[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, MALACHTOS, JJ.]

ANDREAS GEORGHIOU KATSARONAS AND OTHERS,

Appellants,

v.

THE POLICE,

Respondents.

(*Criminal Appeals Nos.* 3401, 3402, 3404–3419).

Criminal Law—Unlawful assembly—Riot—Sections 70 and 72 of the Criminal Code, Cap. 154—Elements of the offences—No safe identification of certain Appellants as rioters at specified place—Their conviction for riot set aside—Conviction for unlawful assembly elsewhere substituted.

Evidence—Evidence in criminal cases—Conviction for assault occasioning actual bodily harm—Committed in the course of unlawful assembly—And based on evidence of complainants for assaults on other counts—Such evidence cannot be treated as safe evidence of identification in the particular circumstances of this case.

Reasoned judgment—Article 30.2 of the Constitution and section 113 (1) of the Criminal Procedure Law, Cap. 155—Duty of the Courts to give reasons for their judgments—Reasons for finding Appellants guilty from the factual point of view given in a very summary manner—Judgment treated as complying with requirements of aforesaid provisions with some difficulty.

Reasoned judgment—Conviction for riot—Alibi by accused—Trial Judge giving no reasons for his decision and not referring at all to accused's alibi and to the evidence in support of it—Serious lack of reasoning in judgment of trial Court—Conviction set aside.

Criminal Law—Sentence—Two months' imprisonment for riot—Not excessive in the circumstances of this case—Appeal dismissed.

Criminal Law—Sentence—Wrong in principle—Two months' imprisonment for riot—Appellant a first offender and got married on the day previous to his being sent to prison—Entitled to be treated with leniency in view of his very recent change of status in life and of his good past record—Sentence wrong in principle—Reduced.

1973
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ANDREAS GEORGHIOU KATSARONAS AND OTHERS
v.
THE POLICE

Criminal Law—Sentence—Disparity of sentences—Four months' imprisonment on one out of a number of rioters who have been sentenced to two months' imprisonment—Wrong in principle—Reduced.

Criminal Law—Sentence—Assault occasioning actual bodily harm—Committed in the course of unlawful assembly and riot—Sentence of four months' imprisonment—Not excessive in view of the seriousness of the offence.

Criminal Law—Sentence—Four months' imprisonment for assault occasioning actual bodily harm—Condition of Appellants' health—One an epileptic and the other suffering from asthma—Sentence excessive—Reduced.

Unlawful Assembly—Riot—Sections 70 and 72 of the Criminal Code, Cap. 154—Conviction and sentence—See, also, under "Criminal Law".

Riot—Unlawful assembly—Sections 70 and 72 of the Criminal Code, Cap. 154—Conviction and sentence—See, also, under "Criminal Law".

Constitutional Law—Article 30.2 of the Constitution—Reasoned judgment—See, also, under "Reasoned judgment".

Assault occasioning actual bodily harm—Section 243 of the Criminal Code, Cap. 154—Sentence—See, also, under "Criminal Law".

The Appellants in these consolidated appeals appealed against convictions and sentences imposed on them by the District Court of Larnaca on the 8th January, 1973.

All the eighteen Appellants (to be referred to hereinafter by the numbers appearing, respectively, opposite their names on the charge sheet) were convicted of the offence of riot, contrary to section 70 (quoted in full in the judgment *post*) of the Criminal Code, Cap. 154 and 5 of them (Appellants 1, 2, 4, 5 and 6) were, also, convicted of assault occasioning actual bodily harm contrary to s. 243 of the Criminal Code. Appellants 1, 2, 4, 5 and 6 were sentenced to concurrent terms of four months' imprisonment for the riot and the assaults, Appellants 8, 9, 11, 12, 15, 16, 17, 21 and 23 were sentenced to two months' imprisonment for the riot, and Appellants 10, 18, 19 and 20 were given lighter sentences not involving deprivation of their liberty.

All Appellants appealed against their convictions, and Appellants 1, 2, 4, 5, 6, 8, 9, 11, 12, 15, 16, 17, 21 and 23 appealed

against their sentence; later on, however, Appellants 1, 8, 11, 12, 21 and 23 withdrew their appeals against sentence, which were accordingly dismissed.

The following statement of facts is taken from the judgment:

On the evening of the 30th April, 1972, from about 7 p.m. onwards, several persons started gathering in Hermes street, in Larnaca, in an area outside the house of Mr. Chr. Christophides, who is a member of the House of Representatives for the District of Larnaca and belongs to the EDEK political party.

In the same street, and at a distance of about 130 feet from the house of Mr. Christophides, there is a bar known as the "Corner Bar' ; and at a distance of about 300 feet from the house of Mr. Christophides, in a nearby street, there is the district Office of the said EDEK party.

The crowd outside the house of Mr. Christophides was growing steadily in numbers and at about 9.30 p.m. there must have been there more than 100 persons. The crowd did not disperse until after midnight, but from about 10.30 p.m. onwards it ceased to be a gathering outside the house of Mr. Christophides and it was transformed into groups of people who were moving up and down the street, between the house of Mr. Christophides and the "Corner Bar".

The crowd in question consisted, mainly, of political opponents of Mr. Christophides, who were in an angry mood, with the common purpose of demonstrating against him as a politician.

At about 9.30 p.m. another crowd, including again political opponents of Mr. Christophides, gathered at a square, (to be referred to hereinafter as the "Pallas Square") which is at a distance of about 450 feet from the house of Mr. Christophides. There was clear evidence that members of the crowd outside the house of Mr. Christophides were seen in the crowd in Pallas Square soon afterwards; so it does seem that there was a nexus, to a certain extent, between the two gatherings and both appear to have had the same common purpose.

Between 9.30 p.m. and 10.30 p.m. the crowd outside the house of Mr. Christophides became riotous, executing their hostile to Mr. Christophides, purpose by breaches of the peace and to the terror of the public, namely by shouting loudly, and

continuously, vile insults against Mr. Christophides and his family; the insults being accompanied, now and then, by the throwing of stones at his house.

At about 10 p.m. the crowd in Pallas Square became agitated and assaults took place in the square and in premises in its vicinity; it is in respect of these assaults that some of the Appellants were convicted.

Shortly after 10.30 p.m. the plate with the name "EDEK" which was affixed outside the district office of the EDEK party, was removed and, subsequently, it was seen being beaten as a drum by a person outside the house of Mr. Christophides.

Having dealt with the legal aspect of the matter (vide pp. 33–35 of the judgment *post*) the Court of Appeal dealt with a question raised by the defence namely as to whether the judgment was a "reasoned" one in the sense of Article 30.2 of the Constitution and whether it satisfied the requirements of s. 113(1) of the Criminal Procedure Law, Cap. 155 to the effect that every "judgment.... shall contain the point or points for determination, the decision thereon and the reasons for the decision".

After stating the law on the question raised (vide pp. 36–37 of the judgment *post*) the Court of Appeal stated the following: " The trial Court has given its reasons, for finding the Appellants guilty from the factual point of view, in a very summary manner and, therefore, it is with some difficulty that we have, eventually, come to the conclusion that its judgment has to be treated as complying with the requirements of Article 30.2 and section 113(1) of Cap. 155 to an extent sufficient to enable us to say that it should not be set aside as a whole for lack of reasoning; we shall however, have more to say on this subject when dealing with the conviction of one particular Appellant".

