1975
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YIANNIS ANTONIOU VOUNIOTIS

v.

THE REPUBLIC

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

YIANNIS ANTONIOU VOUNIOTIS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 3615).

Criminal Procedure—Appeal—"Substantial miscarriage of justice"—Application of proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155—Test to be applied—Conviction for premeditated murders resting on accomplice's evidence and on appellant's confession—Misdirection on corroboration—And reliability of some of the contents of confession not tested in relation to more significant aspects of the case—Said proviso applicable—Appellant would inevitably have been convicted of the murders, on the basis, at least, that he was not present at their commission as an innocent bystander, but that he was an aidor and abettor, in a manner providing wilful encouragement for the commission of the murders (See Vrakas and Another *v.* The Republic *(1973) 2 C.L.R. 139, at p. 195 et seq.).*

Evidence—Accomplice—Corroboration—Purpose of—What is in law evidence amounting to corroboration of an accomplice's version—Medical evidence—Which was found by the trial court to be the main corroboration of accomplice's testimony not actually amounting to corroboration of such testimony either in fact or in law—Conviction upheld by applying the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155.

Criminal Law—Parties to offences—Accessory after the fact—High degree of complicity—Treated as an accomplice who aided and abetted.

Criminal Law—Lies told by accused in Court—Effect.

The appellant was convicted of the premeditated murders of three Turkish Cypriot women and two Turkish Cypriot girls.

The murders were committed at locality "Kourves tou Lokkoumadji" in the area of Alassa village. The victims found themselves there in pursuance of an agreement made on the 9th November, 1974 by appellant and a Turkish Cypriot woman, one Afet Mustafa, to the effect that they would be conveyed the next day to the Turkish occupied northern part of Cyprus.

In the afternoon of the following day the appellant having informed witness Ioannou of the proposed trip the latter agreed to travel with him for at least part of the way, and, so, later on, they both went together to the house of Afet, at about 8 p.m. Two of the women and one of the girls were then the first to be taken at the said locality by appellant and Ioannou and the other woman and the girl were taken later by Ioannou in appellant's car.

Soon afterwards all five of them were killed by firing from an automatic weapon belonging to Ioannou; it was clear from the evidence adduced that this weapon was not taken to the scene of the crime during either of the two trips there with the victims; apparently, it had been taken there earlier, but there is no direct evidence as to who took it.

It has been the version of Ioannou that it was the appellant who killed all five victims, without his own participation, whereas the version of the appellant has been the reverse; the trial Court believed the version of Ioannou.

The conviction was based on the evidence of the said Ioannou and the contents of the confession of the appellant.

The trial Court found that Ioannou was an accessory after the fact to the murders because he, on his own admission had hidden the automatic weapon with which the murders had been committed. The Court of Appeal, however, treated him as an accomplice who had aided and abetted in the commission of the murders.

In dealing with the evidence of Ioannou the trial Court said that "we cannot act upon the evidence of this witness without corroboration, and we have searched for corroborative evidence connecting the accused with the commission of the crime. We hold the view that such corroborative evidence exists, and it is to be found mainly in the medical evidence". And in dealing with appellant's confession the trial Court found that in relation to at least seven matters (specifically mentioned in the judgment appealed from) statements of fact in the confession had been proved by independent evidence.

Counsel for respondent argued that the fact that the trial Court disbelieved the evidence given by the appellant on oath amounts to corroboration of the evidence of Ioannou.

Held (I) Per Triantafyllides, P., Stavrinides and L. Loizou, JJ. concurring.

(1) The medical evidence which was treated by the trial Court as the "main" corroboration of the evidence of the accomplice Ioannou, could not have been treated in law as corroboration of his testimony as an accomplice, that is to say, as evidence implicating the appellant in the commission of the murders.

(As to the purpose of corroboration and as to what is in law evidence amounting to corroboration of the version of an accomplice see pp. 47(41) - 50(5) of the judgment *post*; see, also, *R.* v. *Baskerville,* 12 Cr. App. R. 81 at p. 91; *Demetriou* v. *Republic,* 1961 C.L.R. 309; *Zacharia* v. *Republic,* 1962 C.L.R. 52 and *Meitanis* v. *The Republic* (1967) 2 C.L.R. 31).

(2) There cannot arise the possibility of the evidence of an accomplice being corroborated by any other evidence unless his own evidence is credible itself. (See *Zacharia* v. *Republic,* 1962 C.L.R. 52 at p. 62, *Liatsos* v. *The Police* (1968) 2 C.L.R. 15 at p. 21 and *D.P.P.* v. *Hester,* 57 Cr. App. R. 212 at p. 229).

(3) Lies told by appellant in Court do not amount to corroboration (see *R.* v. *Chapman and Another* [1973] 2 All E.R. 624). But the giving of false evidence "may bear against an accused and assist in his conviction if there is other material sufficient to sustain a verdict

against him" (see *Tumahole Bereng and Others* v. *The King* [1949] A.C. 253 at p. 270 and *Chapman* case, *supra*, at p. 630).

(4) The said statements of fact in the confession are, practically all, matters which might not be inconsistent with the version of the appellant to the effect that he was a mere bystander at the time when the murders were committed by Ioannou.

(5) I would, thus, not be prepared to go as far as to say that the confession of the appellant ought not to have been treated, at least as regards basic parts of it, as reliable evidence, but I feel bound to state that in a case such as the present one it would have been the better course for the reliability of the confession to have been tested in relation to more significant proved facts than those relied on in the judgment of the trial Court. (See pp. 52(1) - 54(2) of the judgment *post*).

(6) On the basis of the record before me, I would definitely not go as far as to say that this is a case in which the conviction of the appellant could be set aside and that he could be acquitted. (See *Petrides* v. *The Republic*, 1964 C.L.R. 413, at p. 430, *Loizias* v. *Republic* (1969) 2 C.L.R. 217, at p. 219, and *Pierides* v. *The Republic* (1971) 2 C.L.R. 263 at pp. 272 - 273). I have, therefore, to decide whether a new trial should be ordered or whether the appeal should be dismissed and the conviction of the appellant upheld by applying the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155.

(As to the law governing the application of the proviso to s. 145(1)(b) (*supra*) see pp. 54(28) - 60(35) *post*).

(7) The said proviso is applicable, if need be, to a murder case in Cyprus (see *Anderson* v. *Reginam* [1971] 3 All E.R. 768).

(8) The conduct of the appellant before and after the murders, his admission in evidence that he was present when they were committed (coupled with the rejection by the trial Court of his version that he was an innocent onlooker) as well as his confession to the police that he did commit such murders (notwithstanding

what has already been stated as to how the reliability of some of the contents of his confession was tested by the trial Court) constitute, in my opinion, an overwhelming combination of factors establishing, beyond any reasonable doubt, at least the participation of the appellant, as an accomplice, in the commission of the murders, on the basis, as counsel for respondent has stated and as I am in agreement, that Ioannou was, also, one of the perpetrators of the crime.

