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

ANDREAS STYLIANOU EFTAPSOUMIS AND ANOTHER,

Appellants,

v.

THE POLICE,

Respondents.

(Criminal Appeals Nos. 3636, 3637).

Administration of Justice—Trial judge wrongly treating as corroboration of accomplice's evidence what he found to be false testimony given by appellants—Witnesses threatened with arrest and detention if they would not give statement implicating appellants—And subjected to phychological pressure—Their evidence, even if technically in law admissible in evidence, could not be safely relied on—Conviction quashed in the interests of the proper administration of justice.

Evidence—Accomplice—Uncorroborated evidence of accomplice—Fundamental consideration which did influence trial judge in deciding to act on such evidence an erroneous one—Conviction quashed—New trial ordered.

New trial—Approach of Court of Appeal to the matter—Conviction for incitement to commit a misdemeanour contrary to section 370(b) of the Criminal Code, Cap. 154—Quashed—New trial ordered—Section 145(1)(d) of the Criminal Procedure Law, Cap. 155.

Criminal Law—Incitement to commit a misdemeanour—Section 370(b) of the Criminal Code, Cap. 154—A prosecution thereunder lies for incitement to commit a contravention of s. 13 of the Motor Transport (Regulation) Law, 1964 (Law 16 of 1964).

Bail—Appeal—New trial—Order for custody pending new trial—Remains in force until accused brought before District Court for new trial—Once so brought up to trial judge to decide whether or not they will remain in custody pending completion of new trial.

Both appellants were found guilty of the offence of

incitement to commit a misdemeanour (*count 3*) contrary to section 370(b) of the Criminal Code, Cap. 154 namely with inciting the commission of an offence contrary to s. 13 of Law 16/64. Appellant 1 was, also, found guilty (counts 4 and 5) of other incitements to commit a misdemeanour, and appellant 2 was found guilty (*count 14*) of aiding and abetting the commission of a misdemeanour, contrary to s. 20 of Cap. 154.

The circumstances in which the offences, with which the accused were charged, were allegedly committed, relate to transportation by private cars, and for reward, of passengers and goods, without there being in existence in respect of such transportation the requisite insurance cover. The passengers were all Turkish Cypriots and the goods were their belongings.

The convictions on counts 4 and 14 were based on the evidence of prosecution witness Andreas Siempis; and it was common ground in these appeals that if his evidence ought not to be relied on such convictions could not stand.

This witness, who was found by the judge to be an accomplice, gave first, a statement to the police in which he denied any involvement in the transportation of Turkish Cypriots, as well as any co-operation with the appellants for such a purpose; subsequently, he made another statement to the police, by means of which he implicated the appellants in the commission of the offences in question. He stated, however, in evidence that he had been illtreated by the police before he made to them the second statement, and it appeared from the judgment that the trial judge did not reject this complaint. Another prosecution witness, whose evidence was treated by the trial judge as corroboration of the evidence of witness Siempis, complained, also, while giving evidence that he made a statement to the police only after he had been illtreated by them.

It was, moreover, to be derived from the part of the judgment of the trial judge where there are set out the reasons for which he accepted as reliable the evidence of the said witness Siempis that he treated as corroboration of his evidence what he found to be false

testimony given by the appellants in their own defence at the trial.

The conviction on count 5 was based on the evidence of prosecution witness Panicos Zacheos who said in evidence that he had been threatened by the police with arrest and detention if he would not give to them a statement implicating appellant 1.

Finally the convictions of both appellants on count 3 were practically solely based on the uncorroborated evidence of prosecution witness Michael Mikis who was found by the trial Court to be an accomplice; the trial judge, having duly warned himself about the dangers involved in his doing so, decided to rely on his evidence, even though there did not exist any other corroborative evidence implicating the appellants.

Counsel for the appellants contended that they could not be charged under s. 370(b) of Cap. 154 with inciting the commission of an offence contrary to section 13 of the Motor Transport (Regulation) Law, 1964 (Law 16 of 1964), inasmuch as such section prohibits itself not only the carriage of passengers by private motor vehicles for reward but it also provides that no person shall cause or permit a private motor vehicle to be used for such a purpose.

