten minutes must have intervened."

The trial Court considered this "as quite sufficient time . . . . . for the accused to reflect and relinquish his intention to kill having regard to the circumstances, *i.e.* the time element and the state of mind of the accused."

I can now sum up the position as it emerges at this stage :—

1. The finding of the trial Court that the appellant was not arrested until 10.15 p.m. of February 14, is, I think, untenable. What was done at 10.15 p.m. was a formal arrest which was obviously delayed by the investigating officer, for a purpose which has not been disclosed to the Court, or explained.

2. The appellant was suspected for the commission of the murder right from the discovery of the body of the victim early in the morning of the 14th February. To keep him for a while out of his way, but under police control, the sergeant ordered the appellant to proceed together with another policeman to Zighi village, a few miles away, on the pretext of some police duty. From his return to the station at about 10 a.m., the appellant was virtually under arrest.

3. While under arrest and under strong suspicion, the appellant was interrogated by the investigating officer without being informed of the true position and without a caution. Such treatment is, in my view, contrary to the spirit of fairness in which the provisions of our criminal law and procedure should be applied to a person under arrest ; and it should be discouraged.

4. In these circumstances the appellant gave his first long statement (now exhibit 8) where he denied complicity in the murder ; and denied the existence of any motive. The statement is marked as having commenced at 13.30 hrs. and as concluded at 16.00 hrs.

5. It is common ground that the appellant is the nephew of a police Chief Inspector working in the same station as the investigating officer. Appellant's version is that this relationship was referred to in the course of his statement, as well as later in the station kitchen ; and that a cultivated expectation of favour and help from the police owing to that relationship, prompted his subsequent confessions. This was entirely denied by the police witnesses.

6. The trial Court accepted the police version ; disbelieved the appellant ; and admitted the confessions (now exhibits 9 and 11) finding them to have been free and voluntary in the sense which this expression carries in our criminal courts. At the conclusion of the argument in the appeal, I was persuaded that this finding is unsatisfactory and should not be sustained. The confessions were, I think, the product of the investigating officer's contact with the appellant.

7. In any case, I take the view that the decision of the trial Court to admit as evidence exhibit 11 (the statement of the appellant after his confession) in exercise of their discretionary power to admit or exclude such evidence, was erroneous. And the statement should be excluded.

8. Without this statement (exhibit 11) the question of premeditation, which is an issue of fact (*Dervish Halil* v. *The Republic*, 1961 C.L.R. p. 432; *Aristidou* v. *The Republic* (1967) 2 C.L.R. p. 43) turns on the point of time in the course of events, at which the appellant took the knife in his hand for the purpose of killing his wife.

9. The damaged credibility of the appellant at the side trials and the emigration of witness PapaMiltiades, a police constable, pending trial, throw a shade of doubt in my mind on the finding of the trial Court that the appellant took the knife from the exhibits-room of the station, as the prosecution suggests ; and did not find it in the pocket of Papamiltiades' overall, as the appellant stated on oath.

10. Under that shade of doubt on a finding so closely connected with premeditation, I have reached the decision, not without considerable difficulty, that the finding of premeditation is vitiated and should be set aside. I would adopt with respect the cautious course taken by the Court of Appeal in England in *Reg.* v. *Wallett* ([1968] 2 W.L.R. p. 1199) and I, likewise, take the view that " it would not be satisfactory or safe " to allow, in the circumstances, the verdict of premeditated murder to stand. And as this case cannot be brought within the proviso in section 145 (1) (*b*) of the Criminal Procedure Law (Cap. 155), the conviction for premeditated murder should, in my opinion, be substituted by a conviction for homicide, under section 205 of the Criminal Code (in its present form). I would allow the appeal accordingly.

TRIANTAFYLLIDES, J. : I have had the privilege of perusing in advance the judgment of the learned President of this Court.

Though, with respect, I may not share his views on every point of detail, I am in agreement with him regarding the outcome of this appeal.

My approach to the matter is as follows :—

The essential issue in this case is whether or not the killing committed by the appellant, at Kalavassos, on the 13th February, 1968, with his wife as the victim, was a premeditated or an unpremeditated one ; there being no dispute about the fact that he did kill his wife by stabbing her repeatedly with a spring-knife.