(9) I have, therefore, reached the conclusion that the appellant would inevitably have been convicted of the murders with which he was charged, on the basis, at least, that he was not present at their commission as an innocent bystander, but that he was an aider and abettor, in a manner providing—to put it at its lowest —willful encouragement for the commission of the murders (see *Vrakas and Another* v. *The Republic* (1973) 2 C.L.R. 139, at p. 195 et seq.); consequently, due to inexorable weight of evidence I have, notwithstanding my initial inclination to order a new trial, decided in the end to dismiss the appeal by applying the proviso to section 145(1)(b) of Cap. 155, having found that "no substantial miscarriage of justice has actually occurred" in this case, (see pp. 61(13) - 64(16)).

Held, (II) per Hadjianastassiou, J., Malachtos, J concurring.

(1) Evidence in corroboration of an accomplice's evidence must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him that is, which confirms in some material particular not only the evidence that the crime has been committed but also that he personally committed it. The nature of the corroboration will necessarily vary according to the particular circumstances of the offence changed, but it must tend to show that the story of the accomplice that the accused has committed the crime is true. (See *R.* v. *Hartley* [1941] 1 K.B. 5; *R.* v. *Jones,* 27 Cr. App. R. 33; *Liatsos* v. *Police* (1968) 2 C.L.R. 15; see also pp. 81(28) - 85(9) of the judgment *post*).

(2) Corroboration need not be direct evidence that the accused committed the crime, nor need it amount to confirmation of the whole of the story of the witness to be corroborated, so long as it corroborates the evidence in some respects material to the charge under consideration (see *R.* v. *Baskerville* [1916] 2 K.B. 658). It is sufficient if it is merely circumstantial evidence of the accused's connection with the crime, it must be independent evidence and it must not be vague (see *R.* v. *Hughes*, 33 Cr. App. R. 59; and see, also, pp. 85(10) - 87(26) of the judgment *post*).

(3) The fact that there was a misdirection on corroboration does not oblige the court to quash a conviction. (See pp. 89(10) - 92(37) of the judgment *post*).

(4) Bearing in mind that the Assize Court consisting of 3 judges had the opportunity of hearing and seeing the witnesses, when giving their testimony, I have decided that this is a proper case in which I can exercise my powers and apply the proviso to s. 145(1)(b) of the Criminal Procedure Law, Cap. 155. And although I cannot approve the Assize Court's misdirection that the medical evidence amounted to corroboration of the accomplice, once there was other corroborating evidence, I think this is a proper case in which to apply the proviso, because no substantial miscarriage of justice has occurred. (See *R.* v. *Baldry*, 5 Cox C.C. 523).

Held, (III) per Malachtos, J.

(1) The evidence as accepted by the trial Court was sufficient to convict the appellant without taking into account the evidence of the accomplice; but irrespective of that, the evidence of the accomplice is amply corroborated by the evidence of the appellant himself. And the principle that the accused's own evidence can afford corroboration to the evidence given by an accomplice has been laid down in *R.* v. *William Bernard Medcraft*, 23 Cr. App. R. 116.

(2) The kind of corroboration required is not confirmation by independent evidence of everything the accomplice relates, as his evidence would be unnecessary if that were so. (See *R.* v. *Mullins*, 3 Cox C.C. 526 at p. 531). What is required is some independent testimony which affects the prisoner by tending to connect

him with the crime; that is, evidence, direct or circumstantial, which implicates the prisoner, which confirms in some material particular not only the evidence given by the accomplice that the crime has been committed, but also the evidence that the prisoner committed it (*R.* v. *Baskerville*, 12 Cr. App. R. 81).

(3) I am, therefore, of the view that this is a proper case for the application of the proviso to section 145 (1)(b) of the Criminal Procedure Law, Cap. 155 as no substantial miscarriage of justice has actually occurred.

Appeal dismissed.

Cases referred to:

R. v. *Baskerville*, 12 Cr. App. R. 81 at p. 91; [1916] 2 K.B. 658 at p. 667;

Demetriou v. *Republic*, 1961 C.L.R. 309;
Zacharia v. *Republic*, 1962 C.L.R. 52, at p. 62;

Meitanis v. *Republic* (1967) 2 C.L.R. 31;

Liatsos v. *Police* (1968) 2 C.L.R. 15 at p. 21;

D.P.P. v. *Hester*, 57 Cr. App. R. 212; [1972] 3 All E.R. 1056;

D.P.P. v. *Kilbourne*, 57 Cr. App. R. 381 at pp. 402, 403; [1973] 1 All E.R. 440 at pp. 446 - 447;

R. v. *Chapman and Another* [1973] 2 All E.R. 624 at pp. 629, 630;

D.P.P. v. *Boardman* [1974] 2 All E.R. 958 at p. 963; [1974] 3 W.L.R. 673 at p. 680;

R. v. *Sykes*, 8 Cr. App. R. 233 at pp. 236, 237;

Petrides v. *Republic*, 1964 C.L.R. 413 at p. 430;

Loizias v. *Republic* (1969) 2 C.L.R. 217 at p. 219;

Pierides v. *Republic* (1971) 2 C.L.R. 263, at pp. 271, 272, 273;

Polycarpou and Another v. *Republic* (1967) 2 C.L.R. 198;

R. v. *Thomas*, 43 Cr. App. R. 210 at p. 214;

Chung Kum Moey v. *Public Prosecutor for Singapore* [1967] 2 A.C. 173 at pp. 185, 186;

R. v. *Richards* [1967] 1 All E.R. 829, at pp. 831, 832;

R. v. *Brown*, 55 Cr. App. R. 478 at pp. 483, 484;

Anderson v. *Reginam* [1971] 3 All E.R. 768 at pp. 772, 773;

R. v. *Deacon*, 57 Cr. App. R. 688 at pp. 692, 693;

R. v. *Lewis*, 57 Cr. App. R. 860 at p. 869;

Tofas v. *Republic*, 1961 C.L.R. 99;

Imam v. *Papacostas* (1968) 1 C.L.R. 207;

Matsis v. *Police* (1970) 2 C.L.R. 58;

Miliotis v. *Police* (1971) 2 C.L.R. 292;

Mantis v. *Police* (1973) 1 J.S.C. 1;

Georghiou v. *Police* (1973) 2 C.L.R. 84;

Tumahole Bereng and Others v. *The King* [1949] A.C. 253 at p. 270;

Vrakas and Another v. *Republic* (1973) 2 C.L.R. 139, at p. 195 et seq.;

Charitonos and Others v. *Republic* (1971) 2 C.L.R. 40, at pp. 113 - 114;

Commissioner of Customs and Excise v. *Harz*; *Reg.* v. *Power* [1967] 1 A.C. 760 at p. 818;

R. v. *Prager* [1972] 1 All E.R. 1114 at p. 1119;

R. v. *Murray* [1950] 2 All E.R. 925, at p. 927;

Chan Wai-Keung v. *R.* [1967] 1 All E.R. 948;

Reg. v. *Burgess* [1968] 2 Q.B.D. 112 at pp. 117 - 118;

Rex v. *Hammond*, 28 Cr. App. Rep. 84;

R. v. *Mullins* [1848] 3 Cox C.C. 526 at p. 531;

R. v. *Hartley* [1941] 1 K.B. 5;

R. v. *Jones*, 27 Cr. App. R. 33;

Credland v. *Knowler*, 35 Cr. App. R. 48;

