[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, JJ.]

THE REPUBLIC,

Applicant,

v.

PHIVOS PETROU PIERIDES,

Respondent.

(*Question of Law Reserved No.* 153).

Statements to the police by persons in custody—Admissibility—Judges' Rules (revised 1964)*—Rule* 3, *paragraphs (a) and (b) and Introduction Appendix A, principle (d)—Statement to the police made by the accused while in custody—In the circumstances of this case the said statement in order that it could be safely admitted in evidence as undoubtedly voluntary, provisions of Rule* 3 *above should have been complied with by cautioning accused in the terms of paragraph (a) of the said Rule and not questioning him not in compliance with paragraph (b) thereof.*

Statements to the police by persons in custody—Admissibility—Judges' Rules—Position in England and in Cyprus—A view somewhat more favourable for a person in custody adopted here than that obtaining in England by taking into account the consideration of local conditions, including differences between the average person in Cyprus and the average person in England.

Judges' Rules—See supra.

Evidence — Statements to the police by persons in custody — Admissibility—Judges' Rules—Such statements should be approached with caution—See also supra.

Criminal Procedure—Question of law reserved for the opinion of the Supreme Court—Section 148 *of the Criminal Procedure Law, Cap.* 155.

Question of law reserved—Section 148 *of Cap.* 155 (supra)*—See* supra.

This is a question of law reserved for the opinion of the Supreme Court by the Assize Court, Famagusta, under section

148 of the Criminal Procedure Law, Cap. 155 on the application of counsel appearing for the Republic during the trial of criminal case No. 2950/71. The matter turns on the admissibility of a statement of the accused obtained on March 7, 1971 by prosecution witness 30, the investigating officer in the case. It was a common ground that if the statement in question ought to have been obtained under Rule 3 of the Judges' Rules 1964 (which were laid down in England in January, 1964; see Archbold on Criminal Pleading, Evidence and Practice, 37th edn., p. 419, para. 1119), then, there has been an infringement of the said Rule 3 and, consequently, the statement was inadmissible in evidence as not being a voluntary one.

It is common ground also that the statement in question was obtained from the accused, while he was in police custody, by the aforesaid prosecution witness 30, a police sergeant who was the investigating officer in the case. The Assize Court refused to admit in evidence the said statement because, as stated in their ruling, "the investigating officer in taking the statement failed to observe the provisions of Rule 3 (*infra*) of the Judges' Rules". It was just after that ruling that counsel for the Republic applied under section 148 (*supra*) for the question to be reserved for the opinion of the Supreme Court.

The question of law reserved as aforesaid was submitted to the Supreme Court by the President of the Assize Court in the following terms:

> "(1) Is rule 3 of the Judges' Rules applicable in the case of persons in custody only after they have been charged with the offence, or does it also apply where the evidence in the hands of the police raises objectively a real possibility that he (a person in custody) may be prosecuted irrespective of whether he is actually informed that he may be prosecuted?
>
> (2)..... and if it is a statement that ought to have been obtained under Rule 3, whether (on the facts as found in the said ruling) there has been any infringement of the said Rule 3".

It should be recalled that it was conceded that the answer to (2) above should be in the affirmative.

The Supreme Court held that in the circumstances of this

case the said statement ought to have been obtained under Rule 3, that there has been an infringement of that Rule; and consequently, the statement was rightly ruled to be inadmissible as not being a voluntary one.

Held, (1). (*After quoting Rule* 2 *and Rule* 3 (*a*) *and* (*b*) *of the Judges' Rules* 1964, *see post in the judgment*):..... ..... These Rules were, when laid down, stated not to affect certain principles set out in an Appendix of Introduction; one of such principles is:

> " (d) That when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for that offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence" (see Archbold *supra* at p. 423, para. 1122).

We would, therefore, say that, even when Rule 3 is not directly applicable, if there has been a breach of principle (d) *supra* and if the protection to be found in Rule 3 is not accorded to a person in custody in relation to a statement made by him to the police, it would not be safe to treat such statement as being admissible in evidence, in the sense of it not being undoubtedly a voluntary one.

(2) Thus, once, in the present instance, the Assize Court has found as a fact by its Ruling, that when the statement of the accused was obtained "there was a real possibility that the accused might be charged" (which expression we take it to mean, as put in the judgment in *R.* v. *Collier and Stenning* 49 Cr. App. R. 344, at p. 351, that there was "enough evidence to prefer a charge..... in the sense that the police acting reasonably should have preferred a charge", in accordance with principle (d) above) we would agree with the Assize Court that in order that the accused's statement could be admitted the provisions of Rule 3 should have been "invoked"; in other words, the accused should have been cautioned as set out in paragraph (a) of Rule 3 and should not have been questioned in a manner not in compliance with paragraph (b) of that Rule.