The main evidence against the appellant were his own confessions to the Police ; and I shall start by assuming, for the time being, that the Assize Court of Larnaca—which convicted the appellant, on the 3rd June, 1968, of premeditated murder—was right in treating such confessions as being free and voluntary and as constituting reliable evidence.

The learned trial Judges have found that the time which intervened between the formation by the appellant of his intention to kill his wife—just before 11 p.m.—until the carrying into effect of such intention was a " very short time ", about 10 minutes ; and that, in the course of that short period of time, the appellant left the main building of the police station at Kalavassos, where he was on duty, and proceeded to obtain the spring-knife from a store-room near the station, where such knife was being kept as an exhibit for a criminal case ; that, then, he walked a distance of about 170 yards to his house, which could be covered at a fast pace in about 5 to 6 minutes ; that upon arrival there he knocked at the back-door, which was bolted from the inside, and that as soon as his wife opened the door he started stabbing her, twenty-two times in all.

Furthermore, the Court has accepted in evidence, as voluntary, the answer of the appellant to the formal charge, in respect of this crime, which was to the effect that he did not kill his wife with premeditation, but because he was beside himself (ἀναστατωμένος).

Bearing all these in mind, as well as the principles regarding the true meaning of premeditation, expounded in, inter alia, *Aristidou* v. *The Republic* (1967) 2 C.L.R. 43, and bearing

in mind, further, that the existence or not of premeditation is largely a question of inference to be drawn from all relevant circumstances, I have reached the conclusion that this is a case in which the appellant could not have been found—beyond reasonable doubt and with the certainty required in a criminal case—to have been in a calm and deliberate condition of mind, after forming the intention to kill his wife, so that he could have reflected upon such intention and relinquished it, and so that his crime could be held to be a premeditated one in the sense envisaged by the law.

The appellant was alone, possibly brooding over various matters, for some time, in the police station, before he formed—as found by the trial Court—just before 11 p.m., the intention to kill his wife ; and then, he put his intention into execution, and completed his lethal purpose in a great hurry, during the space of a mere ten minutes, which was scarcely sufficient for his relevant movements ; and, he stabbed his wife immediately when he reached home, and saw her, and in such a manner as to indicate that undoubtedly he was in a state of real frenzy. In my opinion, all along—from the moment he formed the intention to kill until he did so, within a space of ten minutes—the appellant must have been acting under an uncontrollable state of mental upheaval utterly incompatible with the possibility of his reflecting upon his said intention and relinquishing it; and in taking this view, of the unpremeditated nature of the killing by the appellant, it is most significant to note that the trial Court did not find that the appellant had formed the intention to kill his wife, earlier than about ten minutes before he did kill her, and that he had sat in the police station reflecting on such intention ; had there been such a finding then the outcome of this appeal would, of course, have been a different one.

It appears that the Judges of the trial Court were influenced, in reaching the conclusion that the killing was cold-blooded and premeditated, by the fact that they found that, after the appellant had stabbed his wife to death, he proceeded to lower her knickers and pull up her clothes and administer into her naked belly a number of knife wounds ; they based this finding of theirs on what they considered to be significant fingermarks on the victim's body. Having tested this finding of the trial Court as against the totality of the material before the Court, I cannot agree that it could be safely assumed that this is what did actually happen, and that the possibility can be excluded—with sufficient certainty—that, somehow, the victim's knickers did roll

down her body during the time while she must have been, obviously, struggling for her life, and while she was falling on the ground, stabbed to death ; the knickers, themselves, have not been produced as an exhibit, and it is impossible to say how firm or loose their hold on the victim's body might have been.

The next reason, for which I am of the opinion that the finding of premeditation should not be upheld, is that I have reached the conclusion that the confessions of the appellant ought not to have been admitted in evidence ; there arises, solely therefrom, a factor treated by the trial Court as being relevant to the issue of premeditation, namely, that the appellant did go to the store-room next to the police station in order to arm himself with the spring-knife before setting off for his house, and that he did not find it in a pocket of the overalls of a fellow policeman, PapaMiltiades, as the appellant has testified on oath in Court ; it being common ground that the appellant had put on such overalls, which were handy at the police station, before leaving the station to go home and kill his wife.

At first the appellant had given a statement to the police denying guilt ; some hours later, when he was formally arrested for the murder of his wife, he again denied such guilt ; yet, a few minutes later, at about 10.25 p.m., on the night of the 14th February, 1968, he called the investigating officer, Inspector Ropalis, and confessed to him orally that he had killed his wife.