R. v. *Hughes*, 33 Cr. App. R. 59;

R. v. *Frederick Valentine Russell*, 52 Cr. App. R. 147;

R. v. *Kennaway* [1917] 1 K.B. 25;

R. v. *Keeling* [1942] 1 All E.R. 507;

R. v. *Jackson* [1953] 1 All E.R. 872;

R. v. *Bryant*, 13 Cr. App. R. 49;

R. v. *Rudge*, 17 Cr. App. R. 113;

R. v. *Smith*, 18 Cr. App. R. 19;

R. v. *Parker*, 18 Cr. App. R. 103;

R. v. *Phillips*, 18 Cr. App. R. 115;

R. v. *Charavanmuttu*, 22 Cr. App. R. 1;

R. v. *Martin, Ansell and Ross*, 24 Cr. App. R. 177;

Philotas v. *Republic* (1967) 2 C.L.R. 13;

R. v. *Baldry*, 5 Cox C.C. 523;

Stirland v. *Director of Public Prosecutions* [1944] 2 All E.R. 13 at p. 14;

R. v. *Medcraft*, 23 Cr. App. R. 116;

R. v. *Max Cohen and Leonard Nelson Bateman*, 2 Cr. App. R. 197 at p. 207.

Appeal against conviction.

Appeal against conviction by Yiannis Antoniou Vouniotis who was convicted on the 11th January, 1975 at the Assize Court of Limassol (Criminal Case No. 10516/74) on five counts of the offence of premeditated murder contrary to section 203 of the Criminal Code Cap. 154, as amended by section 5 of the Criminal Code (Amendment) Law, 1962 (Law 3/62) and was sentenced to death by Loris, P.D.C., Pitsillides and Hadjitsangaris, S.D.JJ.

Chr. Dermosoniades, for the appellant.

A. Frangos, Senior Counsel of the Republic, with *G. Constantinou (Miss)* and *M. Flourentzos*, for the respondent.

Cur. adv. vult.

The following judgments were read :

TRIANTAFYLLIDES, P. : The appellant was convicted by an Assize Court in Limassol—under section 203 of the Criminal Code, Cap. 154, as amended by section 5 of the Criminal Code (Amendment) Law, 1962 (Law 3/62)—of the premeditated murders of three Turkish Cypriot women and two Turkish Cypriot girls, which were committed on the 10th November, 1974; each murder was charged in a separate count of one and the same information. He was sentenced to death.

The salient facts of this case are as follows :-

The appellant is a thirty-five years old farmer and labourer; he is married and has four minor children; at all material times he was in possession of a car, No. AQ 205.

The appellant was born at Vouni village, but ever since his marriage he has been living at Monagri village.

On the 8th or 9th November, 1974, Christodoulos Menelaou, a first cousin of the appellant, living at Vouni village, disappeared while working in the fields in the vicinity of a Turkish Cypriot village and it was believed that Turkish Cypriots were responsible for his disappearance.

On the 9th November, 1974, the appellant visited the house in Limassol of a Turkish Cypriot woman, Afet Mustafa, and, while buying some things from her, offered to convey Turkish Cypriots from Limassol to the Turkish occupied northern part of Cyprus. As a result it was agreed that next day the appellant would so convey the abovementioned three women and two girls; Afet was not to travel with them on that occasion. As the Government, in view of the situation created by the Turkish occupation of part of Cyprus, did not approve of the transportation of Turkish Cypriots to the Turkish occupied part, it was arranged for the trip to take place at night and the appellant was to be paid for his services a sum of money far in excess of the normal fare.

In the early afternoon of the 10th November, 1974, the appellant met Makis Ioannou, an acquaintance of

his, who is twenty-one years old, a co-villager of his and who was, at that time, serving in the army.

Ioannou, on being informed of the proposed trip of the appellant, agreed to travel with him for at least part of the way and, so, later on, they both went together to the house of Afet, at about 8 p.m.

In order to avoid, as far as possible, drawing the attention of the police, it was arranged to transport out of Limassol the three women and the two girls, and their luggage, in two stages; during the first trip the appellant and Ioannou drove two of the women and one of the girls to a locality known as "Kourves tou Lokkoumadji", in the area of Alassa village; in order to reach that spot they drove through Ypsonas village—along the road from Limassol to Platres—and, then, proceeded to a point where there is a junction between the new and the old roads to Platres; from there the car was driven along the disused old road for a distance of just under a mile and was stopped at the said locality; at that place there is a bend in the road and the car was stopped just before it; on either side of the road there are downwards sloping banks.

The appellant, the two women and the girl alighted there, and Ioannou returned to the house of Afet, in the appellant's car, and returned, eventually, with the remaining woman and girl.

Soon afterwards all the Turkish Cypriot females were brutally killed by firing from an automatic weapon belonging to Ioannou; it is clear from the evidence adduced that this weapon was not taken to the scene of the crime during either of the two trips there with the victims; apparently, it was taken there earlier, but there is no direct evidence as to who took it. It can, however, be safely concluded that its presence there was connected with the crime.

It has been the version of Ioannou that it was the appellant who killed all five victims, without his own participation, whereas the version of the appellant has been the reverse; the trial Court believed the version of Ioannou.

After they were killed, the victims were thrown off the road and Ioannou and the appellant drove to Monagri, in the appellant's car, taking with them the murder weapon, which, after their arrival at the village, Ioannou buried in a field

On the 16th November 1974, the appellant was called by the police to Lania police station, because it had been found out that he was the person who was in possession of the car in which the victims had been taken away from the house of Afet Mustafa On being asked by police superintendent Karayias as to what happened to the Turkish women whom he had taken from Limassol, about four days earlier in order to transport them to Angolemi—(a Turkish occupied area) —the appellant replied that they were missing Then the superintendent cautioned him and the appellant said that they had been killed and buried nearby at Alasso

Immediately afterwards the appellant volunteered a statement which was taken down under caution by a police constable This statement is in substance a confession of the commission by him of all five murders It is mentioned, also in it that, after the murders he burned the luggage of the victims at another locality and that he had washed the blood off his car which had been holed by three bullets

The defence objected to the admissibility of the confession on the ground that it had been induced by promises that the appellant would not be prosecuted but the trial Court found that it was a voluntary statement and I have no difficulty in agreeing with its conclusion on this point

As a result of information given by the appellant Ioannou was called to Lania police station and he eventually took the police to the place where the automatic weapon had been hidden by him he also handed over to the police some rounds of ammunition which he had at home

In the afternoon of the 16th November 1974 the appellant offered to take the police to the scene of the crime, where there were found the five bodies of the victims and, later on at another locality the appellant

showed to the police the remnants of the burned luggage of the victims.

On the 19th November, 1974, the appellant was formally charged with the five murders and he replied that he had nothing to say.

In the course of the lengthy hearing of the present appeal counsel for the appellant, who has carried out his difficult task with commendable diligence, has tried strenuously, by means of various arguments, to persuade this Court to set aside the conviction of his client; as a result of his submissions it has become necessary to examine whether or not such conviction was properly based on its two mainstays, namely the evidence of Ioannou and the contents of the confession of the appellant.