(3) We have been led to adopt this view—which may seem to be not exactly in accordance with the strict letter, but only with the spirit of the judgment in the *Collier and Stenning* case (*supra*)—by taking into account the consideration of local

conditions, including differences between the average person in Cyprus and the average person in England. (See *Queen* v. *Erodotou* 19 C.L.R. 144, at p. 148 and *KEM (Taxi) Ltd.* v. *Tryfonos* (1969) 1 C.L.R. 52, where the need to take into account local conditions was clearly recognized). Also a cautious approach by Cyprus Courts to statements made by persons in custody has been, quite properly, manifested constantly over the years in quite a number of cases (see *Volettos* v. *The Republic,* 1961 C.L.R. 169, at pp. 186–187; *Petri* v. *The Police* (1968) 2 C.L.R. 40, at p. 74; *Kokkinos* v. *The The Police* (1967) 2 C.L.R. 217). We felt, thus, that it was right to take a view somewhat more favourable for a person in custody than that in *Collier and Stenning supra* (Cf. *Australian Consolidated Press Ltd.* v. *Thomas Uren* [1967] 3 W.L.R. 1338, at p. 1356 (P.C.,) per Lord Morris of Borth—Y—Gest).

Cases referred to:

R. v. *Collier and Stenning* 49 Cr. App. R. 344, at pp. 350–351, per Lord Parker C.J.;

Australian Consolidated Press Ltd. v. *Thomas Uren* [1967] 3 W.L.R. 1338, at p. 1356 (P.C.,) per Lord Morris of Borth—Y—Gest;

Queen v. *Erodotou,* 19 C.L.R. 144, at p. 148;

KEM (Taxi) Ltd. v. *Tryfonos* (1969) 1 C.L.R. 52;

Volettos v. *The Republic,* 1961 C.L.R. 169, at pp. 186–187;

Petri v. *The Police* (1968) 2 C.L.R. 40, at p. 74;

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

Rookes v. *Barnard* [1964] A.C. 1129.

Question of Law Reserved.

Question of Law Reserved by the Assize Court of Famagusta (Georghiou, P.D.C. Pikis & S. Demetriou, D.J.J.) for the opinion of the Supreme Court, under section 148 of the Criminal Procedure Law, Cap. 155, relative to a ruling by the said Assize Court, made in the course of the hearing of Criminal Case No. 2950/71, instituted by the Republic against the above named Respondent who was charged of arson and of setting fire to goods in a building, contrary to sections 315(a) and 319, respectively, of the Criminal Code Cap. 154, whereby it refused to admit in evidence a statement from the said

Respondent because it had been obtained contrary to the provisions of Rule 3 of the Judges' Rules, 1964.

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

G. Cacoyiannis with *N. Zomenis*, for the Respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: During the trial of criminal case No. 2950/71 by an Assize Court in Famagusta Counsel appearing for the Republic applied under section 148 of the Criminal Procedure Law (Cap. 155) that the question:

> " Whether the statement of accused obtained on 7.3.1971 by prosecution witness 30 was a statement to be obtained under Rule 2 or under Rule 3 of the Judges' Rules and if it is a statement that ought to have been obtained under Rule 3 whether there has been an infringement of the said Rule"

be reserved for the opinion of this Court.

The application was made after the Assize Court had refused to admit in evidence a statement obtained from the accused—the Respondent—because, as stated in the relevant Ruling of the Assize Court, "the investigating officer in taking the statement failed to observe the provisions of Rule 3 of the Judge's Rules".

It is common ground that the statement in question was obtained from the accused, while he was in custody, by prosecution witness 30, a police sergeant.

The question of law reserved as aforesaid was submitted to us as follows by the President of the Assize Court:-

"(1) Is Rule 3 of the Judges' Rules applicable in the case of persons in custody only after they have been charged with the offence, or does it also apply where the evidence in the hands of the police raises objectively a real possibility that he"

- (a person in custody) -

may be prosecuted, irrespective of whether he is actually informed that he may be prosecuted?

2) ..... and if it is a statement that ought to have been obtained under Rule 3, whether there has been any infringement of the said Rule."

We might start with paragraph (2) because it can be dealt with very briefly: It has been conceded by counsel appearing for the Republic that if in obtaining the statement of the accused there ought to have been compliance with the requirements of Rule 3 then there has been an infringement of the said Rule; this is, then, an issue of mixed law and fact in respect of which there is nothing more to be said in this Decision.

We come next to deal with the real question of law reserved, as set out in paragraph (1):

The matter of the admissibility of the statement of the accused was argued before the Assize Court, by counsel appearing for both sides, on the basis of a common assumption that either Rule 2 or Rule 3 of the Judges' Rules, which were laid down in England in January 1964 (see Archbold on Criminal Pleading, Evidence & Practice, 37th edition, p. 419, para. 1119), was applicable thereto.

Rule 2 reads as follows:-

"As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms:-

'You are not obliged to say anything unless you with to do so but what you say may be put into writing and given in evidence.'

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present."

Paragraphs (a) and (b) of Rule 3 read as follows:-

"(a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:-

'Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.'

(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms:-

'I wish to put some questions to you about the offence with which you have been charged (*or* about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence.'

Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer."

These Rules, were, when laid down, stated not to affect certain principles set out in an Appendix of Introduction; one of such principles is:-

"(d) That when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence".

(see Archbold, *supra*, p. 423, para. 1122).