Immediately after his oral confession the appellant led the investigating officer to a place just outside the yard of the police station and showed him where he had left the murder weapon ; and upon their return to the police station he made a written statement stating that he obtained the said weapon from the store-room.

When formally charged with the offence, on the next day, the appellant admitted the killing, but denied premeditation.

It is true that the trial Court, having heard the evidence of the appellant and the evidence adduced in support of the voluntariness of his confessions, accepted the latter and rejected the former.

But, when the voluntariness of a confession is being tested, so that it may be decided whether or not to admit it in evidence against an accused person, I do not think

that it can be said that such voluntariness can safely be determined, solely, as a naked issue of credibility. All the surrounding circumstances have to be looked at, and even if the scales of credibility are weighed against the appellant and in favour of the police, a Court may, still, decide that on the whole it is not safe to admit a confession.

In this particular case, and bearing in mind all the relevant circumstances—which have been dealt with by the learned President of this Court in his judgment, and on which I need not dwell all over again in any detail—I am of the opinion that the trial Court should have rejected the appellant's confessions.

And, once the confessions are no longer admissible evidence against the appellant, I think that one would not be prepared to hold, with any degree of certainty, that there exists on record sufficient material to warrant a verdict of premeditated murder ; and, in any case, it cannot be said that as the trial Court's reasoning stands it would inevitably have found premeditation on the part of the appellant if it did not take as a fact (to be derived only from one confession) that the spring-knife was obtained by the appellant from the store-room, and was not found by him, by sinister coincidence, in a pocket of the overalls which he put on.

But even if the confessions were properly admitted, the trial Court had to be satisfied about the reliability of their contents, in material respects, before it could proceed to act upon them ; and in this connection the Court below was deprived, because of what is stated hereinunder, of the opportunity of clearing beyond all reasonable doubt the issue of whether or not the appellant did obtain the spring-knife from the store-room or he did find it in the pocket of the overalls of policeman PapaMiltiades ; such issue having been treated by the trial Court—as already pointed out—as being relevant to the issue of premeditation.

PapaMiltiades gave evidence at the preliminary inquiry ; during that stage of the proceedings against him, the appellant was allowed, by the judicial officer in charge of them, to remain undefended by counsel ; so, PapaMiltiades, who at that stage was called in order to give evidence as to motive, was not questioned about the possibility of the spring-knife being in a pocket of his overalls.

This witness was due to appear and give evidence at the trial, but, somehow, the responsible authorities allowed

him to leave Cyprus before the trial, and he has been away ever since ; thus, the defence had no opportunity of putting to him appellant's version about the spring-knife.

Such a course of events, apart from handicapping severely the appellant in his defence, has resulted in shrouding in such doubt the aspect regarding the procuring of the murder weapon by the appellant, that in all conscience I cannot say that the finding about the existence of premeditation, as reached by the trial Court, is one that can be safely upheld.

For, mainly the foregoing reasons, I find that this appeal should be allowed, and that the appellant should be, instead, found guilty on a count of homicide, as stated in the judgment of the learned President of this Court.

JOSEPHIDES, J. : I regret that I have not found it possible to agree with my learned brothers in this appeal, and I shall endeavour to give my reasons for reaching the conclusion that the appeal should be dismissed.

The appellant was convicted of the premeditated murder of his wife and sentenced to death. In his sworn evidence before the Assize Court he admitted killing his wife at about 11 p.m. on the 13th February, 1968, and the only issue before the Court was whether he killed her with premeditation.

He appealed against his conviction mainly on the following grounds :—

(*a*) that two confessions were wrongfully admitted in evidence, and that " once the Court came to an unequivocal conclusion as to the appellant's credibility on the side issues on the confessions, the Court was no longer in a position to assess objectively the appellant's credibility on the main issue "; and

(*b*) that the conviction " was, having regard to the evidence adduced, unreasonable " (see section 145 (1) (b) of the Criminal Procedure Law, Cap. 155).