The Court of Appeal also dealt with the evidence of prosecution witnesses Christophides and Alexopoulos relating to the incident of stone throwing outside the house of Mr. Christophides, between 9.30 p.m. and 10.30 p.m. and observed the following:

According to the evidence of Mr. Christophides, which was believed by the trial Court and the evidence of a policeman, Alexopoullos, who was there as a guard of his house, stones

were being thrown for about an hour, at least, at the house of Mr. Christophides; on the other hand, it is an indisputable fact that very few stones only were found in the area of the house of Mr. Christophides after the stone throwing, and, also, that a stack of bricks which had been placed there for building purposes was left intact; moreover, there is no evidence that any damage was caused to the house of Mr. Christophides by the stone throwing.

In the light of the above the Court proceeded to say that it had to take such a view of the actual extent of the stone throwing as was compatible with the above indisputable facts and was, consequently bound to treat any evidence, from Mr. Christophides and Policeman Alexopoulos, enlarging the dimensions of this aspect of the case, in a manner incompatible with the said indisputable facts, as having been based on inaccurate observation resulting from the disadvantageous, from the point of view of calm and accurate perception, situation in which these two witnesses found themselves while being besieged in the house in question. For the same reason, and notwithstanding that there was no doubt at all that both the above witnesses intended to give true testimony in Court, the Court of Appeal stated that it was unsafe to rely on some identifications by the said two witnesses as regards participation by Appellants in the riot outside the house of Mr. Christophides; and, especially so, in relation to some of the Appellants who were not mentioned by Mr. Christophides, on the following day, in his statement to the police, but who were identified by him in Court at the trial, as persons whom he recognised then; in these instances the risk of bona fide mistake on his part could not be excluded.

As the trial Judge has given his reasons for convicting the Appellant in a summary manner the Court of Appeal, in deciding about the outcome of the appeals, examined all the evidence in relation to each one of the Appellants and dealt with the case of each Appellant in some detail.

The evidence against each one of the Appellants was shortly as follows:

Appellants 1, 8, 9, 16, 18 and 20 were identified by Mr. Christophides as being amongst those participating in the riot outside his house; and they were mentioned in his statement to the police; they were, also, likewise identified by Alexopoulos.

Appellants 2, 4 and 19 were identified at the trial by Mr. Christophides as being one of the rioters, having not been

mentioned by him in his statement to the police; they were also identified by Alexopoulos as being amongst the rioters.

Appellant 17, was identified at the trial as one of the rioters by Mr. Christophides, having not been mentioned in his statement to the police. He was not identified as one of the rioters by Alexopoulos. He was seen after the riot, by policemen, in the vicinity of the house holding the plate which had been removed from the office of the EDEK political party, and he was beating it like a drum. He was, also, seen by policemen, while participating in the unlawful assembly in Pallas Square.

Appellant 11, was identified at the trial by Mr. Christophides as one of the rioters, having not been mentioned in his statement to the police. He was, also, identified by Alexopoulos as one of the rioters.

Appellants 15, 21 and 23 were identified as rioters, at the trial, by Mr. Christophides, having not been mentioned to the police in his statement; but they were not identified by Alexopoulos. They were, however, identified as being members of the tumultuous crowd in Pallas Square and Appellants 11, 21 and 23 were behaving in a way indicating active participation in what was taking place there. Appellant 15 made a statement from the dock stating that he only passed through Pallas square on his way home.

Appellant 10, was identified by Mr. Christophides at the trial as being outside his house and taking part in the riot, having not been mentioned, in this respect, in his statement to the police. He was not identified as a rioter by Alexopoulos. He was identified as being in the tumultuous crowd in Pallas Square, but there was evidence by two persons who said that when they were assaulted there by others this Appellant intervened and went to their rescue.

Appellant 12, was seen among the rioters by Mr. Christophides and he was mentioned in his statement to the police next day. He was, also, indentified as being one of the rioters, by Alexopoullos. This Appellant stated on oath that on that night he was at his village, participating at a family celebration until 11.30 p.m. and that he went to Larnaca later, for the purpose of finding some medicine; he said that he went round the town trying, unsuccessfully, to find a pharmacy which was open at night and that he returned to his village without having got

out of his car at all. He called three witnesses who supported in all material respects his version; and he mentioned a great number of other persons who were with him at his village until about 11 p.m.; but the police did not obtain statements from any of these persons.

Appellant 5, was seen by Mr. Christophides among the rioters and he was mentioned as such in his statement to the police. He was, also, identified by another policeman at about 10.30 p.m. as being among persons who were shouting insults, in the vicinity of the house of Mr. Christophides.

Appellant 6, was identified at the trial by Mr. Christophides as being one of the rioters, having not been mentioned in his statement to the police; he was identified by Alexopoulos as one of the persons who were shouting insults; and he was moreover identified as a member of the tumultuous crowd in Pallas Square. He has given evidence stating that he is a newspaper correspondent and he admitted having been, in that capacity, both outside the house of Mr. Christophides and in Pallas Square.

Held, (*I*): *With regard to the convictions generally:*

In dealing with the convictions of the Appellants we must, first, state that we are of the view that it has not been established, with the certainty required in a criminal case, that the assaults which took place in the area of Pallas Square were carried out as part of the common purpose of the crowd assembled there, and that they were not merely isolated incidents; and as, also, the behaviour of the crowd in Pallas Square, though tumultuous, was not, in our view, such as to amount to a breach of the peace to the terror of the public, we are of the opinion that no riot took place in Pallas Square on the night in question; but undoubtedly, the crowd there did constitute an unlawful assembly.

Held, (II): *With regard to the appeal against conviction for riot of* (*A*) *Appellants* 1, 2, 4, 8, 9, 16, 18, 19 *and* 20:

In the circumstances their conviction for riot was warranted and, therefore, their appeal against it is dismissed.

(B) *Appellant* 17:

(1). On the evidence before us we cannot treat his presence in Pallas Square as being that of a preson who happened to be

there accidentally; his presence there cannot be disassociated from the fact that, at some stage, he had taken an active part in the events of that night by taking hold of the plate with the name of the EDEK political party and beating it like a drum outside the house of Mr. Christophides.

(2) We have, however, some doubt, as regards his actual participation in the riot outside the house of Mr. Christophides, and we have, therefore, decided to set aside his conviction in this respect; but there can be no doubt that he is guilty of the offence of participating in an unlawful assembly in Pallas Square; as a result we convict him accordingly and we impose on him a sentence of one month's imprisonment.

(C) *Appellants* 11, 15, 21 *and* 23:

In the circumstances it is safer not to treat these four Appellants as having definitely participated in the riot and, so, we acquit them in this respect. It is, however, quite clear on the evidence that Appellants 11, 21 and 23 were not at Pallas Square as innocent bystanders. We find that the evidence on record warrants the convictions of these Appellants (Nos. 11, 21 and 23) of the offence of unlawful assembly in Pallas Square and we convict them accordingly and sentence each one to one month's imprisonment. As regards, Appellant 15 we do not feel safe in adopting the same course and he is, consequently discharged completely.

(D) *Appellant* 10:

We do not think that he was safely identified as being one of the rioters outside the house of Mr. Christophides, and, in view of his conduct in Pallas Square (whereby he went to the rescue of two persons while being assaulted), we think that it is probable that he was there as an innocent bystander; therefore, his appeal against conviction is allowed and the sentence of binding over in the sum of £100 for one year to keep the peace, which was passed upon him, is set aside.

(E) *Appellant* 12:

(1) The trial Judge disposed of the case of this Appellant by stating, generally, that he believed the evidence for the prosecution and disbelieved the evidence of the Appellant. The Judge did not give any reasons at all for his decision and he did not refer at all to the alibi of the Appellant and to the evidence called in support of it.

(2) In the circumstances, we find that, in this connection, there exists such a serious lack of reasoning in the judgment of the trial Court that we are bound to set aside, for this reason, the conviction of the Appellant.

