[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

PETROS STAVRINOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3086).

Criminal Law—Wounding with intent to cause grievous harm contrary to section 228(a) *of the Criminal Code Cap.* 154—*Evidence does not show clear intention to inflict grievous bodily harm—Appellant entitled to the benefit of doubt—And convicted of the lesser offence of unlawful wounding under section* 234(a) *of the Criminal Code.*

Intent—Intent to cause grievous harm—Proof—Onus on the prosecution throughout to prove intent—Inference—It is not sufficient that such intent is a reasonable inference from the facts of the case—It must be the only reasonable inference to be drawn from the facts of the particular case on the totality of the evidence.

Evidence—Intent—Proof of—See above.

Wounding—Unlawful wounding with intent to do grievous bodily harm—Intent—Proof—Section 228(a) *of the Criminal Code, Cap.* 154—*Unlawful wounding contrary to section* 234(a) *of the Code—See above.*

Grievous bodily harm—Intent to cause such harm—Proof of—See above.

The appellant was convicted in the Assizes of Nicosia of wounding with intent to cause grievous harm contrary to section 228(*a*) of the Criminal Code, Cap. 154 ; and was sentenced to 2½ years' imprisonment. He appeals both against conviction and sentence. The main ground of his appeal against conviction is that the evidence adduced before the trial Court is insufficient to support the finding of intent to cause grievous bodily harm ; the appeal against sentence is made on the ground that the sentence imposed is manifestly excessive in the circumstances of this case.

The short facts of the case are that in the course of a quarrel between the appellant's son and the person named in the

charge, during which the former attempted to use a knife and the latter struck the youth with a dangerous knob-stick on the head causing him a very severe injury, the appellant seized the knife from his son, chased the other person round a stationary car and inflicted upon him a superficial wound on the chest.

It was argued by counsel for the appellant that in the circumstances the appellant's intention may well have been merely to wound the other person, in which case the wounding could only amount to unlawful wounding contrary to section 234(*a*) of the Criminal Code, Cap. 154 which is a lesser offence than any of those provided in section 228, with intent " to maim, disfigure or disable " or to do some other " grievous harm " of a similar nature to the victim.

Held, (1). It is well settled that intent can be inferred as a fact from the surrounding circumstances of a particular case, and that it is not sufficient that such an inference is a reasonable one ; it should be the only reasonable inference that can be drawn from the facts. The burden of proving intent is throughout on the prosecution ; and, if on the totality of the evidence there is room for more than one view as to the intent of the accused, and on a review of the whole evidence the Court either think the intent did not exist or they are left in doubt whether it did exist or not the accused is entitled to the benefit of such doubt : See *Reg.* v. *Nicos Sampson Georghiades* (*No.* 2) (1957) 22 C.L.R. 128, at p. 133 ; *Pefkos and Others* v. *The Republic*, 1961 C.L.R. 340, at pp. 351–2 and 367–9 ; *R.* v. *Steane* [1947] K.B. 997, at p. 1004 ; *Aristidou* v. *The Republic* (1967) 2 C.L.R. 43, at pp. 89, 91 and 92 ; *Paspalli* v. *The Police* (1968) 2 C.L.R. 108 ; *Ioannides* v. *The Republic* (1968) 2 C.L.R. 169 ; *Kokkinos and Another* v. *The Police* (1968) 2 C.L.R. 147.

(2)—(*a*) (TRIANTAFYLLIDES, J., *dissenting*) :

On the totality of the evidence the degree of violence used against the victim did not show a clear intention to inflict grievous bodily harm, and the appellant was accordingly entitled to the benefit of doubt and he should have been acquitted of the charge under section 228(*a*) of the Criminal Code, namely, of unlawfully wounding with intent to do grievous harm, but he should have been convicted of the lesser offence of unlawfully wounding under section 234(*a*). We would, therefore, order accordingly by virtue of section 145(1)(*c*) of the Criminal Procedure Law, Cap. 155.

(*b*) Sentence of 2½ years' imprisonment set aside and a sentence of one year's imprisonment imposed (from the date of conviction) for unlawful wounding under section 234(*a*) of the Criminal Code.

(3) *per* TRIANTAFYLLIDES, J. :

Regarding sentence as imposed by the Assize Court in relation to the conviction which I am of the view that it should be upheld (viz. of the offence of unlawful wounding with intent to do grievous harm contrary to section 228(*a*) of the Criminal Code), I am of the opinion that the sentence in the circumstances of this case was manifestly excessive and should be reduced to one year's imprisonment as from the date of the conviction.

(4) In the result the appeal is allowed ; the conviction by the Assize Court under section 228(*a*) of the Criminal Code Cap. 154 is substituted by a conviction of the lesser crime under section 234(*a*) of the Code ; and the sentence is reduced to one year's imprisonment from the date of conviction.

Appeal allowed.