The principles of law applicable to appeals under the provisions of section 145 (1) (b) are well settled. It must be shown by the appellant that the verdict is unreasonable having regard to the evidence adduced, and it is not enough that the members of the Court of Appeal feel some doubt as to the correctness of the verdict. The Court of Appeal

would never substitute its own opinion for that of the trial Court. Since the enactment of the Courts of Justice, 1960, the Court of Appeal has the additional powers conferred upon it under the provisions of section 25 (3) of that Law. In interpreting that section my brother Vassiliades, J. (as he then was), had this to say in the case of *Simadhiakos* v. *The Police*, 1961 C.L.R. 64, at page 88 :—

> "..... I read the provisions of sub-section (3) to mean that this Court on hearing an appeal has the power to review the whole evidence without feeling fettered by determinations on question of fact made by the trial Court ; but in doing so, the Court should still be guided by the principles which have grown and developed in the light of practical experience, as to the value of trial Court findings.
>
> Before such findings are disturbed, the appellate Court must be satisfied to the extent of reaching a decision (unanimous or by majority) that the reasoning behind a finding is unsatisfactory ; or that the finding is not warranted by the evidence considered as a whole. And the onus, in my opinion, must rest on the appellant, both in civil and in criminal appeals, to bring this Court to such decision ; or else, the trial Court findings remain undisturbed as part of the case."

In the case of *Moustakas* v. *The Republic*, 1961 C.L.R. 239, O'Brian P., in considering the functions of the Court of Appeal in an appeal on the ground that the verdict was unreasonable, said (at page 241) :

> "This Court is not a trial Court and its function, as a Court of Appeal, in a case of this kind, is to review the evidence and the record of the trial so as to satisfy itself that the facts found by the trial Court are supported by legal evidence, that the law was correctly stated and properly applied by the Court and that no evidence was wrongly admitted against accused. On each of these heads I can find no valid ground for criticising the trial."

Finally, Zekia J., (as he then was), in dealing with the principles applicable to the credibility of witnesses in the case of *Charalambos Zacharia* v. *The Republic*, 1962 C.L.R. 52, at page 67, said :

> "According to the English principles of law, credibility of witness as well as weight to be attached to evidence falls within the province of the trial Court. Unless one is prepared to go to the extent of finding the verdict arrived at to be unreasonable, such verdict

must stand. As I am not ready to say that the trial Court went too far to the extent that having regard to the evidence adduced their verdict was unreasonable, I must, as a matter of law, dismiss the appeal."

The above stated principles have been applied by this Court in many appeals ever since.

In a recent appeal before the House of Lords in a civil case, Lord Dilhorne said that the true rule laid down in the authorities was that a Court of appeal should "attach the greatest weight to the opinion of the Judge who saw the witnesses and heard their evidence" (*Onassis & Callas* v. *Vergottis* (1968), "The Times", November 1).

These observations show that those who seek to disturb the decision of a trial Judge who had seen and heard the witnesses on a question of fact face a heavy task—especially in the case of a unanimous judgment of a Court composed of three Judges.

With these principles in mind I now turn to the facts of this case.

The appellant inflicted on his wife 22 stab-wounds of which several were fatal, and it is admitted that he did so with a spring-knife which was kept as an exhibit in the police station. On that night (13.2.68) the appellant—a special constable—was the only constable on duty at the station and immediately before the killing he left the station unattended at about 11 p.m., he went to his house some 170 yards away, where he killed his wife and, after washing the knife and his hands, he went back to the police station where he hid the knife under a stone outside the police yard. He stayed at the station until the next morning (14.2.68) when a colleague of his went there to take up duty. The appellant admitted hiding the knife under a stone where he took the police and showed it to them at about 10.30 p.m. on the 14th February, 1968. He did not mention to any of his colleagues or any other person that he had been to his house on the night in question until he confessed to the killing on the following night (14.2.68) at about 10.25 p.m.—but his confessions were objected to by the defence at the trial.

The question of premeditation in this case turns on the point of time at which the appellant took the knife knowingly in his possession, that is,

(*a*) whether he took it from the police station, or

(*b*) whether he found it in another policeman's overall on his way home.

In the former case there would no doubt be ample evidence on which to find premeditation ; in the latter, the appellant would be entitled to the benefit of doubt.