Held, (I) with regard to the contention relating to s. 13 of Law 16/64:

We do not think that the manner in which section 13 has been drafted was intended to exclude a prosecution under section 370(b) of Cap. 154 for the offence of incitement to commit a contravention of section 13; in our opinion section 370(b) is a provision which is of general applicability in view of the nature of the principle of criminal law to which it gives statutory expression.

Held, (II) with regard to the conviction on counts 4 and 14:

As the trial judge has wrongly treated what he found to be false testimony of the appellants as amounting to corroboration of the evidence against them of the accomplice Siempis (see *Vouniotis* v. *The Republic*,

at p. 34 in this Part *ante* at p. 50 et seq.) and as the evidence of Siempis and of the other prosecution witness, even if technically in law admissible in evidence, could not be safely relied on, because they had been illtreated by the police before making to them statements implicating the appellants, we have reached the conclusion that, in the interests of the proper administration of justice, we have to set aside the convictions on counts 4 and 14.

Held, (III) with regard to the conviction on count 5:

For the basic considerations concerning the proper administration of justice which we took into account in setting aside the convictions on counts 4 and 14, we feel that we should set aside, too, the conviction of appellant 1 on count 5.

Held, (IV) with regard to the conviction on count 3:

1. We might not have been prepared to interfere, on appeal, with the decision of the trial judge to act on the uncorroborated evidence of the said accomplice Michael Mikis, had it not been for the fact that, in evaluating his evidence, the judge was obviously influenced in believing him by the consideration that the credibility of the appellants had, in his opinion, been demolished, for the main reasons for which he disbelieved the appellants when comparing their evidence with that of the aforementioned witness Siempis.

2. Having already held that it was not safe for the trial judge to treat the evidence of witness Siempis as reliable, we are bound to reach the conclusion that a fundamental consideration which did influence the trial judge in deciding to act on the uncorroborated evidence of the accomplice Mikis, and convict on count 3, was an erroneous one.

3. As we cannot and should not speculate as to whether or not, had he not been influenced as above, the trial judge would still have treated the uncorroborated evidence of the accomplice Mikis as reliable—and we express no opinion at all in this respect as to what he could or should have done—we do not think that we can uphold the conviction of the appellants on count 3.

4. In the light, however, of the approach adopted in, *inter alia, Nestoros* v. *The Republic,* 1961 C.L.R. 217, at p. 219, *Petrides* v. *The Republic*, 1964 C.L.R. 413, at p. 429 et seq. and *Pierides* v. *The Republic* (1971) 2 C.L.R. 263, at pp. 272 - 273 et seq. we have decided that it is not in the interests of justice to acquit the appellants on count 3, but the proper course is to order, under s. 145(1)(d) of the Criminal Procedure Law, Cap. 155, a new trial of the appellants on such count, before another judge.

5. Because of the nature of the case and in order to avoid any suspicion of interference with witnesses we direct that the appellants should remain in custody pending their new trial.

Held, (V) with regard to the application for bail:

We have ordered that the appellants should remain in custody pending their trial, and this means that they should remain in custody until they are brought before the District Court for their new trial; once they are so brought it is up to the trial judge to decide whether or not they will remain in custody pending the completion of the new trial.

Appeals allowed.

Cases referred to:

Vouniotis v. *The Republic* (reported in this Part at p. 34, *ante* at p. 50);

Nestoros v. *The Republic,* 1961 C.L.R. 217, at p. 219;

Petrides v. *The Republic,* 1964 C.L.R. 413, at p. 419;

Pierides v. *The Republic* (1971) 2 C.L.R. 263 at pp. 272 - 273.

Appeals against conviction.