In their judgment the learned trial judges found that Ioannou was an accessory after the fact to the murders because he, on his own admission, had hidden the automatic weapon with which they had been committed. In this connection counsel for the respondent has submitted in argument—and I am inclined to agree with him—that the degree of complicity of Ioannou was, in the light of all relevant circumstances as they were established by the evidence adduced, a higher one and that the better course would be to treat him as an accomplice who had aided and abetted in the commission of the murders.

In relation to the evidence of Ioannou the trial Court said the following in its judgment :-

> "We feel that we cannot act upon the evidence of the witness Makis Ioannou without corroboration, and we have searched for corroborative evidence connecting the accused with the commission of the crime. We hold the view that such corroborative evidence exists, and it is to be found mainly in the medical evidence.
>
> Makis Ioannou stated on oath that when he returned to the scene (after going round along the old and the new road) with Nevin and the two girls sitting by his side, he called out to the accused who was standing underneath a tree, and the accused told

him to tell Nevin who was in the car to go down so that they would arrange for the money. Nevin heard this, she alighted from the left hand side door of the car and proceeded towards the accused. At that moment the accused walked up to the 'ohtos' towards the road and fired at her. That is, the accused fired at Nevin when Nevin was facing the accused. Then Nevin turned back and the accused fired at her again. Nevin finally fell by the side of the near-side door of the car. So Nevin must have been injured by two shots, one in front, when she was proceeding towards the accused, facing the accused, and the other one, at the back when she turned away from the accused. This description of Makis tallies fully with the medical evidence.

Dr. Panos Stavrinos who carried out the P.M. examination on all 5 victims, and testified before us as P.W.4 (and we accept his evidence in toto), stated the following in respect of the injuries he found on Nevin Mahmoud: '.... Anteriorly there was 1½ inch circular penetrating wound, corresponding at the middle region of the sternum and multiple exit wounds were noted at the right scapula. Secondly an entry wound was present 5 cm. posteriorly below the left elbow, and an exit wound corresponding at the middle region internally of the left arm...'."

A perusal of the record of the trial—and in this respect there has been no dispute by either side during the hearing of this appeal—shows that Ioannou did not testify to the effect that the victim Nevin was shot twice by the appellant, once while she was facing him and again after she had turned her back to him, as it appears to have been found by the trial Court in the above-quoted passage from its judgment.

It follows, therefore, that the medical evidence regarding the injuries on the body of Nevin, which was treated by the trial Court as the "main" corroboration of the evidence of the accomplice Ioannou, does not in actual fact support at all his evidence, because he did not give testimony tallying with such medical evidence.

What is in law evidence amounting to corroboration of the version of an accomplice has been laid down as

follows in *R* v *Baskerville*, 12 Cr. App R 81, by Reading L.C J. (at p 91) -

"We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offence for which corroboration is required by statute The language of the statute, 'implicating the accused', compendiously incorporates the test applicable at common law in the rule of practice The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged It would be in a high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shews or tends to shew that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed but that it was committed by the accused"

Our own case-law has adopted as valid the above approach to the matter of corroboration, as it appears from, *inter alia*, *Demetriou* v *The Republic*, 1961 C.L.R 309, *Zacharia* v *The Republic*, 1962 C.L R 52 and *Mettanis* v *The Republic* (1967) 2 C L R 31

So, even if the aforesaid unfortunate slip as regards the effect of the evidence of Ioannou had not cropped up and his evidence had been as set out in the above-quoted passage from the judgment of the trial Court, I am of the view that the medical evidence in question could not have been treated in law as corroboration of his testimony as an accomplice, that is to say, as evidence implicating the appellant in the commission of the murders; in this connection it must be borne in mind that both the appellant and Ioannou admitted being

present at the scene of the crime at the material time and they only diferred in that they each denied responsibility for the shootings and threw the blame on the other.

The medical evidence concerning the injuries found on the body of Nevin could merely have been treated—had it tallied with the evidence of Ioannou in this respect —as testimony supporting his credibility and not, at the same time, as evidence implicating the appellant; of course, even as testimony relevant only to the issue of his credibility it might have been of quite some significance, because there cannot arise the possibility of the evidence of an accomplice being corroborated by any other evidence unless his own evidence is credible itself. This view has been expressed in, *inter alia*, the case of *Zacharia, supra* (at p. 62), and in the case of *Liatsos* v. *The Police* (1968) 2 C.L.R. 15, at p. 21. More recently in *D.P.P.* v. *Hester*, 57 Cr. App. R. 212, Lord Morris of Borth-y-Gest said (at p. 229) :-

> "The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible, but only to confirm and support that which as evidence is sufficient and satisfactory and credible : And corroborative evidence will only fill its role if it itself is completely credible evidence."

And the same view was adopted in *D.P.P.* v. *Kilbourne*, 57 Cr. App. R. 381, where Lord Hailsham LC stated (at pp. 402, 403) :-

> "In addition to the valuable direction to the jury, this summing-up appears to me to contain a proposition which is central to the nature of corroboration, but which does not appear to date to have been emphasised in any reported English decision until the opinion delivered in *D.P.P.* v. *Hester* (*supra*) by Lord Morris of Borth-y-Gest, although it is implicit in them all. Corroboration is only required or afforded if the witness requiring corroboration or giving it is otherwise credible. If his evidence is not credible, a witness's testimony should be rejected and the accused acquitted, even if there could be found evidence capable of being corroboration in other

testimony. Corroboration can only be afforded to or by a witness who is otherwise to be believed. If a witness's testimony fails of its own inanition, the question of his needing or being capable of giving, corroboration does not arise."

In the light of all the foregoing I would sum up by stating that as the medical evidence regarding the injuries suffered by the victim Nevim did not support the relevant part of the testimony of the accomplice Ioannou, such medical evidence was not to be treated as a factor establishing the credibility of Ioannou nor could it have been treated, either in fact or in law, as being corroboration of his testimony, as it was found to be by the trial Court.

Though the trial Court did not refer in the judgment appealed from to any other evidence as corroborating that of Ioannou—(and had it had evidence of this kind in mind it must have considered it to be of a less significant nature since it has stated expressly in its judgment what it considered to be the "main" corroboration)— it was submitted, by the respondent, that medical evidence concerning the injuries suffered by the victims Ulfet and Meirem can be regarded as corroboration of the testimony of Ioannou; it suffices to say that, in my opinion, such evidence cannot be safely treated as supporting Ioannou's testimony or as implicating the appellant in the commission of the murders in question.

Another line of argument which was adopted by counsel for the respondent was to the effect that the fact that the trial Court disbelieved the evidence given by the appellant—and that, allegedly, it has, also, been established by other evidence in the case that the appellant had lied on oath at the trial—amounts to corroboration of the evidence of Ioannou; this contention was not much pressed, eventually, in view of the case of *R.* v. *Chapman and Another* [1973] 2 All E.R. 624, where Roskill L.J. stated (at pp. 629, 630) the following :-

> "There is no doubt that a lie told out of Court is capable in some circumstances of constituting corroboration, though it may not necessarily do so. There may be an explanation of the lie which will

clearly prevent it being corroboration: See, for example, *R.* v. *Clynes* [1960] 44 Cr. App. Rep. 158 at 163, 164.