The trial Court in convicting the appellant relied on his two confessions to the police (*exhibits* 9 and 11). The voluntariness of these confessions was challenged at the trial and the Assize Court held two trials within trial to decide this question. I have read the evidence adduced on both sides in the side trials and have also read the long reasoning given by the Court in both cases. Undoubtedly the Court directed themselves correctly on the law as to the admissibility of confessions by referring to recent decisions of this Court and by directing themselves on the lines laid down by us in the case of *Petri* v. *The Police* (reported in this Part at p. 40 *ante*) because they found it necessary to enter into the question of the credibility of the witnesses, including the appellant. They stated, however, in their ruling that in deciding the credibility of the witnesses who gave evidence before them on the side issues they left their minds unaffected on other vital issues involving the credibility of the appellant and the witnesses for the prosecution. In touching the question of the credibility of the appellant they restricted themselves exclusively to matters arising on the side issues, and they did not go further than what was absolutely *necessary* for the purposes of their rulings : *Petri's* case at p. 70 (*ante*).

Having given careful consideration to this matter, after hearing the very helpful argument of appellant's able counsel, I have not been persuaded that, on the evidence adduced before the Assize Court, their findings that both confessions were voluntary are unreasonable or wrong ; nor am I satisfied that the reasoning behind such findings is unsatisfactory.

But assuming that the appellant's confessions were wrongly admitted, I would still be of the view that, on the whole of the other evidence adduced, the trial Court would or must inevitably have come to the same conclusion, once they rejected the appellant's version, as they were entitled so to do. I would, therefore, apply the proviso to section 145 (1) (b) of Cap. 155, on the ground that no substantial miscarriage of justice has actually occurred.

The appellant's version, which he disclosed for the first time in the witness-box when he was called upon for his

defence, appears in the following extract from the transcript of his evidence :—

"*A.* While I was sleeping, I dreamt of something which I do not remember exactly what dream it was and I got worried about my wife. I took an overall which was in the cell. . . . . .

Q. Did the dream finish? You saw something, you woke up confused, you took an overall, what happened?

A. I was worried as the dream was about my wife, I put on the overall in order to go home and see my wife, as I had in mind that as she had undergone two 'apoxysis' she was not very well. While I was going, as it was cold, I put my hands in the pockets of the overall and I felt that there was something in the pocket of the overall. When I took out that object from the pocket, I observed that it was a knife and I put it back in the pocket. I went to my house from the back door, as my wife used to leave the back door open so that I would not wake her up when I used to go home during the night. When I went there, I knocked at the door and as soon as the back door opened, after I knocked, I saw the main entrance door closing.

Q. Did you hear the noise of the closing of the door?

A. Yes, I did. I also heard a noise behind the door, a noise like footsteps. As soon as my wife opened the door, with one of her hands she opened the door and with her other hand she was trying to pull up her knickers. I do not know what happened to me at that moment, I took the knife out from my pocket in my hand and I started striking her.

Q. Tell the Court, did you want to kill her?

A. No.

Q. Did you think of such a thing?

A. No.

Q. You loved her you said.

A. Yes. In the beginning we had some friction, but later I loved her more than anybody else could have loved his wife.

Q. Were you leading a happy life?

A. Yes.".

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Put briefly, the appellant's story was that while on duty on a cold and rainy February night at about 11 p.m. he had a dream about his wife. He was worried about her but he does not remember what the dream was about. He puts on a police overall and on his way home he discovers in the pocket a spring-knife which was an exhibit in the police station ; he arrives home on foot. There is no light in the house. He knocks on the back floor. His wife opens the door while pulling up her knickers and he sees the front door closing and hears footsteps going away. Immediately and without saying anything to his wife he takes out the spring-knife and inflicts 22 terrible stab-wounds in the front part of her body from the heart to the legs and he literally eviscerates her. He then goes out, washes the knife clean (the knife having got broken in the meantime), he hides it under a stone near the police station and goes back to the station where he is found the next morning. When he is told in the afternoon by the investigating officer of his wife's murder he does not react as a normal husband would do and he pretends no knowledge.

The trial Court in rejecting the appellant's version gave their reasons for doing so to which I shall refer presently.

Pausing there, however, one should consider the formidable coincidence of events put forward by the appellant, that is, within a short space of time—within a matter of minutes—the dream of the appellant about his wife, his sudden decision to go home (leaving the station unattended at 11 p.m. on that winter night), his accidental finding of the spring-knife in another policeman's overalls while on his way home, and his wife to provide him with the perfect defence by opening the back door for him while pulling up her knickers and, simultaneously, an unknown person to be running away through the front door—the implication being that his wife had a lover.