(3) We have considered the possibility of ordering a new trial but, bearing in mind that the Appellant has already served one out of the two months of his prison sentence, we think that it would be contrary to the interests of justice, in this particular instance, to order a new trial, and, therefore, we discharge the Appellant.

(F) *Appellant* 5:

We regard the identification of this Appellant as sufficiently safe and we reject his appeal against his conviction.

(G) *Appellant* 6:

(1) This Appellant does not appear to have been connected with the riot by any other evidence and as he was not identified straight away by Mr. Christophides we do not regard his identification as a rioter as a safe one; therefore, we have decided to give him the benefit of the doubt and set aside his conviction as regards the offence of riot.

(2) But even though his presence outside the house of Mr. Christophides might be attributed to professional reasons, his presence, later, among the crowd in Pallas Square cannot be, also, regarded as innocent, because he was convicted of having committed two assaults in the area of Pallas Square; in our view conduct such as this establishes participation in an unlawful assembly in the said square; if he was there only as an innocent newspaper reporter he had no reason to assault others. We, accordingly, convict him of the offence of unlawful assembly in Pallas Square and sentence him to one month's imprisonment.

Held, (III): *With regard to the conviction for assault occasioning actual bodily harm of*

(A) *Appellant* 1:

(1) This Appellant was found guilty on counts 2, 3, 4 and 5. Regarding count 2 the trial Court believed the complainant, who stated that the Appellant was one of the persons who assaulted him and disbelieved the Appellant who denied com-

mitting such offence. We see no reason to interfere with the finding of the trial Court and we dismiss the appeal of the Appellant against his conviction on this count.

(2) In so far as his conviction on count 3 is concerned, there is no evidence that he actually, assaulted the particular complainant, and, so, we do not feel, in the circumstances that such conviction can be upheld; thus, the Appellant's appeal is allowed accordingly.

(3) Regarding his conviction on count 5, there is no evidence at all connecting directly the Appellant with the commission of the offence in question, except evidence of a general nature given by the complainant in count 2 to the effect that the Appellant, together with other persons, attacked, also, friends of the complainant, one of whom was the complainant in count 5. We are not prepared to treat as safe evidence of identification of this Appellant in relation to count 5, the evidence of the complainant in count 2, who was being assaulted himself by others at the time when he identified, allegedly, the Appellant. We do not intend to lay down that evidence of this nature should be invariably disbelieved, but, in the confusion that must have been reigning at the material time in this particular case, we feel that it was not safe to accept such evidence of identification. So, the Appellant's appeal is allowed in relation to his conviction on count 5.

(4) Regarding his conviction on count 4, it is to be noted that the complainant concerned stated in evidence that the Appellant went near him at the time and pulled him out of the place where he was being assaulted by others; conduct such as this appears to us incompatible with an assault against such complainant by the Appellant and so the Appellant's appeal is allowed in this respect, too.

(B) *Appellant* 2:

(1) Regarding the counts for assault, this Appellant was found guilty on counts 2, 3, 4, 5 and 6. In respect of counts 2, 4 and 6, he was identified by the complainants concerned as being one of the persons who attacked them. As the complainants have been believed by the trial Court we are not prepared, in the light of all relevant considerations, to interfere with his convictions regarding these counts and his appeal in relation to them is dismissed.

(2) Regarding his convictions on counts 3 and 5, apparently the trial Judge—who did not give detailed reasons in this respect—based his decision on evidence of complainants involved in other counts, who stated that while they, themselves, were being assaulted by others, they had seen this Appellant attacking the complainants in counts 3 and 5. For the reasons which we have already explained in acquitting Appellant 1 on count 5 (vide p. 26, *ante*), we are not prepared to treat the evidence in question as safe enough, in the circumstances, to support the convictions of this Appellant on counts 3 and 5 and we, accordingly, set them aside.

(C) *Appellant* 4:

(1) This Appellant was, also, convicted of assaults, on counts 2, 3, 4 and 5; but there is direct evidence, by complainants that he took part in only the assaults against the complainants involved in counts 2 and 4; this evidence was believed by the trial court and we see no reason to disturb its findings in this respect; therefore, his appeal against conviction regarding these two counts is dismissed.

(2) In relation to count 3, it was stated initially in evidence, by the complainant concerned, that he had recognised him as one of the persons who had attacked him, but, later on, the same witness appeared to be in some doubt as to whether the Appellant had, actually, assaulted him. We have decided that this Appellant is entitled to the benefit of such doubt and we set aside his conviction on count 3.

(3) Regarding count 5 his conviction was based on the evidence of other complainants, who were, at the material time, being assaulted themselves, and who stated that certain persons assaulted their friends, including the complainant in count 5; as already stated we regard evidence of this nature, in the circumstances of the present case, as not providing a secure basis for safe identification and we, therefore, have decided to set aside the conviction of this Appellant on count 5, too.

(D) *Appellant* 6:

(1) This Appellant was identified, as one of the persons who assaulted them, by both the complainants involved on counts 2 and 4; and they were believed by the trial Court. We see no reason to disturb the Court's finding and we, therefore, dismiss his appeal against conviction in relation to these two counts.

(2) Conviction for assaults on counts 3 and 5 set aside for the same reasons that the conviction of Appellant No. 1 on count 5 was set aside (vide p. 26, *ante*).

Held, (IV): *With regard to the appeal against sentence for riot of*

(A) *Appellant* 16:

We have not been satisfied that the sentence of two months' imprisonment for riot, which was passed upon this Appellant is, in the circumstances, excessive. So we dismiss his appeal against sentence.

(B) *Appellant* 9:

We think that, in view of his so very recent change of status in life and of his good past record (he got married on the day previous to his being sent to prison and he was a first offender), he was entitled to be treated with leniency and we, are, therefore, prepared to regard the sentence imposed on him as being wrong in principle; as a result it is reduced to one month's imprisonment.

(C) *Appellant* 2:

We see no reason why, when all the other rioters were sentenced to only two months' imprisonment, this Appellant should have been sentenced to four months' imprisonment; if that was done because he was found guilty of assaults, also such course was wrong in principle, because in respect of the assaults he was sentenced separately. We, therefore, have decided to reduce the sentence passed upon this Appellant in respect of the offence of riot to two months' imprisonment.

(D) *Appellant* 4:

We allow the appeal of this Appellant against the sentence of four months' imprisonment for the offence of riot, and we reduce such sentence to two months' imprisonment, for the same reason as in the case of Appellant 2 (vide para. (C) above.

(E) *Appellant* 5:

From the social investigation report, which is before us, but which was not before the trial Court, it appears that this man is an epileptic; taking into account, to the required extent, his personal circumstances, and especially the condition of his

health, we have decided to reduce his concurrent sentences of four months' imprisonment, as regards the offences of riot and assault, to concurrent sentences of two months' imprisonment; and, anyhow, as in the case of Appellant 2, we see no reason for upholding a sentence of more than two months' imprisonment for the riot.

Held, (V): *With regard to the appeal against sentence for assault occasioning actual bodily harm of*

(A) *Appellant* 2:

We have considered all that has been submitted in his favour; we have studied a social investigation report which was produced before us, and which was not before the trial Court; as we do regard the assaults in question as very serious offences, in view of the circumstances in which they were committed, we are not prepared to say that the concurrent sentences of four months' imprisonment are excessive; therefore the appeal against them is dismissed.

(B) *Appellant* 4:

Having considered a social investigation report, which was produced before us, but not before the trial Court, and having heard everything that his counsel had to say in his favour, we find nothing requiring us to interfere with the concurrent sentences of four months' imprisonment imposed in respect of counts 2 and 4; therefore his appeal against sentence fails.