Appeals against conviction by Andreas Stylianou Eftapsoumis and Another who were convicted on the 27th June, 1975 at the District Court of Larnaca (Criminal Case No. 1111/75 as follows:- Appellant 1 on three counts and appellant 2 on one count of the offence of incitement to commit a misdemeanour contrary to section 370(b) of the Criminal Code Cap. 154; appellant

2 was also convicted on one count of the offence of aiding and abetting the commission of a misdemeanour contrary to section 20 of the Criminal Code Cap. 154 and were sentenced by Constantinides, D.J. to the following consecutive terms of imprisonment: Both appellants were sentenced to four months' imprisonment on the incitement count, appellant 1 was further sentenced to eight months' and four months' imprisonment on each of the other two incitement counts, respectively, and appellant 2 was sentenced to four months' imprisonment on the aiding and abetting count.

E. Efstathiou with *D. Koutras*, for the appellants.

N. Charalambous, Counsel of the Republic, for the respondents.

The facts sufficiently appear in the judgment delivered by :-

TRIANTAFYLLIDES, P.: The two appellants, who at all material times were police constables serving at Larnaca, were, on the 27th June, 1975, convicted on four, out of fourteen, counts contained in the charge (as amended by the trial court).

They were both found guilty, on count 3, of the offence of incitement to commit a misdemeanour, contrary to section 370(b) of the Criminal Code, Cap. 154; appellant 1 was, also, found guilty on counts 4 and 5, of other incitements to commit a misdemeanour, and appellant 2 was found guilty, on count 14, of aiding and abetting the commission of a misdemeanour, contrary to section 20 of Cap. 154. They were both acquitted on counts 1 and 13, under which they were charged with official corruption, contrary to section 100(a) of Cap. 154, and on count 2, under which they were charged with conspiracy to commit a misdemeanour, contrary to section 372 of Cap. 154; also, appellant 1 was acquitted on counts 6, 7, 8 and 9, under which he was charged with official corruption contrary to section 100(a), above, and appellant 2 was acquitted on counts 10, 11 and 12, under which he was likewise charged with official corruption.

Both appellants were sentenced to four months' imprisonment on count 3, appellant 1 was further sentenced

to 8 months' and 4 months' imprisonment on counts 4 and 5, respectively, and appellant 2 was further sentenced to four months' imprisonment on count 14; it was ordered that all terms of imprisonment should be consecutive, and not concurrent.

The circumstances in which the offences, with which the appellants were charged were allegedly committed, relate to transportation by private cars, and for reward, of passengers and goods, without there being in existence in respect of such transportation the requisite insurance cover, in the Larnaca District, over a period extending between the 1st October, 1974, and the 28th February, 1975. The passengers were all Turkish Cypriots and the goods were their belongings; these Turkish Cypriots were thus enabled to move away from their homes at a time when this was prohibited by the Government of the Republic for reasons of public security.

Though the particulars in counts 3, 4 and 5 referred to transportation by private cars, for reward, of both passengers and goods, and without the requisite insurance cover, it is clear from the judgment of the learned trial judge that the appellants were, eventually, convicted, on such counts, only of incitement to transport passengers by private cars for reward; the particulars in count 14 referred, from the beginning, only to the transportation of passengers by private cars for reward.

The convictions on counts 4 and 14 were based on the evidence of prosecution witness Andreas Siempis; and it is common ground in this appeal that if his evidence ought not to be relied on such convictions cannot stand.

This witness, who was found by the judge to be an accomplice, gave, first, a statement to the police on the 24th February, 1975, in which he denied any involvement in the transportation of Turkish Cypriots, as well as any cooperation with the appellants for such a purpose; subsequently, he made another statement to the police, by means of which he implicated the appellants in the commission of the offences in question. He stated, however, in evidence that he had been illtreated by the police before he made to them the second statement, and it appears from the judgment that the trial judge did not reject

this complaint. Another prosecution witness, whose evidence was treated by the trial judge as corroboration of the evidence of witness Siempis, complained, also, while giving evidence, that he made a statement to the police only after he had been illtreated by them. It is, moreover, to be derived from the part of the judgment of the trial judge where there are set out the reasons for which he accepted as reliable the evidence of witness Siempis, that he treated as corroboration of his evidence what he found to be false testimony given by the appellants in their own defence at the trial; furthermore, the trial judge reached the conclusion that the appellants had given false testimony, because, *inter alia*, their version was contrary to that of witness Siempis.