To my mind this was such a highly improbable story that no reasonable jury would be likely to accept it or act on it, and the trial Court rightly rejected it. The following is the relevant part of their reasoning for doing so :—

> " When the accused was called upon, he came and gave evidence and he admitted the killing but he gave us his own version which we do not believe. Accused did not make a good impression on us and his version is a belated defence and it is very unnatural. The accused tried to evade answers to facts which were

against him by repeatedly saying that he did not remember. Yet when accused thought that the answer was to be in his favour, he gave a definite answer. When he read Exhibit 8 with eagerness he pointed out a paragraph which he said was incriminating against him. He spoke about a dream and in the examination in chief, when he was asked by his counsel what that dream was, he gave the usual answer, that he did not remember. Yet in cross-examination he gave the vague reply that he dreamt that his wife was in hospital. He said that he loved his wife more than any other husband loved his own wife, and that he went to his house on that night because he worried about the condition of his wife and that when he knocked at the door he had no suspicion against the morals of his wife. He said that he shouted to his wife that his wife opened the door with one hand and with the other hand she was trying to pull up her knickers. But to us it appears unnatural and improbable that the wife who heard the voice of her husband would have appeared before him with her knickers downwards. If she had indeed an amorous affair, her first consideration would have been to pull up her knickers, give time to her lover to go a good distance away, close the main door and then open the back door to the husband. From the photographs in the booklet (*Exh.* 3) and which are part of the evidence, the accused's wife was wearing clothes, stockings and shoes, and she could have quicker drawn up her knickers and appear properly dressed than walk to the door with her knickers down to her knees ; knickers drawn to the knees impede with the walking of any woman. The inference to be drawn is that the accused, after he killed his wife, he pulled down her knickers and he pulled up her clothes as this is consistent with the blood and finger-marks ('daktylies') on the belly going downwards to the place where the knickers were and from the fact that no corresponding knife-rippings were found on the knickers and the lower part of the clothes. Moreover accused said that he stabbed his wife without speaking to her, but it would appear to us as a natural act on the part of the accused to have questioned his wife about her alleged appearance, before stabbing her, since he had no suspicion against her morality.

The accused said in his testimony that that knife had been used by Papamiltiades a few days before

the commission of this crime to cut paper but he added that there was no other person who saw Papamiltiades except he. Yet, in cross-examination his counsel put questions to prosecution witnesses to the effect that the knife was used by policemen for cutting bushes of 'shinia' but the accused himself did not ever say that this knife was ever used for such a purpose. On the other hand the accused said that he knew that this knife was being kept as an exhibit in relation to another case.

Further we should remark that when accused was formally charged by Inspector Ropalis at the Larnaca Police Station on 15.2.1968, and at about 12.30 hrs. he gave the answer :

«Δεν την εσκότωσα εκ προμελέτης αλλά την εσκότωσα επειδή ήμουν αναστατωμένος».

This answer of the accused is in fact the gist of his evidence yet the accused attacked this statement as untrue and as not being free and voluntary, and we had to hold a side trial at which we decided that it was free and voluntary.

Lastly, we should observe, that the version of the accused was put forward by him for the first time, when he gave evidence, after he was called on his defence. He did not disclose it earlier, though he had ample opportunity to do so, so that the police could have had the opportunity to check it and verify it. Particularly that part of his version that the knife was in a pocket of the overall of his colleague Papamiltiades inasmuch as it could not have been contradicted by the evidence of Papamiltiades as this person is not in Cyprus and he could not have been called as a witness because he immigrated to America after he gave evidence at the preliminary inquiry."

Having considered and weighed carefully the whole of the evidence before them the trial Court, after giving their reasons, accepted the evidence of the prosecution as true and discarded the evidence of the appellant as " untrue, unreasonable and unnatural ".

After hearing the learned counsel for the appellant in this case and considering the whole evidence and the judgment of the trial Court, I have not been persuaded that the reasoning of the Court is unsatisfactory nor that their

findings are not warranted by the evidence ; and it is not in dispute that the Court directed themselves correctly on the law.

I should not, however, be taken as concurring in all the conclusions that the trial Court drew from the conduct of the appellant or the primary facts of the case, but, in my opinion, in the circumstances of this case they were entitled to reject the appellant's version and, having done so, they arrived at the verdict which they could have found upon the evidence and I would be bound to dismiss the appeal.