(C) *Appellant* 6:

Having taken into account what is stated in a social investigation report, which is before us, but was not before the trial Court, to the effect that he has been suffering from asthma for years and that, actually, he had to be discharged from the army due to this affliction, we have decided to reduce the concurrent sentences of four months' imprisonment to concurrent terms of two months' imprisonment.

Observation:

It is advisable that in serious cases, such as those involving charges of unlawful assembly and riot, the prosecution should be conducted by Counsel of the Republic and not by police officers who are not lawyers.

Cases referred to:

Trikomitis and Others v. *The Police*, 21 C.L.R. 92 at pp. 95, 96 and 99;

Field and Others v. *The Receiver of Metropolitan Police* [1907] 2 K.B. 853;

Ford v. *Receiver for the Metropolitan Police District* [1921] 2 K.B. 344;

J. W. Dwyer Ltd. v. *Metropolitan Police District Receiver* [1967] 2 Q.B. 970;

Reg. v. *Atkinson and Others*, 11 Cox C.C. 330;

Jayasena v. *Reginam* [1970] 1 All E.R. 219 at p. 221;

Sava v. *The Police*, 18 C.L.R. 192;

Constanti v. *The District Officer Famagusta*, 1962 C.L.R. 96;

Frixou v. *The Police* (1963) 1 C.L.R. 83;

Panayi v. *The Police* (1968) 2 C.L.R. 124;

Ioannidou v. *Dikeos* (1969) 1 C.L.R. 235;

Petrou and Others v. *The Police*, 21 C.L.R. 115 at p. 117;

Economides v. *Zodhiatis*, 1961 C.L.R. 306.

Appeals against conviction and sentence.

Appeals against conviction and sentence by Andreas Georghiou Katsaronas and Others who (all the Appellants) were convicted on the 8th January, 1973, at the District Court of Larnaca (Criminal Case No. 3564/72) on one count of the offence of riot contrary to s. 70 of the Criminal Code, Cap. 154 and (five of the Appellants) on various counts of the offence of assault occasioning actual bodily harm contrary to section 243 of the Criminal Code, Cap. 154 and fourteen of the Appellants were sentenced by Artemides, D.J. to terms of imprisonment ranging from two to four months, three of them were bound over in the sum of £100.— for one year to keep the peace and one of them was ordered to pay a fine of £30.–

K. Saveriades, for the Appellants.

M. Kyprianou, Senior Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: This is the judgment in consolidated criminal appeals Nos. 3401, 3402 and 3404-3419, filed against convictions and sentences imposed in criminal case No. 3564/72, which was tried before the District Court of Larnaca.

A related criminal appeal, No. 3403, has (as directed on the 18th January, 1973, without objection on the part of counsel for the Appellant) been adjourned *sine die*, because the Appellant concerned—accused 3 before the trial Court—failed to appear to hear the judgment of such Court and, though a warrant has been issued for his arrest, he has not yet been apprehended; the trial Court convicted him in his absence of the offences of riot, under section 70 of the Criminal Code, Cap. 154, and of assault occasioning actual bodily harm, under section 243 of Cap. 154, and sentenced him to concurrent terms of imprisonment of four months; he has appealed against both conviction and sentence.

All the other eighteen Appellants were convicted on the 8th January, 1973, of the offence of riot; also, five of them, Appellant 1, 2, 4, 5 and 6—(and in this judgment we shall refer to the Appellants by the numbers which appear, respectively, opposite their names on the charge sheet)—were, also, convicted on various counts charging them with assaults occasioning actual bodily harm. Appellants 1, 2, 4, 5 and 6 were sentenced to concurrent terms of four months' imprisonment for the riot and the assaults, Appellants 8, 9, 11, 12, 15, 16, 17, 21 and 23 were sentenced to two months' imprisonment for the riot, and Appellants 10, 18, 19 and 20 were given lighter sentences not involving deprivation of their liberty.

All Appellants have appealed against their convictions, and Appellants 1, 2, 4, 5, 6, 8, 9, 11, 12, 15, 16, 17, 21 and 23 appealed against their sentences; later on, however, Appellants 1, 8, 11, 12, 21 and 23 withdrew their appeals against sentence, which were accordingly dismissed.

The salient facts in this case appear to be as follows:-

On the evening of the 30th April, 1972, from about 7 p.m. onwards, several persons started gathering in Hermes Street, in Larnaca, in an area outside the house of Mr. Chr. Christophides, who is a Member of the House of Representatives for the District of Larnaca and belongs to the EDEK political party.

In the same street, and at a distance of about 130 feet from the house of Mr. Christophides, there is a bar known as the "Corner Bar"; and at a distance of about 300 feet from the house of Mr. Christophides, in a nearby street, there is the district office of the EDEK party.

The crowd outside the house of Mr. Christophides was growing steadily in numbers and at about 9.30 p.m. there must have been there more than 100 persons. The crowd did not disperse until after midnight, but from about 10.30 p.m. onwards it ceased to be a gathering outside the house of Mr. Christophides and it was transformed into groups of people who were moving up and down the street, between the house of Mr. Christophides and the "Corner Bar".

There is no doubt that the crowd in question consisted, mainly, of political opponents of Mr. Christophides, who were in an angry mood, with the common purpose of demonstrating against him as a politician.

At about 9.30 p.m., another crowd, including again political opponents of Mr. Christophides, gathered in what we shall describe in this judgment as the "Pallas Square" (being the junction of streets outside the "Pallas Cinema"), which is at a distance of about 450 feet from the house of Mr. Christophides.

There is clear evidence that members of the crowd outside the house of Mr. Christophides were seen in the crowd in Pallas square soon afterwards; so it does seem that there was a nexus, to a certain extent, between the two gatherings; and both appear to have had the same common purpose.

Between 9.30 p.m. and 10.30 p.m. the crowd outside the house of Mr. Christophides became riotous, executing their, aforesaid, hostile to Mr. Christophides, purpose by breaches of the peace and to the terror of the public, namely by shouting loudly, and continuously, vile insults against Mr. Christophides and his family; the insults being accompanied, now and then, by the throwing of stones at his house. We are, therefore, in agreement with the trial Judge that a riot did take place there between, approximately, 9.30 p.m. and 10.30 p.m.

It may be mentioned, at this stage, that shortly after 10.30 p.m. the plate with the name "EDEK", which was affixed outside the district office of the EDEK party, was removed and,

subsequently, it was seen being beaten as a drum by a person outside the house of Mr. Christophides.

At about 10 p.m. the crowd in Pallas square became agitated and assaults took place in the square and in premises in its vicinity; it is in respect of these assaults that some of the Appellants were convicted.

Before proceeding further, it is proper to deal now with certain legal aspects of the present case:

Nobody can be convicted, or be punished, for holding and expressing opinions of his own on any matter; but the enjoyment by a citizen of the freedom of expression creates the corresponding obligation not to violate the law when expressing disagreement with opinions held by any other person, and such obligation is, obviously, of a rather special significance when that other person happens to be, as in the present case, an elected Member of the House of Representatives.

All the Appellants were convicted of the offence of riot, under section 70 of Cap. 154, which reads as follows:-

> " Where five or more persons assembled with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace they are an unlawful assembly.
>
> It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.
>
> When an unlawful assembly was begun to execute the purpose, whether of a public or of a private nature, for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled".

As was pointed out in *Trikomitis and Others* v. *The Police*, 21 C.L.R. 92 (at p. 95) in relation to section 70—(which at the time was section 67 of Cap. 13 of the 1949 Revised Edition of

the Laws of Cyprus)—the legislator has framed the definitions of unlawful assembly and riot in such a way "as to treat unlawful assembly as an earlier stage of riot".