But, in the view of this Court, there is a clear distinction in principle between a lie told out of Court and evidence given in the witness box which the jury rejects as incapable of belief or as otherwise unreliable. Proof of a lie told out of Court is capable of being direct evidence, admissible at the trial, amounting to affirmative proof of the untruth of the defendant's denial of guilt. This in turn may tend to confirm the evidence against him and to implicate him in the offence charged. But a denial in the witness box which is untruthful or otherwise incapable of belief is not positive proof of anything. It leads only to the rejection of the evidence given, which then has to be treated as if it had not been given. Mere rejection of evidence is not of itself affirmative or confirmatory proof of the truth of other evidence to the contrary."

It is, however, useful to note in this respect that quite recently the Court of Appeal in England in *D.P.P.* v. *Boardman* [1974] 3 W.L.R. 673, observed in relation to the *Chapman* case, *supra*, the following (at p. 680):-

"As to lies by the defendant in Court we accept the correctness of the decision in *Reg.* v. *Chapman* [1973] Q.B. 774 on the facts of that case, and that it will be applicable in most cases. Whether the judgment should be treated as authority for the proposition that a lie told by the defendant in evidence can never, whatever the circumstances, be capable of amounting to corroboration is a matter on which to feel some doubt but which does not arise for determination in the present case."

When the *Boardman* case was considered by the House of Lords (see p. 682 of the report) nothing further was said about the *Chapman* case.

I shall deal next with the issue of the reliance placed by the trial Court on the contents of the confession of the appellant:

The trial Court referred in this connection to *R.* v. *Sykes,* 8 Cr. App. R. 233, where Ridley J. stated (at pp. 236, 237):-

"The main point, however, is one independent of all these details, the question how far the jury could rely on these confessions. I think the Commissioner put it correctly; he said: 'A man may be convicted on his own confession alone; there is no law against it. The law is that if a man makes a free and voluntary confession which is direct and positive, and is properly proved, a jury may, if they think fit, convict him of any crime upon it. But seldom, if ever, the necessity arises, because confessions can always be tested and examined, first by the police, and then by you and us in Court, and the first question you ask when you are examining the confession of a man is, is there anything outside it to show it was true? Is it corroborated? Are the statements made in it of fact so far as we can test them true? Was the prisoner a man who had the opportunity of committing the murder? Is his confession possible? Is it consistent with other facts which have been ascertained and which have been, as in this case, proved before us?' It was said that the murder was the talk of the countryside, and it might well be that a man under the influence of insanity or a morbid desire for notoriety would accuse himself of such a crime. I agree that this is so, but it was a question for the jury, and they ought to see whether it was properly corroborated by facts, and so they were directed."

By following the above approach it was found that in relation to at least seven matters (which are specifically mentioned in the judgment appealed from) statements of fact in the confession of the appellant had been proved by independent evidence; and the following is stated in the judgment before us: "The fact that most of the statements in the confession were established by independent evidence to be true, coupled with the opportunity the accused had of committing the crime, renders it quite safe for us to act upon his confession".

In my view the said statements of fact are, practically

all, matters which might not be inconsistent with the version of the appellant, namely that the appellant was a mere bystander at the time when the murders were committed by Ioannou.

Also, there do exist in the appellant's confession matters which appear to be inconsistent with proved facts; these might be deemed of some importance in relation to the issue of the reliability of statements in the confession as evidence of truth, but, unfortunately, it does not appear that they have been fully weighed; for example, one such matter is the following:

In his confession the appellant has stated that he hid the corpses of the victims by covering them with branches; yet, according to the evidence of the police, when the victims were discovered they were found covered with parts of cardboard boxes or pieces of sackcloth and none of the dead bodies was covered with branches; the appellant stated, more than once in his evidence, that Ioannou had told him that he would either bury the bodies or cover them with branches; it is, therefore, at least *prima facie*, rather strange that if the appellant was telling the truth in his confession when he said that it was he who covered up the bodies he would not have said how in fact he had done so, but he would have instead mentioned a manner of covering them which does not correspond with proved facts.

As it has been the appellant's own allegation that all along—because he was afraid of what Ioannou might do to him if he divulged anything about Ioannou's involvement in the murders—he had studiously avoided any reference to Ioannou in his confession, or in any other statement of his to the police, it is reasonably probable that the appellant in his confession spoke about things which were done by Ioannou as having been done by himself and, having had no exact knowledge in this respect, he stated things which were incorrect.

I would, thus, not be prepared to go as far as to say that the confession of the appellant ought not to have been treated, at least as regards basic parts of it, as reliable evidence, but I feel bound to state that in a case such as the present one it would have been the better course for the reliability of the confession to have

been tested in relation to more significant proved facts than those relied on in the judgment of the trial Court.

I have anxiously and at length considered, in the light of all that I have stated in my judgment, what was the proper course to adopt in deciding this appeal.

On the basis of the record before me, and in the light of what has been stated in cases such as *Petrides* v. *The Republic*, 1964 C.L.R. 413, at p. 430, *Loizias* v. *The Republic* (1969) 2 C.L.R. 217, at p. 219, and *Pierides* v. *The Republic* (1971) 2 C.L.R. 263, at pp. 272 - 273, I would definitely not go as far as to say that this is a case in which the conviction of the appellant could be set aside and that he could be acquitted. The maximum favourable for him outcome of the appeal could be an order for a new trial. I have, therefore, to decide whether a new trial should be ordered or whether the appeal should be dismissed and the conviction of the appellant should be upheld, irrespective of the flaws which, as mentioned in my judgment, have been discovered, during the proceedings on appeal, in the generally careful and well prepared judgment of the learned trial judges. In order to follow the latter course there would have to be applied the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155, that is to say, I should be able to reach the conclusion that, in effect, "no substantial miscarriage of justice has actually occurred".

It must be borne in mind that the burden of satisfying an appellate tribunal that the said proviso should be applied lies on the prosecuting authority; in this respect the following have been stated in *Pierides*, *supra* (at p. 271) :-

> "Though the burden of upsetting a conviction lies on an appellant, it is to be derived from the wording and the object of the proviso that the burden of satisfying the Supreme Court that the proviso should be applied lies on the respondent, the prosecuting authority; and that this is so is confirmed by the view taken by the High Court of Australia regarding a corresponding provision in Australian legislation— (after a review of relevant English case-law, some of which being the same as that referred to in the

case of *Polycarpou, supra*)—in the case of *Mraz* v. *The Queen*, (1954 - 1956) 93 C.L.R. 493."

Of course, whether or not the proviso is to be applied is a question primarily depending on the particular circumstances of each case; it is useful, however, to refer in this connection by way of guidance to some relevant case-law, other than that referred to already in our own case of *Polycarpou and Another* v. *The Republic* (1967) 2 C.L.R. 198, to which I do not find it necessary to refer in extenso.

In *R.* v. *Thomas*, 43 Cr. App. R. 210, Ashworth J. stated (at p. 214):-

> "It follows, therefore, that the jury were invited to regard two matters as capable of constituting corroboration which could not properly be so regarded. This Court has had occasion to consider this type of problem on many occassions in the past and the decided cases show that in such circumstances the conviction will as a rule be quashed, unless the proviso to subsection (1) of section 4 of the Criminal Appeal Act, 1907, is held to be applicable: See, for example, *Coulthread* [1933] 24 Cr. App. R. 44."