As the trial judge has wrongly treated what he found to be false testimony of the appellants as amounting to corroboration of the evidence against them of the accomplice Siempis (see *Vouniotis* v. *The Republic*, reported in this Part at p. 34, at p. 50 et seq.) and as the evidence of Siempis and of the aforesaid other prosecution witness, even if technically in law admissible in evidence, could not be safely relied on, because they had been illtreated by the police before making to them statements implicating the appellants, we have reached the conclusion that, in the interests of the proper administration of justice, we have to set aside the convictions on counts 4 and 14.

Prosecution witness Panicos Zacheos, on whose evidence the conviction on count 5 was based, said in evidence that he had been threatened by the police with arrest and detention if he would not give to them a statement implicating appellant 1; and he testified further that he was subjected to psychological pressure, by the police, because he was told by them that it would be a great shame for him if it became known that he himself had been involved in the transportation of Turkish Cypriots at a time when a brother of his was missing and his fate was unknown as a result of the Turkish invasion of Cyprus. This witness, in an obvious effort to get out of the predicament of having to give evidence against appellant 1, stated in evidence that when appellant 1 spoke to him regarding the transportation of

Turkish Cypriots the appellant was drunk and he, therefore, did not take him to mean what he was saying.

In the light of the foregoing, and for the same basic considerations concerning the proper administration of justice which we took into account in setting aside the convictions on counts 4 and 14, we feel that we should set aside, too, the conviction of appellant 1 on count 5.

Coming, next, to the convictions of both appellants on count 3, it is not in dispute that they were convicted practically solely on the uncorroborated evidence of prosecution witness Michael Mikis, who was found by the trial court to be an accomplice; the trial judge, having duly warned himself about the dangers involved in his doing so, decided to rely on his evidence, even though there did not exist any other corroborative evidence implicating the appellants.

We might not have been prepared to interfere, on appeal, with the decision of the trial judge to act on the uncorroborated evidence of this accomplice, had it not been for the fact that, in evaluating his evidence, the judge was obviously influenced in believing him—(as can be derived from his judgment)—by the consideration that the credibility of the appellants had, in his opinion, been demolished, for reasons which, as he put it, were to be stated by him later on in his judgment; and the main such reasons appear to be the reasons for which he disbelieved the appellants when comparing their evidence with that of the aforementioned prosecution witness Siempis; in this connection the trial judge observed that the credibility of the appellants was inextricably related to the credibility of Siempis.

Having already held that it was not safe for the trial judge to treat the evidence of witness Siempis as reliable, we are bound to reach the conclusion that a fundamental consideration which did influence the trial judge in deciding to act on the uncorroborated evidence of the accomplice Mikis, and convict the appellants on count 3, was an erroneous one. As we cannot and should not speculate as to whether or not, had he not been influenced as above, the trial judge would still have treated the uncorroborated evidence of the accomplice Mikis as reliable—and we express no opinion at all in this respect

as to what he could or should have done—we do not think that we can uphold the conviction of the appellants on count 3.

In the light, however, of the approach adopted in, *inter alia, Nestoros* v. *The Republic,* 1961 C.L.R. 217, 219, *Petrides and Others* v. *The Republic,* 1964 C.L.R. 413, 429 et seq., and *Pierides* v. *The Republic,* (1971) 2 C.L.R. 263, at pp. 272 - 273 et seq., we have decided that it is not in the interests of justice to acquit the appellants on count 3, but the proper course is to order, under section 145(1)(d) of the Criminal Procedure Law, Cap. 155, a new trial of the appellants on such count, with its particulars being limited to those in respect of which the appellants were, in effect, convicted, namely that they incited prosecution witness Mikis to transport passengers for reward by private cars (contrary to section 13 of the Motor Transport (Regulation) Law, 1964—Law 16/64).