Though in Cyprus we have to apply the law as laid down in section 70 of Cap. 154, there is no doubt that English case-law, consistent with the provisions of section 70, can be usefully referred to: *In Field and Others* v. *The Receiver of Metropolitan Police* [1907] 2 K.B. 853, a judgment was delivered by Phillimore, J. reviewing the authorities on the matter and stating the five necessary elements of the offence of riot in England as follows (at p. 860): First, there must be an assembly of at least three persons; secondly, a common purpose; thirdly, execution of the said common purpose; fourthly, an intent of those involved to help one another by force if necessary against any person who may oppose them in the execution of their common purpose; and, fifthly, force or violence, not merely used concerning the common purpose, but also displayed in such a manner as to alarm at least one person of reasonable firmness and courage.

The *Field* case was followed in, *inter alia*, *Ford* v. *Receiver for the Metropolitan Police District* [1921] 2 K.B. 344, and *J. W. Dwyer Ltd.* v. *Metropolitan Police District Receiver* [1967] 2 Q.B. 970; it is to be derived from the latter case (see at p. 978) that even if there is no direct evidence that persons witnessing an assembly were alarmed by the display of force or violence, there may be found, in a proper case, that the conduct of those assembled was such as to alarm persons of reasonable courage.

It is not every unlawful assembly, which becomes tumultuous, that can be regarded as a riot. As was pointed out in the *Dwyer* case, *supra* (at p. 979), "an assembly may well start by being tumultuous and only after a time become riotous, as well".

As regards participation in an unlawful assembly or riot, it was pointed out in the *Trikomitis* case, *supra* (at p. 96), that "there must be some evidence that an accused person was present at and shared in the common purpose of an assembly whether it is riotous or merely unlawful before he can be convicted"; that "mere presence in a riotous assembly is insufficient evidence that an accused person was taking part in the riot" (see, too, *Reg.* v. *Atkinson and Others*, 11 Cox C.C. 330); and that "the issue is one of fact: Was the accused while present

in the assembly sharing in its common purpose? The circumstances from which a *prima-facie* presumption of intent may be inferred are as varied as life itself and should not be circumscribed by a neat legal definition. When a captain stands on the bridge of his sinking ship and goes down with it, his heroic intent is manifested by inactivity. The position a man takes up in a riotous assembly, his continued presence despite the strenuous efforts of the Queen's forces to disperse the crowd and his giving an explanation of his presence which is on the face of it improbable are circumstances tending to show that his presence in the riotous assembly was something more than 'mere presence', and may be sufficient to support the conclusion that he shared in its common purpose".

Elsewhere in the *Trikomitis* case—(at p. 95)—it was stressed that "on the other hand, when the assembly resorts to violence a man should not be held vicariously responsible for such violence unless the prosecution shows that he was in the assembly sharing the common purpose and remained there after the peace is disturbed in execution of such purpose".

Of course, when a trial Court is faced with a denial of the existence of any intention to share in a common purpose, it must not be forgotten that the burden of establishing such intention, beyond reasonable doubt, rests on the prosecution (see, *inter alia*, as to the burden of proof, *Jayasena* v. *Reginam* [1970] 1 All E.R. 219, at p. 221). But, it should, also, not be lost sight of the fact that, as was stated in the *Trikomitis* case—(at p. 99)—whether the circumstantial evidence which surrounds the unexplained presence of an accused in a riotous assembly "is sufficient for a Court to hold that this was not a case of mere presence but of something more, is a question of fact not of law".

We pass on, next, to another aspect of the present case:

During the hearing before us the question was raised as to whether the contents of the judgment of the trial Judge are such as to satisfy duly the requirement, under Article 30.2 of the Constitution, that a "judgment shall be reasoned", as well as the requirement under section 113(1) of the Criminal Procedure Law, Cap. 155, that every judgment in a criminal case where an appeal lies shall "contain the point or points for determination, the decision thereon and the reasons for the decision".

In *Sava* v. *The Police*, 18 C.L.R. 192, which was decided before the coming into operation of the Constitution in 1960, on the basis of section 110(1) of the Criminal Procedure Law, 1948 (which corresponds to section 113(1) of Cap. 155) it was held that omission to comply with section 110(1) was not necessarily a sufficient reason for granting leave to appeal—(such leave being required at the time)—and that it might be that the correctness of a conviction would be obvious from the record; it was stated, further, in that case that, in general, a Judge's omission to comply with section 110(1) could be cured by returning the case to the trial Court, under section 143(a) of the Criminal Procedure Law (now section 146(a)), for further information, but the question whether or not it would be expedient to do so must depend on the circumstances of each case.

In *Constanti* v. *The District Officer Famagusta*, 1962 C.L.R. 96, it was held on appeal that having regard to the shortness of the material put before the trial Judge his judgment was reasoned enough in the sense of Article 30.2 of the Constitution.

In *Frixou* v. *The Police* (1963) 1 C.L.R. 83, the *Sava* case, *supra*, was referred to as a precedent which was "particularly in point"; and no reference at all was made to Article 30.2; it was held that it was possible to deal with the case, on appeal, upon the record of the case and the appeal was dismissed.

In *Panayi* v. *The Police* (1968) 2 C.L.R. 124, reference was made to the *Frixou* case, *supra*, as well as to Article 30.2 and section 113(1) of Cap. 155, and the conviction was set aside and a new trial was ordered because of absence of reasoning in support of the trial Court's decision; Vassiliades, P. stated, in delivering judgment, that "a conviction based on a non-reasoned judgment should not be sustained".

In *Ioannidou* v. *Dikeos* (1969) 1 C.L.R. 235, reference was made to the aforementioned cases of *Sava*, *Constanti*, *Frixou* and *Panayi*, as well as, in addition to Article 30.2 of the Constitution, to Article 35 of the Constitution, which lays down, *inter alia*, that the judicial authorities of the Republic "shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions" of Part II of the Constitution, in which Article 30.2 is to be found. In the *Ioannidou* case it was held on appeal that the judgment of the

trial Court was not "reasoned", in the sense of Article 30.2, because, as pronounced, it did not amount to a sufficient judicial determination of the dispute between the parties, and, consequently, a new trial was ordered.

In the present case the trial Court has given its reasons, for finding the Appellants guilty from the factual point of view, in a very summary manner and, therefore, it is with some difficulty that we have, eventually, come to the conclusion that its judgment has to be treated as complying with the requirements of Article 30.2 and section 113(1) of Cap. 155 to an extent just sufficient to enable us to say that it should not be set aside as a whole for lack of reasoning; we shall, however, have more to say on this subject when dealing with the conviction of one particular Appellant.

Before proceeding further with our judgment we think that this is an appropriate stage at which to observe, as was done in *Petrou and Others* v. *The Police*, 21 C.L.R. 115, 117, that it is advisable that in serious cases, such as those involving charges of unlawful assembly and riot, the prosecution should be conducted by counsel of the Republic and not by police officers who are not lawyers; we feel certain that had the trial Judge had the benefit of the assistance of a detailed examination of the evidence in relation to each accused, as we have been given in this appeal by counsel appearing for both sides, he would have been greatly assisted in giving fuller reasoning in relation to the conviction of each individual accused

In dealing with the convictions of the Appellants we must, first, state that we are of the view that it has not been established, with the certainty required in a criminal case, that the assaults which took place in the area of Pallas square were carried out as part of the common purpose of the crowd assembled there, and that they were not merely isolated incidents; and as, also, the behaviour of the crowd in Pallas square, though tumultuous, was not, in our view, such as to amount to a breach of the peace to the terror of the public, we are of the opinion that no riot took place in Pallas square on the night in question; but, undoubtedly, the crowd there did constitute an unlawful assembly.