Cases referred to :

Regina v. *Nico Sampson Georghiades* (No. 2) (1957) 22 C.L.R. 128 at p. 133 ;

Pefkos and Others v. *The Republic*, 1961 C.L.R. 340 at pp. 351–2, 367–9 ;

R. v. *Steane* [1947] K.B. 997 at p. 1004 ;

Aristidou v. *The Republic* (1967) 2 C.L.R. 43 at pp. 89, 91 and 92 ;

Paspalli v. *The Police* (1968) 2 C.L.R. 108 ;

Kokkinos and Another v. *The Police* (1968) 2 C.L.R. 147 ;

Ioannides v. *The Republic* (1968) 2 C.L.R. 169.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Petros Stavrinou who was convicted on the 22nd February, 1969, at the Assize Court of Nicosia (Criminal Case No. 24819/68) on one count of the offence of wounding with intent contrary to section 228 (*a*) of the Criminal Code Cap. 154.

and was sentenced by Ioannides Ag.P.D.C., Kourris and HjiTsangaris, D.JJ., to 2½ years' imprisonment.

L. N. Clerides, for the appellant.

A. Frangos, Senior Counsel of the Republic, for the respondent.

The following judgments were delivered by :—

VASSILIADES P.: The appellant was convicted in the Assize Court of Nicosia on February 22, 1969, of wounding with intent to cause grievous harm ; and was sentenced under section 228 (*a*) of the Criminal Code (Cap. 154) to 2½ years' imprisonment. He is now appealing both against conviction and sentence. The main ground of his appeal against conviction is that the evidence of intent is insufficient to support the conviction ; the appeal against sentence is made on the ground that the sentence imposed, is manifestly excessive, in the circumstances in which the offence was committed.

The appellant, an animal dealer of 57 years of age, from a Tylliria village, was charged together with his son, a youth of 18. The father was charged for unlawfully wounding the person named in the charge, " with intent to maim, disfigure or disable " him " or to do him grievous harm ;" the son was charged on a separate count for attempting to strike with a knife the person in question. We are only concerned in this appeal. with the case against the father as the son was acquitted by the trial Court.

The short facts of the case are that in the course of a quarrel between the son and the person named in the charge, during which the former attempted to use a knife and the latter struck the youth with a dangerous knob-stick on the head causing him a very severe injury, the appellant seized the knife from his son, chased the other person round a stationary car and inflicted upon him a superficial wound on the chest. For this wounding the appellant was convicted under section 228 (*a*) of the Criminal Code, which carries imprisonment for life. His case is that he should be convicted of unlawful wounding under section 234 (*a*) a lesser offence which entails imprisonment for three years.

The knife was not traced and may well have been a clasp-knife. The wound as described by the Medical Officer who gave evidence at the trial, was half an inch long

and about half c.m. deep to the sternum bone, which in that part is only under a thin layer of skin and other tissues. The doctor could not say whether the bone was injured at all ; and described the wound as superficial. The injury on the young man's head, on the other hand, was a very serious one, causing immediate as well as subsequent effects of a permanent nature. For causing that injury to the son, the other person was prosecuted, convicted and sentenced to 18 months' imprisonment.

Learned counsel for the appellant ably submitted that in the circumstances, in which the wounding was committed, (as established by the evidence, and as found by the trial Court) the intent required to constitute a charge under section 228 of the Criminal Code, was not sufficiently established ; and, therefore, the conviction could not stand. There can be no doubt, counsel argued, that the appellant intended the consequences of his act in using the knife ; but as he did so in the heat of the moment and under the strain of the provocation received from the other person's violent attack on appellant's son, his intention may well have been to wound the other person. In which case the wounding, if short of justification, would, in the circumstances, only amount to unlawful wounding contrary to section 234 (*a*), which is a lesser offence than any of those provided in section 228, with intent " to maim disfigure or disable " or to do some other " grievous harm " of a similar nature to the victim.

The trial Court's assessment of the facts is reflected in the following statement found in the part of the judgment connected with the sentence :

> " We do agree ", the trial Court say, " that what the accused did he did it on the heat of the moment and after being provoked by the complainant, the provocation amounting to a severe blow on the head of his son. We also take it as being in favour of the accused that it was not he who first took out the knife but his son ; and further that on seeing the knife in the hands of his son the accused attempted to dissuade him from committing any further trouble ".

As regards intent, however, the trial Court say :—

> " A person's intent must usually be gathered from the very nature of his act and the person stabbing another with a knife on the chest could not but have intended to cause grievous harm. It must be further

borne in mind that the knife stopped at the bone and there is nothing to show that the accused intentionally used little force so as to cause a superficial wound in order to negative his presumed intent shown from the very nature of his act. For the above reasons we find accused guilty as charged ".

With all respect I find myself in full agreement with the first part of the above statement, regarding the finding of intent. But I cannot accept the second part of the proposition regarding the bone and the " presumed intent ". As pointed out by learned counsel for the appellant, the intent required to support a charge under section 228, is an intent to maim, disfigure or disable the victim, or to cause some grievous harm to him of that nature. An intent to cause a superficial wound as the one actually inflicted in this case, would not be sufficient to establish the charge upon which the appellant was convicted. The trial Court seems to have proceeded on this footing when they looked for evidence showing the force used by the appellant in inflicting the wound found on his son's assailant.