In *Chung Kum Moey* v. *Public Prosecutor for Singapore* [1967] 2 A.C. 173, it was said by Viscount Dilhorne (at pp. 185, 186):-

> "Their Lordships were invited to dismiss the appeal on the ground that no substantial miscarriage of justice had occurred. By section 60(1) of the Courts of Judicature Act, 1964, the Federal Court is given power to take that course notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant if it considers that no substantial miscarriage of justice has occurred.
>
> In *Woolmington* v. *Director of Public Prosecutions* [1935] A.C. 462, Lord Sankey L.C. said in relation to the similar provision in the Criminal Appeal Act, 1907, that the test was whether 'if the jury had been properly directed they would inevitably have come to the same conclusion'. In *Stirland* v. *Director of Public Prosecutions* [1944] A.C. 315,

Lord Simon said that the provision assumed 'a situation where a reasonable jury, after being properly directed, would, on the evidence properly admissible, without doubt convict'."

In *R.* v. *Richards* [1967] 1 All E.R. 829, Winn L.J. said in his judgment (at pp. 831, 832) :-

"..... It is not for this Court to speculate what would have happened in the trial itself, what the jury which was charged with the decision in that case would or would not have done. It is not sufficient that this Court itself should be clear that the appellant is guilty. The Court has to apply the test which I have just enunciated and ask itself whether, on the two hypotheses stated and assuming an intelligent and reasonable jury, this Court can itself be sure that the appellant would have been convicted. The fact that the chances are very greatly in favour of that having happened in the present trial is in law beside the point. It follows that these convictions must be quashed."

In *R.* v. *Brown,* 55 Cr. App. R. 478, Cairns L.J. stated (at pp. 483, 484) :-

"Nevertheless, the Court is of the opinion that there was an incompleteness of direction here, and that it is a case where it should be considered whether the proviso to section 2(1) of the Criminal Appeal Act 1968 should be applied. Now, it has been rightly said on behalf of the appellant that for the proviso to be applied, there must be an overwhelming case against the accused. It is put in this way in Archbold (37th ed.), paragraph 925, in two sentences, which, in the view of the Court, correctly state the law: 'A miscarriage of justice within the meaning of the proviso has occurred where by reason of a mistake, omission or irregularity in the trial the appellant has lost a chance of acquittal which was fairly open to him. The Court may apply the proviso and dismiss the appeal if they are satisfied that on the whole of the facts and with a correct direction the only proper verdict would have been one of guilty'.

Several cases were helpfully referred to, in two of which this Court refused to apply the proviso and two others in which the proviso was applied. The first case was that of *Turner* [1944] 30 Cr. App. R. 9; [1944] K.B. 463. The matter is dealt with at pp. 20 and 471 of the respective reports. There the proviso was not applied, the situation being that evidence of character had been admitted in the course of the trial. The second case where the Court declined to apply the proviso was *Badjan* [1968] 50 Cr. App. R. 141, where there was a misdirection by complete omission in the summing-up to refer to what was the cardinal line of defence. Both these cases appear to this Court to be of quite a different character from the one with which we are dealing.

The first of the cases mentioned in which the proviso was applied where there was a misdirection in law was *Oster-Ritter* [1948] 32 Cr. App. R. 191, where there was a misdirection of an obviously serious kind as to what constituted false pretences. Nevertheless the proviso was applied, because the Court took the view that the evidence against the appellant was overwhelming. The last case is *Whybrow* [1951] 35 Cr. App. R. 141, where there was a misdirection on the intent necessary to constitute attempted murder, again a misdirection of some seriousness. Nevertheless the proviso was applied, because the Court took the view that the evidence was overwhelming.

We approach the question whether or not it is our duty to apply the proviso here by considering whether the evidence was overwhelming and whether a jury properly directed in this case could have come to any other verdict other than that of Guilty."

In *Anderson* v. *Reginam*, [1971] 3 All E.R. 768, Lord Guest stated (at pp. 772, 773):-

"The test which an appeal Court is to apply to the proviso was recently referred to by Viscount Dilhorne in *Chung Kum Moey (alias Ah Ngar)* v. *Public Prosecutor for Singapore*, [1967] 2 A.C. 173 at 185, quoting the classic passage by Lord Sankey L.C. in *Woolmington* v *Director of Public Prose-*

cutions [1935] A.C. 462 at 482, 483 whether 'if the jury had been properly directed they would inevitably have come to the same conclusion'. Viscount Dilhorne also referred to *Stirland* v. *Director of Public Prosecutions* [1944] 2 All E.R. 13 at 15, where Viscount Simon L.C. said that the provision assumed 'a situation where a reasonable jury, after being properly directed would, on the evidence properly admissible, without doubt convict'.

In the judgment of the Court of Appeal a reference was made in relation to the proviso as to whether the relevant evidence would have 'tipped the scales in favour of the prosecution'. Their Lordships are not satisfied that this is the appropriate test to apply and they prefer those above referred to. The question is therefore 'whether a jury being properly directed as to the presence of blood on the water boots or cardboard would inevitably have come to the same conclusion'."

It is to be noted that in that case the proviso to be applied was the proviso to section 13(1) of the Judicature (Appellate Jurisdiction) Law (Jamaica), 1962, which is closely similar to our corresponding proviso (see p. 772 of the report of the *Anderson* case).

In *R.* v. *Deacon*, 57 Cr. App. R. 688, Widgery L.C.J. said (at pp. 692, 693):-

"We have accordingly, of course, considered whether this is a case in which it is possible to apply the proviso to section 2(1) of the Criminal Appeal Act 1968, on the footing that no miscarriage of justice had actually occurred by reason of the fact that the two counts were tried together and the jury were not given any direction to exclude the evidence of the wife when considering their verdict on count 1.

In our view, this is not a case in which the proviso can be applied. It is perfectly true that there was plenty of other evidence upon which the jury might well have convicted if the wife had not given evidence, but the wife was the sole eye-witness to the scene, and her evidence that the appellant had deli-

berately shot at her brother was evidence of such weight and importance that we cannot bring ourselves to say that the verdict of the jury would have been the same if either the wife had not been called or if they had been given a direction to exclude her evidence when considering their verdict on count 1."

Lastly, in *R.* v. *Lewis*, 57 Cr. App. R. 860, Roskill, L.J. stated (at p. 869) :-

"There was a misdirection in this case. The question then arises whether this Court should apply the proviso. There is no reason in principle why this should not be done. It was done in *Sullivan's* case, [1967] 51 Cr. App. R. 102. The evidence in this case, as I have already said when relating the facts, was quite overwhelming, and no reasonable jury, even without the comment made by the Recorder of which complaint has been properly made, could possibly have failed to convict this appellant. Accordingly we have no hesitation in saying there is no shadow of a risk of a miscarriage of justice if we apply the proviso and we propose to do so."

It may be pointed out that the wording of the proviso in England was until 1966 closely similar to the proviso to our section 145(1)(b) of Cap. 155; but even in its amended form (since the enactment in England of the Criminal Appeal Act, 1966) it is still sufficiently similar to our own proviso and, therefore, relevant English case-law continues to afford valuable guidance.