Regarding the incident of stone throwing outside the house of Mr. Christophides, between 9.30 p.m. and 10.30 p.m. of that night, we have to observe the following: According to the

evidence of Mr. Christophides, which was believed by the trial Court and the evidence of a policeman, Alexopoulos, who was there as a guard of his house, stones were being thrown for about an hour, at least, at the house of Mr. Christophides; on the other hand, it is an indisputable fact that very few stones only were found in the area of the house of Mr. Christophides after the stone throwing, and, also, that a stack of bricks which had been placed there for building purposes was left intact; moreover, there is no evidence that any damage was caused to the house of Mr. Christophides by the stone throwing.

We have, therefore, to take such a view of the actual extent of the stone throwing as is compatible with the above indisputable facts and we are, consequently, bound to treat any evidence —(on the part of Mr. Christophides or of the policeman, Alexopoulos, who was with him in the house at the time)— enlarging the dimensions of this aspect of the case, in a manner incompatible with the said indisputable facts (see, *inter alia*, *Economides* v. *Zodhiatis*, 1961 C.L.R. 306), as having been based on inaccurate observation resulting from the disadvantageous, from the point of view of calm and accurate perception, situation in which these two witnesses found themselves while being besieged in the house on the night in question. For the same reason, and notwithstanding that we do not doubt at all that they both intended to give true testimony in Court, we have had to hold that it was unsafe to rely on some identifications by them as regards participation by Appellants in the riot outside the house of Mr. Christophides; and, especially so, in relation of some of the Appellants who were not mentioned by him, on the following day, in his statement to the police, but who were identified by him in Court at the trial, as persons whom he recognized then; we think that in those instances the risk of *bona fide* mistake on his part cannot be excluded.

In deciding about the outcome of these appeals we have examined all the evidence in relation to each one of the Appellants; and because, as already stated, the trial Judge has given his reasons, for convicting the Appellants, in a summary manner, we shall have to deal ourselves with the case of each Appellant in some detail:-

Appellant 8, Kouloumas, was identified by Mr. Christophides as being one of those participating in the riot outside his house, and he was mentioned in his statement to the police. He was, also, likewise identified by Alexopoulos. He was seen outside

the house of Mr. Christophides, both before and after the riot, that is at about 9.30 p.m. and at about 10.30 p.m., by policemen. The Appellant gave evidence on oath and he did not deny being outside the house of Mr. Christophides at about 9.30 p.m., and being, later, about 10.30 p.m., in the vicinity of the house of Mr. Christophides, at the " Corner Bar". He gave an explanation for his presence there which was not believed by the trial Judge. We find that, in the circumstances, his conviction was warranted and, therefore, his appeal against it is dismissed.

Appellant 16, Iacovides, is the proprietor of the " Corner Bar". He was seen in the street near the house of Mr. Christophides immediately after the riot, at about 10.30 p.m. The fact that he is the proprietor of the " Corner Bar" could have made his presence in the street appear to be consistent with innocence, creating thus a reasonable doubt as to whether he was actually taking part in the riot or he was there merely as an innocent bystander. He has not given evidence on oath and in a statement from the dock he denied leaving, at all, at any time, the premises of the " Corner Bar" and going out in the street. He, also, denied that he had been in Pallas square; yet he was seen there by a policeman during the tumultuous unlawful assembly on that night. It could, therefore, be held, on the totality of the evidence, that he was not present near the house of Mr. Christophides only as an innocent bystander; otherwise he would not have had any motive to deny that he had left the premises of the "Corner Bar" and to insist that he had not been outside in the street at any material time. As he has been identified as one of the rioters by Mr. Christophides, and was mentioned by him in his statement to the police, and as he was, also, identified as a participant in the riot by Alexopoulos, we find that his conviction was warranted and his appeal against it is hereby dismissed. He has appealed against sentence, but we have not been satisfied that the sentence of two months' imprisonment for riot, which was passed upon him, is, in the circumstances, excessive. So, we dismiss, too, his appeal against sentence.

Appellant 18, N. Plastiras, was identified by Mr. Christophides as being one of the rioters and he was mentioned by him in his statement to the police. He was, also, identified by Alexopoulos as participating in the riot. He has not given evidence on oath, but has made a statement from the dock stating that he did not take part at all in the incidents, because, being a pupil, he was

not allowed to be away from his home after 7.30 p.m. His version was disbelieved by the trial Court and, in the circumstances, we find that his conviction was warranted on the evidence and the appeal against it is dismissed.

Appellant 19, Kyriacou, was identified at the trial by Mr. Christophides as being one of the rioters, having not been mentioned by him in his statement to the police. He was identified, also, by Alexopoulos as being one of the rioters; and when the police arrived outside the house of Mr. Christophides, he was seen to be one of those persons who were shouting insults against Mr. Christophides; these persons were asked by the police to disperse but they refused. The Appellant testified on oath denying that he had been, at all, on that night in the street outside the house of Mr. Christophides; he said that he had left for his village when it started raining, at about 10 p.m. But, according to evidence accepted by the trial Court, he was seen by the police outside the house of Mr. Christophides after the rain had stopped; and it is not suggested that it rained twice on that night in that area of Larnaca. In the light of all the foregoing, we find that his conviction was warranted and we dismiss his appeal against it.

Appellant 17, Yerasimou, was identified at the trial as one of the rioters by Mr. Christophides, having not been mentioned in his statement to the police. He was not identified as one of the rioters by Alexopoulos. He was seen, after the riot, by policemen, in the vicinity of the house of Mr. Christophides, holding the plate, which had been removed, as stated earlier in this judgment, from the office of the EDEK political party, and he was beating it like a drum. He was, also, seen, by policemen, while participating in the unlawful assembly in Pallas square. He has not given evidence on oath, but has made a statement from the dock saying that he remained in Pallas square for only five minutes, on his way home from the cinema; and that he did not take part in any other incident. On the evidence before us we cannot treat his presence in Pallas square as being that of a person who happened to be there accidentally; his presence there cannot be disassociated from the fact that, at some stage, he had taken an active part in the events of that night by taking hold of the plate with the name of the EDEK political party and beating it like a drum outside the house of Mr. Christophides. We have, however, some doubt, as regards his actual participation in the riot outside the house of Mr. Christophides, and we have, therefore, decided to set aside his

conviction in this respect; but there can be no doubt that he is guilty of the offence of participating in an unlawful assembly in Pallas square; as a result we convict him accordingly and we impose on him a sentence of one month's imprisonment.

Appellant 20, Misos, was identified as one of the rioters by Mr. Christophides and was mentioned, in this connection, in his statement to the police. He was, also, identified by Alexopoulos and by another policeman as one of the persons who were shouting insults outside the house of Mr. Christophides, at about 9.30 p.m. The Appellant stated, in giving evidence, that from 10.30 p.m. onwards he was at the " Corner Bar" and that between 10 p.m. and 10.30 p.m. he was in Pallas square; he was not believed by the trial Court. We are of the view that his conviction was warranted and so his appeal against it is dismissed.

Appellant 9, Chr. Christoforou, was identified by Mr. Christophides as one of the rioters and was mentioned by him in his statement to the police. He was, also, identified as one of the rioters by Alexopoulos. In a statement from the dock he denied being present at all outside the house of Mr. Christophides on that night. His version was not believed by the trial Court. We see no reason for not upholding his conviction and so his appeal against it is dismissed. He has appealed against the sentence of two months' imprisonment which was passed upon him: He was a first offender and he got married on the day previous to his being sent to prison; we think that, in view of his so very recent change of status in life and of his good past record, he was entitled to be treated with leniency and we are, therefore, prepared to regard the sentence imposed on him as being wrong in principle; as a result it is reduced to one month's imprisonment.