Counsel for the Republic has submitted in argument before us that Rule 3 of the Judges Rules applies where the evidence in the hands of the police raises objectively a real possibility that a person in custody may be prosecuted, irrespective of whether he is actually informed that he may be prosecuted; and counsel for the accused agreed with this.

It has been held in England in *R.* v. *Collier and Stenning*, 49 Cr. App. R. 344, that the word "charged", in Rule 3(a), means that the prisoner must actually have been charged, and does not mean "charged or ought to have been charged"; and that the words "or informed that he may be prosecuted" are intended merely to cover a case where the suspect has *not* been arrested and where, in the course of the questioning, a time comes when the police contemplate that a summons may be issued. It was, however, stated by Parker L.C.J., in delivering the judgment of the Court of Criminal Appeal in that case (at p. 350), that where Rule 3(a) "does not apply, because there has been no actual charge, but there has been a breach of the principle set out in paragraph (d) of the Appendix of Introduction, that breach would be a factor to be considered in determining whether any statement obtained or made thereafter is a voluntary statement"; and (at p.351), in relation to principle (d), that "in considering whether there was in any case 'enough evidence' to prefer a charge, the Court must consider the exact facts as they existed at the time, and determine whether they constitute enough evidence in the sense that the police acting reasonably should have preferred a charge."

We would, therefore, say—though not fully endorsing, in the way in which it has been framed, the already referred to submission of counsel for the Republic—that, even when Rule 3 is not directly applicable, if there has been a breach of principle (d) and if the protection to be found in Rule 3 is not accorded to a person in custody in relation to a statement made by him to the police, it would not be safe to treat such statement as being admissible in evidence, in the sense of it not being undoubtedly a voluntary one. Thus, once, in the present instance, the Assize Court has found as a fact, by its relevant Ruling, that when the statement concerned of the accused was obtained "there was a real possibility that accused might be charged" (which expression we take to mean, as put in the judgment in *Collier and Stenning*, *supra*, that there was " 'enough evidence' to prefer a charge..... in the sense that the police acting reasonably should have preferred a charge", in accordance with principle (d), above) we would agree with the Assize Court that in order that the accused's statement could be admitted in evidence the provisions of Rule 3 should have been "invoked"; in other words, the accused should have been cautioned as set out in paragraph

(a) of Rule 3 and should not have been questioned in a manner not in compliance with paragraph (b) of that Rule.

We have been led to adopt this view—which may seem to be not exactly in accordance with the strict letter, but only with the spirit, of the judgment in *Collier and Stenning*—by taking into account the consideration of local conditions, including differences between the average person in Cyprus and the average person in England.

The existence of differences between average persons here and in England was referred to, in connection with another kind of situation related to criminal law, by the Supreme Court in *Queen* v. *Erodotou*, 19 C.L.R. 144, at p. 148; in that case as well as in later cases, such as *KEM (Taxi) Limited* v. *Tryphonos* (1969) 1 C.L.R. 52, the need to take into account local conditions was clearly recognized.

Also, a cautious approach by Cyprus Courts to statements by persons in custody has been, quite properly, manifested constantly over the years in quite a number of cases. In *Volettos* v. *The Republic*, 1961 C.L.R. 169, the view was expressed (at pp.186–187), that in order "to prevent possible abuse of their powers by the police" it should be required, on the basis of provisions in sections 25 and 26 of the Indian Evidence Act, 1872, that "confessions, say, in the case of homicide and other serious crimes" be made "before a Judge and not a police officer; and this would be in the interests of the administration of justice in Cyprus". In *Petri* v. *The Police* (1968) 2 C.L.R. 40 (at p. 74), it was the unanimous view of five Judges of this Court that it is dangerous to admit in evidence statements "made in circumstances which apparently place the maker of the statement (a person facing a criminal prosecution) at an unfair advantage before a police investigator"; and reference was made, in this respect, to the earlier case of *Kokkinos* v. *The Police* (1967) 2 C.L.R. 217.

We felt, thus, that it was right to take a view somewhat more favourable for a person in custody than that in *Collier and Stenning*. As pointed out by Lord Morris of Borth-Y-Gest in delivering the judgment of the Privy Council, in England, in *Australian Consolidated Press Limited* v. *Thomas Uren* [1967] 3 W.L.R. 1338 (at p. 1356): "There are doubtless advantages if within those parts of the Commonwealth (or indeed of the English-speaking world) where the law is built

upon a common foundation development proceeds along similar lines. But development may gain its impetus from any one and not from one only of those parts. The law may be influenced from any one direction. The gain that uniformity of approach may yield is however far less marked in some branches of the law than in others. In trade between countries and nations the sphere where common acceptance of view is desirable may be wide..... But in matters which may considerably be of domestic or internal significance the need for uniformity is not compelling". In that case the Privy Council refused to allow an appeal against a decision of the High Court of Australia which failed to follow a decision of the House of Lords in England—(*Rookes* v. *Barnard* [1964] A.C. 1129)—regarding the awarding of exemplary damages in libel cases.

Having answered, as stated in this Decision, the question of law reserved for our opinion, we remit the case for further trial by the Assize Court.

Order accordingly.