With regard to the question of the alleged damaged credibility of the appellant at the side trials, suffice it to say that, as stated earlier in this judgment, the trial Court directed themselves correctly on the law, as laid down in the *Petris* case, and that, in touching the question of his credibility at that stage, they restricted themselves exclusively to matters arising on the side issues, and they did not go further than what was absolutely necessary for the purposes of their rulings.

Finally, with regard to the emigration of the witness Papamiltiades, a police constable, pending the trial, it is important to note that the appellant failed to bring up earlier the question of the finding of the knife in the overalls worn by Papamiltiades. The appellant disclosed his version for the first time on the thirteenth day of his trial before the Assizes, when he was called upon for his defence, and this was some 3 1/2 months after the killing of his wife and after he had made several statements about the crime. The said Papamiltiades had given evidence at the preliminary inquiry on other points, including the identification of his overalls, but he was not cross-examined by the appellant, though it should be stated that the latter was not legally represented at the preliminary inquiry.

For the reasons I have endeavoured to state I am of the view that there was evidence to go to the jury, that there was no misdirection and that it cannot be said that the verdict is one which a reasonable jury could not arrive at. It would be impossible for me to say, in the words of section 145 (1) (*b*) of the Criminal Procedure Law, that the conviction was, having regard to the evidence adduced, unreasonable.

I would, therefore, dismiss the appeal.

STAVRINIDES, J.: In my opinion it was unsafe, having regard to the evidence before the trial Court, to admit

the statements exhibits 9 and 11 as voluntary ; and on this ground I agree that the finding of premeditation cannot stand.

HADJIANASTASSIOU, J.: The appellant was convicted by the Assize Court of Larnaca, for the premeditated murder of his wife and sentenced to death, under the provisions of section 203 of the Criminal Code, Cap. 154, as amended by section 5 of Law 3/62. He admitted killing his wife but he alleged that he did so in circumstances when he found himself at the back door of his home ; after knocking on the door and as soon as the back door opened, he saw the main entrance door closing. He heard noise of foot steps ; his wife opened the door with one of her hands and with the other she was trying to pull up her knickers. At that moment he did not realise what has happened to him, but he took a knife out of his pocket and started knifing her. His version was rejected by the trial Court as being inconsistent with the evidence as a whole including the statements he has made to the police amounting to a confession of the crime of premeditated murder.

The appellant in his notice of appeal relies in effect on the following grounds : --

A. That the trial Court was wrong in admitting *exhibit* 9 as voluntary statement because the appellant had been induced to confess on his guilt by promises and/or threats ;

B. Once the appellant had been induced to confess his guilt all his subsequent confessions including *exhibit* 11 were tainted with the illegality which attaches to the original confession ;

C. The Court's conclusion that there was premeditation was wrong in law and in fact and not justified on the totality of the evidence resting mainly on the confession of the appellant.

This appeal is grounded on alleged misdirection on both law and facts. As the facts of this case are stated at length in the judgment of the learned President of this Court I do not propose treading over the same grounds, except when it is necessary for the purpose of considering the findings of fact made by the Assize Court. I would like, however, to add that after having the advantage of reading in advance the judgment of the President I agree that the conviction for premeditated murder should be set aside and substituted by a verdict of homicide under the provisions of section 205 of the Criminal Code.

Counsel for the appellant has contended that the Assize Court misdirected themselves on the law viz., that the statement given by the appellant (*exhibit* 9) was free and voluntary ; and that the admission of the second statement (*exhibit* 11) was the natural consequence of the wrongful admission of *exhibit* 9 because once the appellant had been induced to confess his guilt, all his subsequent confessions were tainted with illegality.

The question whether the statement given by the appellant is admissible or not has been decided in many cases : I propose dealing with the case of *Ibrahim* v. *Rex* [1914] A.C. 599. Lord Sumner had this to say at page 609 :—

> " It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shewn by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale. The burden of proof in the matter has been decided by high authority in recent times in *Reg.* v. *Thompson* [1893] 2 Q.B. 12 a case which, it is important to observe, was considered by the trial judge before he admitted the evidence. There was, in the present case, Major Barett's affirmative evidence that the prisoner was not subjected to the pressure of either fear or hope in the sense mentioned. There was no evidence to the contrary. With *Reg.* v. *Thompson* [1893] 2 Q.B. 12 before him the learned judge must be taken to have been satisfied with the prosecution's evidence that the prisoner's statement was not so induced either by hope or fear, and, as is laid down in the same case, the decision of this question, albeit one of fact, rests with the trial judge. Their Lordships are clearly of opinion that the admission of this evidence was no breach of the aforesaid rule."