The *Anderson* case, *supra*, has to be referred to, also, in relation to the question of the application of the proviso in a murder case. In this respect Lord Guest has stated (at p. 773) :-

"Counsel for the appellant contended that in a case of murder a special rule applied in regard to the proviso and he referred in particular to the observation of Lord Goddard C.J. in *R.* v. *Dunbar*, [1957] 2 All E.R. 737 at 740, where he said :

'.... in a matter which makes a difference between a capital sentence and a sentence only of imprisonment we feel it would be undesirable for the Court to consider applying the proviso....'.

Reference was also made to a passage in a judgment of Sachs L.J. in *R.* v. *Cooper*, [1969] 3 All E.R. 118 at 122, where on an appeal from a finding of a court-martial Sachs L.J. is reported as saying:

> 'That being the situation, and there having been improper admission of evidence and improper directions as raised in the notice of appeal, counsel for the Crown in his usual persuasive manner sought the application by this Court of the proviso. On that matter it is sufficient to say that the proviso is very rarely applied in murder cases, and then only when there has in every other respect been nothing which can be criticised in the conduct of the trial or in the summing-up. It is not applied where the summing-up has imperfections such as those already related'.
>
> The Court refused to apply the proviso in that case. Their Lordships with respect consider that the statement by Sachs L.J., if it contains a principle, is too widely expressed and should not be followed. It cannot be the case that the proviso is never applied in murder cases nor can it be the case that for the application of the poviso there cannot be any possible criticism of the summing-up. Their Lordships realise that in cases of murder great care must be taken to see that there has been no miscarriage of justice. Further than that they do not consider it wise to lay down any principle."

In relation to the view expressed, as above, in the *Anderson* case, regarding the application of the proviso in cases of murder, there exists in the Law Quarterly Review, (1972) 88 p. 6, the following comment: "Furthermore, in England which unlike Jamaica"—(from where the *Anderson* case came before the Privy Council)—"has abolished the death penalty in murder cases, there is even less reason than before for a special rule for murder cases". In this connection I feel that I should observe that in regarding, as I do, on the basis of the *Anderson* case, the proviso as being applicable, if need be, to a murder case in Cyprus, I have completely disregarded the fact that, though the death penalty for murder remains statutorily in force in Cyprus, it has,

as it can be judicially noticed, not been enforced, irrespective of the gravity of the various murder cases, for more than ten years, so that it might conceivably have been treated as having been de facto abolished, in the course of the evolution of social progress, as in other countries.

I have most anxiously considered whether or not to apply the proviso in the present case:

In this respect it should be stated, first, that, apart from what I have found in the appellant's favour earlier on in my judgment, I am of the view that none of the other matters which were raised in argument in support of his appeal could, when viewed in the context of the totality of the circumstances of this case, be treated as being of any decisive significance in so far as the outcome of this appeal is concerned; and this is the reason for which I have not deemed it fit, or necessary, to deal with each one of them specifically; in any event, practically all of them involved issues of credibility of witnesses in relation to which I did not think that, on the basis of the relevant principles (which were applied in, *inter alia*, *Tofas* v. *The Republic*, 1961 C.L.R. 99, *Imam* v. *Papacostas* (1968) 1 C.L.R. 207, *Matsis* v. *The Police*, (1970) 2 C.L.R. 58, *Miliotis* v. *The Police*, (1971) 1 C.L.R. 292, *Mantis* v. *The Police* (1973) 1 J.S.C. 1 and *Georghiou* v. *The Police* (1973) 2 C.L.R. 84), there existed sufficient reason for interfering with findings of fact made by the trial Court.

What has given me quite some difficulty, in deciding whether the proviso should be applied, or whether, instead, a new trial should be ordered, has been (a) the fact that the trial Court has stated expressly in its judgment that it would not have relied on the evidence of the accomplice Ioannou if it had not been corroborated, and (b) the fact that—as I have explained earlier on in this judgment—the medical evidence, which the trial Court found to be the "main" corroboration of Ioannou's testimony, does not actually amount to corroboration of such testimony, either in fact or in law. Moreover, I have been keeping in mind, too, my already expressed opinion that the reliability of the contents of the con-

fession of the appellant ought to have been tested in relation to more significant aspects of the case.

On the other hand, it has been established, by evidence given at the trial by the appellant himself, that it was he, himself, who had arranged to take charge of the five eventual victims, for the purpose of transporting them to the northern Turkish occupied part of Cypus, and that it was he who, later on, on the day of the crime, brought Ioannou into this affair; furthermore, it was in his own car that the victims were transported to the place where they met with their death and it was in his own car that he and Ioannou, after the commission of the murders, made their get-away from the scene of the crime.

Also, on the very next day after the murders the appellant went again to the house of the witness Afet Mustafa and asked her if there were any more Turkish Cypriots to be transported to the northern part of Cyprus and whether she herself wanted to go, too.

It is true that the appellant's version at the trial has been that, while they were all assembled at the scene of the crime, Ioannou suddenly started firing at, and killing, the victims and that he, the appellant, was nothing more than a shocked and terrified innocent spectator, who had had no previous knowedge or warning about Ioannou's plan to commit the murders. Yet, nowhere does there appear in the evidence of the appellant that he made any real effort either to dissuade Ioannou from committing the murders, or any of them, or that he really tried to save any of the victims, as should have been inevitably his first impulsive reaction had his presence there been an innocent one.

The trial Court disbelieved the appellant's version; and there can be, really, no doubt that, even if the trial Court had not relied on the testimony of Ioannou, it could not, in any event, have accepted the appellant's version, because it had before it a confession of the appellant that he had, indeed, committed the murders.

As has been pointed out by Lord MacDermott in *Tumahole Bereng and Others* v. *The King*, [1949] A.C. 253 (at p. 270), the giving of false evidence "may bear

against an accused and assist in his conviction if there is other material sufficient to sustain a verdict against him"; and this dictum was referred to with approval by Roskill L.J. in the *Chapman* case, *supra* (at p. 630), where it was, also, indicated that evidence by an accused person which is "incapable of belief or otherwise unreliable" may contribute to a verdict of guilty, even though lies told in evidence by an accused cannot amount to corroboration of the testimony of an accomplice.

The conduct of the appellant before and after the murders, his admission in evidence that he was present when they were committed (coupled with the rejection by the trial Court of his version that he was an innocent onlooker) as well as his confession to the police that he did commit such murders (notwithstanding what has already been stated as to how the reliability of some of the contents of his confession was tested by the trial Court) constitute, in my opinion, an overwhelming combination of factors establishing, beyond any reasonable doubt, at least the participation of the appellant, as an accomplice, in the commission of the murders, on the basis, as counsel for respondent has stated and as I am in agreement, that Ioannou was, also, one of the perpetrators of the crime.

I cannot accept as being reasonably probable, or even possible, that the appellant would have voluntarily confessed that he had committed the murders if he had not been involved at all in their commission as an accomplice, but he had been only a terrified onlooker, who had been taken by surprise when Ioannou started firing at the innocent victims.

It is true that the appellant has said in evidence that he confessed that he had committed the murders himself, on his own, because he had been threatened by Ioannou to be killed if he had stated that it was Ioannou who was involved; I could well understand the appellant adopting such a course if he was also himself one of the perpetrators of the crime and he was prepared to shoulder responsibility for it on his own; but it is beyond my understanding to grasp that the appellant would accept the blame for something for which he was not

responsible at all and which had been done by Ioannou entirely on his own.