Appellant 11, Karamanlis, was identified at the trial by Mr. Christophides as one of the rioters, having not been mentioned, in this connection, in his statement to the police. He was, also, identified by Alexopoulos as one of the rioters. Appellants 15, Ioannides, 21, Tappos, and 23, Aspromallis, were identified as rioters, at the trial, by Mr. Christophides, having not been mentioned to the police in his statement; but they were not identified by Alexopoulos. Appellant 15 was seen in the vicinity of the house of Mr. Christophides, just after 10.30 p.m., by a policeman, but by that time there was no longer any rioting taking place there. In the circumstances, it is safer not to treat

these four Appellants as having definitely participated in the riot and, so, we acquit them in this respect. They were, however, identified as being members of the tumultuous crowd in Pallas square and Appellants 11, 21 and 23 were behaving in a way indicating active participation in what was taking place there; it is quite clear, on the evidence, that they were not there as innocent bystanders. Appellant 11 made a statement from the dock admitting that on that night he was in Pallas square and that he did see one of the policemen who identified him as being there. Appellant 15 made a statement from the dock stating that he only passed through Pallas square on his way home. Appellant 21 in a statement from the dock denied having left his house at all on that night after 8.00 p.m. Appellant 23, again in a statement from the dock, denied being at Larnaca at all on that night. The versions of these four Appellants—11, 15, 21 and 23—were not relied on by the trial Court. We find that the evidence on record warrants the convictions of the offence of unlawful assembly in Pallas square of Appellants 11, 21 and 23 and we convict them accordingly and sentence each to one month's imprisonment. As regards, however, Appellant 15 we do not feel safe in adopting the same course and he is, consequently, discharged completely.

Appellant 10, A. Plastiras, was identified by Mr. Christophides at the trial as being outside his house and taking part there in the riot, having not been mentioned, in this respect, to the police by Mr. Christophides in his statement. He was not identified as a rioter by Alexopoulos; he was only seen by a policeman outside the house of Mr. Christophides after 10.30 p.m., at a time when no riot was taking place there any longer. He was identified as being in the tumultuous crowd in Pallas square, but there is evidence by two persons, who complained that they were assaulted there by others, that this Appellant intervened and went to their rescue. In a statement from the dock he stated that he happened to be in Pallas square by coincidence and without any unlawful object in mind. We do not think that he was safely identified as being one of the rioters outside the home of Mr. Christophides, and, in view of his aforesaid conduct in Pallas square, we think that it is probable that he was there as an innocent bystander; therefore, his appeal against conviction is allowed and the sentence of binding over in the sum of £100 for one year to keep the peace, which was passed upon him, is set aside.

Appellant 12, Antoniou, was seen among the rioters by Mr.

Christophides and he was mentioned, in this connection, in his statement to the police next day. He was, also, identified, as being one of the rioters, by Alexopoulos. Both these prosecution witnesses stated that this Appellant remained outside the house of Mr. Christophides until after midnight, having got there as early as 9 p.m. On the other hand, in defending himself, this Appellant stated on oath that on that night he was at his village, Livadhia, participating at a family celebration until 11.30 p.m. and that he went to Larnaca later, for the purpose of finding some medicine; he said that he went round the town trying, unsuccessfully, to find a pharmacy which was open at night, and that he returned to his village without having got out of his car at all; he admitted that he drove by in the street outside the house of Mr. Christophides. He called three witnesses who supported in all material respects his version; and he mentioned a great number of other persons who were with him at Livadhia until about 11 p.m.; but the police did not obtain statements from any of these persons.

The trial Judge disposed of his case by stating, generally, that he believed the evidence for the prosecution and disbelieved the evidence of the Appellant. The Judge did not give any reasons at all for his decision and he did not refer at all to the alibi of the Appellant and to the evidence called in support of it. In the circumstances, we find that, in this connection, there exists such a serious lack of reasoning in the judgment of the trial Court that we are bound to set aside, for this reason, the conviction of the Appellant. We have considered the possibility of ordering a new trial but, bearing in mind that the Appellant has already served one out of the two months of his prison sentence, we think that it would be contrary to the interests of justice, in this particular instance, to order a new trial and, therefore, we discharge the Appellant.

Appellant 1, Katsaronas, was seen by Mr. Christophides participating in the riot outside his house and he was mentioned in his statement to the police; he was, also, seen there by Alexopoulos, who was challenged by the Appellant to come out of the house and fight it out with him; the Appellant was, also, identified by a policeman as being one of the persons who were shouting insults outside the house of Mr. Christophides. At about the same time he was seen there by another policeman, to whom the Appellant complained that Mr. Christophides and Alexopoulos were armed with firearms, and that they were provoking him; he was advised by the policeman to leave the

area but, apparently, he did not do so, because he was seen in the vicinity about an hour later. To another policeman who met the Appellant outside the house of Mr. Christophides the Appellant complained that Alexopoulos was going to shoot him, and said that if Mr. Christophides or Alexopoulos were brave enough they should come out of the house and fight with him unarmed. On the basis of the above evidence we find that the conviction of the Appellant of the offence of riot was warranted and, therefore, his appeal against it is dismissed.

In relation to the charges against this Appellant for assaults occasioning actual bodily harm, in the vicinity of Pallas square, he was found guilty by the trial Court on counts 2, 3, 4 and 5. Regarding count 2 the trial Court believed the complainant, who stated that the Appellant was one of the persons who assaulted him and disbelieved the Appellant who denied committing such offence. We see no reason to interfere with the finding of the trial Court and we dismiss the appeal of the Appellant against his conviction on this count. In so far as his conviction on count 3 is concerned, there is no evidence that he, actually, assaulted the particular complainant, and, so, we do not feel, in the circumstances, that such conviction can be upheld; thus, the Appellant's appeal is allowed accordingly. Regarding his conviction on count 5, there is no evidence at all connecting directly the Appellant with the commission of the offence in question, except evidence of a general nature given by the complainant in count 2 to the effect that the Appellant, together with other persons, attacked, also, friends of the said complainant, one of whom was the complainant in count 5. We are not prepared to treat as safe evidence of identification of this Appellant in relation to count 5, the evidence of the complainant in count 2, who was being assaulted himself by others at the time when he identified, allegedly, the Appellant. We do not intend to lay down that evidence of this nature should be invariably disbelieved, but, in the confusion that must have been reigning at the material time, in this particular case, we feel that it was not safe to accept such evidence of identification. So, the Appellant's appeal is allowed in relation to his conviction on count 5. Regarding his conviction on count 4, it is to be noted that the complainant concerned stated in evidence that the Appellant went near him at the time and pulled him out of the place where he was being assaulted by others; conduct such as this appears to us incompatible with an assault against such complainant by the Appellant and so the Appellant's appeal is allowed in this respect, too.