This principle was adopted and followed in the very well known case of *Reg.* v. *Georghios Sfongaras* (1957) 22 Cyprus Law Reports 113. In the Sfongaras case it was held that the onus lay upon the prosecution to prove the voluntariness of a confession, and the trial Judge had to be satisfied that the confession was a voluntary one and not that it was involuntary. It was not, therefore, necessary that the Judge should have been convinced that the allegations

of violence were true ; if he had a doubt the prosecution had not discharged the onus cast upon it. See also *Kokkinos* v. *Police* (1967) 2 C.L.R. 217.

The admissibility of the confession was the subject of a side trial, on the issue whether it was free and voluntary or whether it was prompted by an oppressive manner or conduct of inducing the accused to make the statement either by hope of fear as alleged by the defence. Several witnesses were heard, including the appellant, who gave evidence to the contrary, alleging that he gave the statement because the investigating officer told him that his uncle Chrysanthos, a Chief Inspector of the Police, is his best friend. The appellant went on to say that the investigating officer then addressed him in these terms :

> " You will admit that you have killed her, that you have committed this, because I and your uncle do not want an evil to happen to you . . . . . .Don't you know the case of Crinos, the policeman, and Fanis who gave a statement not to incriminate the police, and then in Court everything was arranged . . . . . .Your uncle and I want τὸ καλό σου ".

The Assize Court in a reasoned ruling of 7 pages, after dealing and weighing the evidence and after considering the authorities with regard to the law, had this to say at page 71 of the record :

> " In short, on this point, we prefer the evidence of the witnesses for the prosecution to the evidence of the accused, and we are satisfied beyond any reasonable doubt that the statement in question was not obtained as a result of threats and promises held out to the accused by persons in authority and we are further satisfied that the accused was cautioned before making this statement and we, therefore, find that the statement was obtained in accordance with the law and we rule that it is admissible".

With due respect to the learned trial Judges, having consider the whole confession and having reviewed all the evidence on this issue, I have reached the conclusion that their finding is not satisfactory and cannot be sustained. In my opinion having regard to the totality of the evidence before them and particularly in view of the relationship of the appellant with Police Chief Inspector Chrysanthos, it was not necessary that the Judges should have been convinced that the allegations of inducements such as hope

or of threats were true. If they had doubts the prosecution had not discharged the onus cast upon them. Certainly, therefore, reviewing all the evidence, in my view, there is room for doubt, and that the confession was in my mind involuntary. I therefore, rule that the confession under the circumstances is inadmissible in evidence.

Having arrived at this conclusion, it follows in my view, that the statement given by the accused to the Police *exhibit* 11, is also inadmissible in evidence because it was given as a result of *exhibit* 9 and it was tainted with illegality ; and, therefore, this finding also cannot be sustained.

Having excluded both confessions (*exhibits* 9 & 11) made by the appellant, I now propose, to deal with the question of premeditation. Without dealing at length with the evidence of the accused on this issue, I would like to add, that I have some doubts in my mind, whether the appellant took the knife from the exhibits room in the Police Station at the time of this terrible killing before leaving for his house or whether he found it in the pocket of the overall used by Police Constable Papamiltiades as he was on his way to his house ; and used it to kill his wife when he saw her opening the back door with her knickers down. Unfortunately, this very important witness who could help the Court on this important issue, was not available at the trial because he emigrated to America shortly before the trial started. As this witness was the policeman who was using the overall which the accused admittedly was wearing at the night of the crime and, as the accused has alleged that this constable had been seen using this very important knife in order to cut paper at the Police Station, I repeat that because of his absence and as I did not have the benefit of his evidence, it made me have even more serious doubts on this crucial issue on the question of premeditation.

In these circumstances, I would be inclined to the view, not to allow a verdict of premeditated murder to stand.

I would, therefore, allow the appeal.

Appeal allowed. Conviction for premeditated murder set aside ; substituted by a conviction for homicide. Appellant sentenced to life imprisonment.