When the trial Court speak of the absence of evidence " negativing " a " presumed intent ", they give me the impression of placing on the appellant a burden which the law does not put on the defendant. It is always for the prosecution to establish positively the intent required to constitute the offence charged. This matter was exhaustively dealt with in *Pefkos* v. *The Republic*, 1961, C.L.R. p. 340 ; and was recently considered in *Paspalli* v. *The Police* (1968) 2 C.L.R. 108 ; *Kokkinos and Another* v. *The Police* (1968) 2 C.L.R. 147 ; *Ioannides* v. *The Republic* (1968) 2 C.L.R. 169.

In the circumstances of this case where the appellant was acting under the strain of strong provocation and in the heat of the moment, I think that the submission made on behalf of the appellant regarding intent, based as it is on the actual wound caused, is well founded. I would allow this appeal and substitute by virtue of section 145 (*c*) of Cap. 155, a conviction under section 234 (*a*) of the Criminal Code Cap. 154, for the conviction under section 228 (*a*).

As regards sentence, having given the matter full consideration we have reached unanimously the conclusion that the proper sentence in the circumstances, is one year's imprisonment from the date of conviction.

TRIANTAFYLLIDES, J.: I am not in disagreement with the majority view in this case regarding the true legal position on the issue of establishing intent in a criminal case ; and I take the law to be as laid down in, *inter alia*, *Regina* v. *Nicos Sampson Georghiades* (No. 2) 22 C.L.R. 128, and as restated in *Pefkos and Others* v. *The Republic*, 1961 C.L.R. p. 340 ; in other words, that when the presence of intent is an essential ingredient of the offence charged it is not enough to say, in ascertaining whether a particular intent is proved or not, that this was a reasonable inference to be drawn from the facts, but one must go further and say that this was the only reasonable inference that could be drawn.

In my opinion the only reasonable inference that could be drawn from the facts, as found on the basis of the evidence accepted as true by the trial Court, is that the appellant had the intent charged in the count on which he was convicted. I take this view bearing in mind that when he saw his son being struck down by the complainant with a stick he no doubt became very angry and his attitude towards the complainant must have been a very aggressive one ; he did not rush at the complainant to attack him with his hands, but he got hold of a big clasp-knife and chased him for quite some time, at least twice round a car which was stationary there, and then he stabbed him in a very vital part of his body.

Regarding sentence, as imposed in relation to the conviction which I am of the view that it should be upheld, I am of the opinion that the sentence was manifestly excessive in the circumstances of this case. I take into account the conciliatory behaviour of the appellant before he committed the crime, the fact that he saw his son being struck down in front of his own eyes and the continuing thereafter aggressiveness of the complainant ; I think that the trial Court must have been unduly influenced by the previous criminal record of this man, without giving due weight to the circumstances of the case itself.

I would agree that the sentence should be not more than one year's imprisonment as from the date of conviction.

JOSEPHIDES, J.: I agree that the appeal against conviction should be allowed. In deciding this case it should be borne in mind that the wounding of the complainant by the appellant took place after the complainant had inflicted a very severe injury on the head of the appellant's son with a knob-stick and while the appellant was chasing the

complainant away ; that the complainant's wound was half-an-inch long and half-a-centimetre deep to the bone, and that it was described by the doctor as superficial.

It is well settled that intent can be inferred as a fact from the surrounding circumstances of a particular case, and that it is not sufficient that such an inference is a reasonable one ; it should be the only reasonable inference that can be drawn from the facts. The burden of proving intent is throughout on the prosecution ; and, if on the totality of the evidence there is room for more than one view as to the intent of the accused, and on a review of the whole evidence the Court either think the intent did not exist or they are left in doubt as to the intent, the accused is entitled to the benefit of such doubt : see *Pefkos and Others* v. *the Republic*, 1961 C.L.R. 340 at pages 351–2 and 367–9 ; *Reg.* v. *Nicos Sampson Georghiades* (No. 2) (1957) 22 C.L.R. 128, at page 133 ; *R.* v. *Steane* [1947] K.B. 997 at page 1004 ; and *Aristidou* v. *The Republic* (1967) 2 C.L.R. 43 at pp. 89, 91 and 92.

On the totality of the evibence in the present case the degree of violence used against the complainant did not show a clear intention to inflict grievous bodily harm, and the appellant was accordingly entitled to the benefit of doubt and he should have been acquitted of the charge under section 228 (*a*) of the Criminal Code, namely, of unlawfully wounding with intent to do grievous harm, but he should have been convicted of the lesser offence of unlawfully wounding under section 234 (*a*). I would, therefore, order accordingly.

I also agree that the appeal against sentence should be allowed, the sentence of 2½ years' imprisonment set aside, and a sentence of one year's imprisonment (from the date of conviction) imposed on the appellant in respect of his conviction of unlawful wounding under section 234 (*a*) of the Criminal Code.

VASSILIADES, P.: In the result the appeal is allowed ; the conviction by the Assize Court under section 228(*a*) of the Criminal Code (Cap. 154) is substituted by a conviction for the lesser crime under section 234 (*a*) of the Code ; and the sentence is reduced to one year's imprisonment from the date of conviction.

Appeal allowed.