

ANDREAS MICHAEL STASOULLIS,

Appellant.

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3284*).

Forgery and uttering forged document—Evidence—Handwriting—Signature disputed—Trial Judge cannot assume himself the task of a handwriting expert—However, by acting as he did he arrived at a conclusion not different from that amply warranted by the expert prosecution evidence which he believed—And there is no doubt that even if the trial Judge had not acted as complained of in relation to the handwriting aspect of the matter he, as well as any other Court trying the Appellant, would, on the evidence adduced, have convicted the Appellant—Therefore, no substantial miscarriage of justice has actually occurred—And this appeal against conviction has to be dismissed under the proviso to section 145 (1) (b) of the Criminal Procedure Law, Cap. 155.

Evidence in Criminal cases—Handwriting—Trial Judge cannot assume himself the task of a handwriting expert—See further immediately hereabove.

Appeal—Dismissal of appeal notwithstanding errors at the trial—No substantial miscarriage of justice having actually occurred—Proviso to section 145 (1) (b) of Cap. 155—See supra.

Miscarriage of Justice—No substantial miscarriage—Proviso to section 145 (1) (b) of Cap. 155—See supra.

The Appellant appeals against his conviction by the District Court of Famagusta, in respect of the offence of forgery, contrary to section 335 of the Criminal Code Cap. 154, and of the offence of uttering a forged document contrary to section 339 of the Code.

The salient facts, as found by the trial Court, are that the Appellant, being indebted by virtue of a bond to the complainant, a friend of his, forged on November 9, 1959, a

1971
Nov. 11
—
ANDREAS
MICHAEL
STASOULLIS
v.
THE POLICE

receipt indorsed on the bond, which purported to be a receipt written and signed by the complainant showing the payment of £120.— by the Appellant towards his indebtedness under the bond; and that on March 29, 1971, the Appellant produced the said forged receipt to the complainant and asked to be credited with the payment by him of £120.—.

It was argued by counsel for the Appellant that the trial Judge, in dealing with the matter of the comparison of the handwriting of the complainant and of the handwriting in which the receipt was written, acted, in effect, as if he were himself a handwriting expert and that by doing so he arrived at conclusions of his own after comparing the two handwritings in question.

Dismissing the appeal, the Court:—

Held, (1). We are inclined to the view that there is merit in the submission of counsel for the Appellant (*supra*); and in the light of, *inter alia*, the decision in *R. v. O'Sullivan* [1969] 2 All E.R. 237, we are of the view that the trial Judge ought not to have assumed himself the task of a handwriting expert.

(2) However, on the totality of the evidence on record, we are of the view that no substantial miscarriage of justice has actually occurred in this case; we have no doubt that even if the trial Judge had not acted as complained of in relation to the handwriting aspect of the case he, as well as any other Court trying the Appellant, would, on the evidence adduced, have convicted the Appellant (see *Pierides v. The Republic* (reported in this Part at p. 263 *ante*, at p. 271)); therefore, this appeal has to be dismissed under the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155.

Appeal dismissed.

Cases referred to:

R. v. O'Sullivan [1969] 2 All E.R. 237;

Pierides v. The Republic (reported in this Part at p. 263 *ante*, at p. 271).

Appeal against conviction.

Appeal against conviction by Andreas Michael Stasoullis who was convicted on the 18th September, 1971, at the District

Court of Famagusta (Criminal Case No. 4810/71) on two counts of the offences of forgery and uttering a forged document contrary to sections 331, 333(d), 334, 335 and 339, respectively, of the Criminal Code, Cap. 154 and was sentenced by Pikis, D.J. to nine months' imprisonment on each count, the sentences to run concurrently.

E. Efsthathiou with *A. Skordis*, for the Appellant.

S. Nicolaidis, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The Appellant appeals against his conviction, by the District Court in Famagusta, in respect of the offence of forgery, contrary to section 335 of the Criminal Code, Cap. 154, and of the offence of uttering a forged document, contrary to section 339 of the Code. The Appellant was sentenced to nine months' imprisonment for each offence, the sentences to run concurrently.

The salient facts of the case, as found by the trial Court, are that the Appellant, being indebted by virtue of a bond to the complainant, a friend of his, forged, on the 9th November, 1969, a receipt, endorsed on the bond, which purported to be a receipt written and signed by the complainant in respect of the payment of £120 by the Appellant towards his indebtedness under the bond; and that on the 29th March, 1971, the Appellant produced the said forged receipt to the complainant and asked to be credited with the payment by him of £120.

In support of the Appeal it has been submitted by counsel for the Appellant that the trial Judge, in dealing with the matter of the comparison of the handwriting of the complainant and of the handwriting in which the receipt was written, acted, in effect, as if he were himself a handwriting expert and that by doing so he arrived at conclusions of his own after comparing the two handwritings in question.

In view of the contents of the judgment appealed from we are inclined to the view that there is merit in this submission; and in the light of, *inter alia*, the decision in *R. v. O'Sullivan* [1969] 2 All E.R. 237, we are of the view that the trial Judge ought not to have assumed himself the task of a handwriting expert.

1971
Nov. 11
—
ANDREAS
MICHAEL
STASOULLIS
v.
THE POLICE

1971
Nov. 11
—
ANDREAS
MICHAEL
STASOULLIS
v.
THE POLICE

It has, however, to be stressed that by acting as he did the trial Judge arrived at a conclusion which was not different from that which was amply warranted by the expert evidence called by the prosecution, which the Judge believed. Such evidence established that the receipt for £120 was not in the handwriting of the complainant but in the handwriting of a person other than the complainant; and the trial Judge by drawing, as stated, his own conclusions from a comparison of handwritings went no further than to hold that the receipt was not in the handwriting of the complainant; the Judge did not find that such receipt was in the handwriting of the Appellant.

There was accepted by the trial Court the evidence of the complainant that he never wrote the receipt for £120; also, it was not in dispute that, according to the practice adopted by the complainant and the Appellant, the Appellant was keeping in his own possession the bond in between payments; and the trial Court disbelieved the Appellant's version that he had paid £120 to the complainant and that as a result the complainant endorsed the bond with a receipt therefor.

On the basis of the totality of the record before us we are of the view that no substantial miscarriage of justice has actually occurred in this case; we have no doubt that even if the trial Judge had not acted as complained of in relation to the handwriting aspect of the matter he, as well as any other Court trying the Appellant, would, on the evidence adduced, have convicted him (see *Pierides v. The Republic* (reported in this Part at p. 263 *ante*, at p. 271)); therefore, this appeal has to be dismissed under the proviso the section 145 (1) (b) of the Criminal Procedure Law, Cap. 155.

As the punishment inflicted on the Appellant is, in our view, a lenient one, we are not prepared to exercise our special powers, under section 147(1) of Cap. 155, and to order that his imprisonment should run from the date of conviction; this appeal having been dismissed, the law—the said section 147(1)—shall take its course and the Appellant's imprisonment shall run as from today.

Appeal dismissed.