The new trial has to take place before another judge, as expeditiously as possible; and, of course, if the appellants are convicted again—and we express no view at all in this connection—there should be taken into account when passing sentence upon them that they have been serving since the 27th June, 1975, the four months' prison sentences imposed on them on their conviction on count 3.

Because of the nature of the case and in order to avoid any suspicion of interference with witnesses we direct that the appellants should remain in custody pending their new trial.

Since we have ordered a retrial on count 3, and as we should not prejudge any issue that may be raised at the new trial, we do not think that we should deal in this judgment with the arguments, advanced during the hearing of these appeals, to the effect that the appellants could not be convicted under count 3 in respect of more than one instance of incitement, or that, in the light of the particular circumstances of this case, the proper course was to convict them, instead, of having committed themselves the offence which they were accused to have incited; all these are matters which may

or may not arise again, depending on the evidence to be adduced and the findings to be made at the new trial.

There is, however, one issue with which we should deal and this is that which arises out of the contention of counsel for the appellants that they could not be charged under section 370(b) of Cap. 154 with inciting the commission of an offence contrary to section 13 of Law 16/64, inasmuch as such section prohibits itself not only the carriage of passengers by private motor vehicles for reward but it, also, provides that no person shall cause or permit a private motor vehicle to be used for such a purpose. We do not think that the manner in which section 13 has been drafted was intended to exclude a prosecution under section 370(b) of Cap. 154 for the offence of incitement to commit a contravention of section 13; in our opinion section 370(b) is a provision which is of general applicability in view of the nature of the principle of criminal law to which it gives statutory expression.

Before concluding we should add that we have been invited by counsel for the respondents to convict both appellants, in the exercise of our powers under section 145(1)(c) of Cap. 155, and on the basis of the evidence of the aforesaid witness Mikis, of the offence of official corruption, under section 100(a) of Cap. 154. In view of the reasons which we have already given in our judgment for not upholding the conviction of the appellants on count 3 it should be obvious that we cannot adopt the course, suggested as above, by counsel for the respondents. We have, further, been invited to convict, likewise, appellant 1 of the offence of official corruption on the basis, mainly, of the evidence of another prosecution witness, Osman Karamani, who was found by the trial judge to be an accomplice. As we did not have ourselves the chance to see this witness giving evidence, and as in the judgment of the trial court there does not appear to exist a sufficiently complete evaluation of the credibility of this witness, we are not prepared to convict appellant 1 as proposed. We should, however, make it clear that the fact that we refrain from exercising our powers under section 145(1)(c) of Cap. 155, in order to convict either both the appellants or only appellant 1

as aforesaid, does not mean that the judge who will retry this case is prevented—should he deem it proper to do so on the evidence before him—from exercising his corresponding powers under section 85 of Cap. 155.

In the result, these appeals are allowed so that the convictions of appellant 1 on counts 4 and 5 are set aside, and the conviction of appellant 2 on count 14 is also set aside and they are both acquitted in respect of the offences concerned; furthermore, the convictions of both appellants on count 3 are set aside, but a new trial is ordered in respect thereof.

Appeals allowed.

The following decision was delivered on the 29th September, 1975, by:

TRIANTAFYLLIDES, P.: On the 27th September, 1975, when we gave judgment in the above criminal appeals, we ordered a retrial of the appellants on one of the charges brought against them and, further, we directed "because of the nature of the case and in order to avoid any suspicion of interference with witnesses" that the appellants "should remain in custody pending their new trial".

Today we have been presented with an application by them that they should be released on bail, on the grounds set out in an affidavit supporting such application. We need not refer to such grounds because we are of the view that it is not for us to deal with this application for bail; we have ordered that the appellants should remain in custody pending their trial, and this means that they should remain in custody until they are brought before the District Court for their new trial; once they are so brought it is up to the trial judge to decide whether or not they will remain in custody pending the completion of the new trial.

Order accordingly.