Appellant 2, Taki, was identified at the trial by Mr. Christophides as one of the rioters, having not been mentioned in his statement to the police. He was identified as one of the rioters by Alexopoulos, too. He was noticed, by a policeman, standing a few feet away from the house of Mr. Christophides, at about 9.30 p.m., just before the riot started. In giving evidence on oath this Appellant stated that until about 10.30 p.m. he had been continuously sitting outside the " Corner Bar", about 130 feet away from the house of Mr. Christophides; this version was disbelieved by the trial Judge. Actually, he was seen outside the " Corner Bar", by some policemen, at about 10.30 p.m., just after the riot had finished; he was with another 30 or 40 persons and he was shouting insults. On the whole, we think that it was open to the trial Judge to hold that this Appellant did participate in the riot outside the house of Mr. Christophides—having apparently gone there from the " Corner Bar"—even though he was not mentioned by name to the police by Mr. Christophides in his statement; we think that there is sufficient evidence to make it proper for us to uphold, on appeal, his conviction, even though, had we been trying the case ourselves, we might perhaps have given him the benefit of the doubt as regards his having had actually participated in the riot. His appeal against conviction is, therefore, dismissed. He has appealed against the sentence of four months' imprisonment imposed on him in relation to such conviction: We see no reason why, when all the other rioters were sentenced to only two months' imprisonment, this Appellant should have been sentenced to four months' imprisonment; if that was done because he was—(as it is stated hereinafter)—found guilty of assaults, also, such course was wrong in principle, because in respect of the assaults he was sentenced separately. We, therefore, have decided to reduce the sentence passed upon this Appellant in respect of the offence of riot to two months' imprisonment.

Regarding the counts for assault, this Appellant was found guilty on counts 2, 3, 4, 5 and 6. In respect of counts 2, 4 and 6, he was identified by the complainants concerned as being one of the persons who attacked them. As the complainants have been believed by the trial Court we are not prepared, in the light of all relevant considerations, to interfere with his convictions regarding these counts and his appeal in relation to them is dismissed. He has appealed against the concurrent sentences of four months' imprisonment imposed on him in

respect of these offences. We have considered all that has been submitted in his favour in this connection; we have studied a social investigation report which was produced before us, and which was not before the trial Court; as we do regard the assaults in question as very serious offences, in view of the circumstances in which they were committed, we are not disposed to say that the sentences complained of are excessive; therefore, his appeal against them is dismissed. Regarding his convictions on counts 3 and 5, apparently the trial Judge—who did not give detailed reasons in this respect—based his decision on evidence of complainants involved in other counts, who stated that while they, themselves, were being assaulted by others, they had seen this Appellant attacking the complainants in counts 3 and 5. For the reasons which we have already explained in acquitting Appellant 1 on count 5, we are not prepared to treat the evidence in question as safe enough, in the circumstances, to support the convictions of this Appellant on counts 3 and 5 and we, accordingly, set them aside.

Appellant 4, A. Christoforou, was identified at the trial, as being one of the rioters, by Mr. Christophides, having not been mentioned in his statement to the police. He was, also, identified as a rioter by Alexopoulos. He was seen in the vicinity of the house of Mr. Christophides by a policeman at about 10.30 p.m., just as the riot was coming to an end. Like Appellant 2, he was identified, at the time, as one of those who were shouting insults. In defending himself he denied having gone at all on that night to the street where there is the house of Mr. Christophides; he said that he had only gone to Pallas square in order to buy cigarettes. His version was not believed by the trial Judge. Viewing the evidence as a whole we are of the opinion that it was open to the trial Court to convict him on such evidence and so we cannot intervene on appeal. His appeal against conviction is, therefore, dismissed. We allow, however, his appeal against the sentence of four months' imprisonment for the offence of riot, and we reduce such sentence to two months' imprisonment, for the same reason as in the case of Appellant 2.

This Appellant was, also, convicted of assaults, on counts 2, 3, 4 and 5; but there is direct evidence, by complainants, that he took part in only the assaults against the complainants involved in counts 2 and 4; this evidence was believed by the trial Court and we see no reason to disturb its finding in this respect; therefore, his appeal against conviction regarding these two

counts is dismissed. In relation to count 3, it was stated initially in evidence, by the complainant concerned, that he had recognized him as one of the persons who had attacked him, but, later on, the same witness appeared to be in some doubt as to whether the Appellant had, actually, assaulted him. We have decided that this Appellant is entitled to the benefit of such doubt and we set aside his conviction on count 3. Regarding count 5 his conviction was based on the evidence of other complainants, who were, at the material time, being assaulted themselves, and who stated that certain persons assaulted their friends, including the complainant in count 5; as already stated, we regard evidence of this nature, in the circumstances of the present case, as not providing a secure basis for safe identification and we, therefore, have decided to set aside the conviction of this Appellant on count 5, too. He has appealed, also, against sentence: We have considered a social investigation report which was produced before us, but not before the trial Court. We have heard everything that his counsel had to say in his favour, but we find nothing requiring us to interfere with the concurrent sentences of four months' imprisonment imposed in respect of counts 2 and 4, in relation to which we have upheld his convictions; therefore, his appeal against sentence fails.

Appellant 5, Constantinou, was seen by Mr. Christophides among the rioters and he was mentioned as such in his statement to the police. He was, also, identified by another policeman, at about 10.30 p.m., as being among persons who were shouting insults, in the vicinity of the house of Mr. Christophides. We regard the identification of the Appellant as sufficiently safe and we reject his appeal against his conviction. He has pleaded guilty to assault on count 6. He has been sentenced, in relation to both the offences concerned, to concurrent terms of four months' imprisonment. From the social investigation report, which is before us, but which was not before the trial Court, it appears that this man is an epileptic; taking into account, to the required extent, his personal circumstances, and especially the condition of his health, we have decided to reduce his sentences, as regards both offences, to concurrent sentences of two months' imprisonment; and, anyhow, as in the case of Appellant 2, we see no reason for upholding a sentence of more than two months' imprisonment for the riot.

Appellant 6, Vrachas, was identified at the trial by Mr. Christophides as being one of the rioters, having not been

mentioned in his statement to the police. He was identified by Alexopoulos as one of the persons who were shouting insults. He does not, however, appear to have been connected with the riot by any other evidence and as he was not identified straight away by Mr. Christophides we do not regard his identification as a rioter as a safe one; therefore, we have decided to give him the benefit of the doubt and set aside his conviction as regards the offence of riot.

He was identified as a member of the tumultuous crowd in Pallas square. The Appellant has given evidence stating that he is a newspaper correspondent. He admitted frankly having been, in that capacity, both outside the house of Mr. Christophides and in Pallas square. Even though his presence outside the house of Mr. Christophides might be attributed to professional reasons, his presence, later, among the crowd in Pallas square cannot be, also, regarded as innocent, because he was—as it is stated hereinafter—convicted of having committed two assaults in the area of Pallas square; in our view conduct such as this establishes participation in an unlawful assembly in the said square; if he was there only as an innocent newspaper reporter he had no reason to assault others. We, accordingly, convict him of the offence of unlawful assembly in Pallas square and we sentence him to one month's imprisonment in respect thereof.

The Appellant was identified, as one of the persons who assaulted them, by both the complainants involved in counts 2 and 4; and they were believed by the trial Court. We see no reason to disturb the Court's finding and we, therefore, dismiss his appeal against conviction in relation to these two counts. Regarding his convictions for assaults on counts 3 and 5, we are faced once again with the situation that the evidence against him is only that of complainants involved in other counts, who allegedly saw him, while they themselves were being assaulted, assaulting the complainants in counts 3 and 5. As already explained in relation to similar evidence against other Appellants, we do not regard this kind of identification as safe in the circumstances of the present case and we, therefore, set aside his convictions on counts 3 and 5. He was sentenced to four months' imprisonment in respect of each count of assault and he has appealed against sentence. In this connection we have taken into account what is stated in a social investigation report, which is before us, but was not before the trial Court, to the

effect that he has been suffering from asthma for years and that, actually, he had to be discharged from the army due to this affliction. So, we have decided to reduce the sentences on both counts, in respect of which we have upheld his convictions, to concurrent terms of two months' imprisonment.

In the result, the outcome of the appeal of each Appellant is as set out hereinbefore in this judgment. All sentences of imprisonment to run from the date when the Appellants were convicted and sentenced by the trial Court.

Order accordingly.