I have, therefore, reached the conclusion that the appellant would inevitably have been convicted of the murders with which he was charged, on the basis, at least, that he was not present at their commission as an innocent bystander, but that he was aidor and abettor, in a manner providing—to put it at its lowest—wilful encouragement for the commission of the murders (see *Vrakas and Another* v. *The Republic*, (1973) 2 C.L.R. 139, at p. 195 et seq.); consequently, due to inexorable weight of evidence I have, notwithstanding my initial inclination to order a new trial, decided in the end to dismiss the appeal by applying the proviso to section 145(1)(b) of Cap. 155, having found that "no substantial miscarriage of justice has actually occurred" in this case.

The appeal is consequently dismissed.

STAVRINIDES, J.: I have had the advantage of reading the judgment just delivered. I agree with it and have nothing to add.

L. LOIZOU, J.: That the outcome of this appeal could not be the acquittal of the appellant was never in doubt in the course of the proceedings before this Court. The question all along was whether to dismiss the appeal by applying the proviso to section 145(1)(b) of the Criminal Procedure Law Cap. 155 or order a retrial. I must say that until a late stage of our deliberations I was inclined to the view that the latter was the better course and this especially in view of the obvious confusion and subsequent misdirection in the judgment regarding the question of corroboration of the accomplice's evidence. Having, however, considered the matter further in the light of the discussions with the other members of this Court I have now decided, even though somewhat reluctantly, not to dissent from the majority conclusion. I would, therefore, for the reasons stated in the judgment of the President of this Court which I had the advantage of reading in advance, dismiss the appeal and affirm the conviction and sentence of the Court below.

HADJIANASTASSIOU, J.: The appellant was convicted by the Assize Court of Limassol on November 1, 1974,

on five counts on an indictment charging him with premeditated murder (contrary to s. 203 of the Criminal Code, Cap. 154 (as amended by s. 5 of Law 3/62)), of five female persons, Ulfet Osman aged 23, Nevim Mahmut Satik aged 27, Meyrem Niazi aged 16, Tingen Mahmut Satik aged 7, and Semay Osman Mehmet aged 3, and he was sentenced to death.

He now appeals against those convictions, and the points of substance raised by the notice of appeal are :-

(1) "that the Court erroneously convicted the appellant, whose version was not properly considered, and was wrong in law and in fact, such as the injuries of Nevim Mahmut;

(2) the Court erroneously accepted that there was corroboration of the evidence of prosecution witness 15 and was wrong as to the credibility of P.W. 16 and of the appellant;

(3) the Court erroneously accepted the statement (*exhibit* 24), as true, and has not taken into consideration material facts such as the position of the expended cartridges, the covering of the corpses with cardboard boxes, and the evidence of Sgt. G. Hadjioannou; and

(4) the Court erroneously accepted premeditation, though it was not proved that the weapon used for the crime belonged to P.W. 15, nor was it proved that it had been hidden at the scene of the crime by the appellant."

As most crimes are committed in secret and as the question of intention and guilty mind plays a much more prominent part in criminal than in civil proceedings, direct evidence of the guilt of an accused person is often impossible, and a great deal of evidence in criminal trials is of the kind which is called indirect or circumstantial or presumptive. (*Charitonos & Others* v. *The Republic* (1971) 2 C.L.R. 40, at pp. 113 - 114). But in the case in hand, the Assize Court in reaching its conclusions that the accused was guilty of the murder of the five victims, had before it not only evidence of a circumstantial nature, but direct evidence of a witness who said "I saw this crime committed by the accused". There

was further evidence in the nature of an admission of the accused who admitted that he had committed these atrocious crimes, and no doubt the defendant may be convicted on his own confession without any corroborating evidence (Halsbury's Laws of England, 3rd ed. vol. 10 at p. 469 paragraph 860).

Briefly, the main evidence against the appellant, was as follows :- The appellant was residing at Monagri village. On November 9, 1974, he drove in his motor car Reg. No. AQ205 to the house of Afet Mustafa at Limassol, where he purchased some household effects from her. Having done so, he then informed her that he was willing, if there were any Turks wanting to move from Limassol to the Turkish occupied area, to transport them in his own car. Ulfet Osman and Nevim Mahmut Satik were present at that time, and after having a talk with the accused, it was agreed that he would convey them to the Turkish occupied area on the following day, that is to say, November 10, 1974, for a fee of £40 each; and that he was to pick them up from the house of Afet Mustafa.

In the meantime, the appellant, who knew that Makis Ioannou, a co-villager of his, possessed an automatic weapon, asked him to lend it to him, and as a result, the gun loaded with a magazine, was handed over to him on November 9, 1974.

On November 10, 1974, the appellant met Makis Ioannou at about 2 - 2.30 p.m. at a cafe at Monagri village, and from there they drove to Alassa in the car of the appellant. They had refreshment at the cafe of Chrysostomos Panayi, and later on they drove again to Limassol in the same car. They then went to the house of Afet Mustafa where the appellant had a talk with her. After having a meal at Heroes Square, they returned to the house of Afet Mustafa, and after the appellant had a private talk with her, they left and proceeded to the house of the sister-in-law of Makis Ioannou. On their way, the appellant revealed to him for the first time that on that evening he was to transport three women and two children from Limassol to the Turkish occupied area, and asked him to go with him. Although at first he refused, later on he accepted. At about 8.00

p.m. of the same day they went to the house of Afet Mustafa. The appellant alighted, whilst the latter remained in the car. The appellant entered the house and had a talk with Afet Mustafa and the other women there, and then Ulfet Osman, Meyrem Niazi and Tingen Mahmut Satik left the house carrying with them handbags and proceeded towards the car,

When the three passengers entered the car, the appellant, before setting off, said "I shall take these ones now and see if there is a road block. I shall take them further up Ypsonas, leave them there and I shall come back and take the other two". After making that statement, the appellant started the engine and switched the lights on. Nevim Mahmut Satik, who remained behind, wrote the number of appellant's car on a piece of paper and handed it over to Afet Mustafa, who placed it on the radio of the house underneath a book. This piece of paper was later handed over by Afet Mustafa to P.C. Panayiotis Tsolakis on November 18, 1974, who later on handed it over to Supt. Karayias.

Regarding this piece of evidence, counsel on behalf of the appellant cross-examined this witness as to her credibility, but the Court, which had the occasion to observe her demeanour and weigh her evidence, came to the conclusion, in spite of her contradictions—as to who wrote down the number of the car of the appellant—that she was a truthful witness and that they could rely on her evidence; and we see no reason, having read her evidence, to disagree with the Court's finding.

The appellant, driving with his passengers and Makis Ioannou, proceeded towards the Limassol Ypsonas main road, and when they reached Viagrex factory, he turned right into a side road in order to avoid the police road block at Ypsonas, and entered into the village of Ypsonas on the northern part facing Platres. However, before arriving at Ypsonas, the appellant warned the Turkish women that if they were stopped by the police, they were to say that they were their girl-friends and that they were going for a drive. The appellant continued driving, and instead of stopping after Ypsonas (as he said earlier) he drove further up Alassa, and at the junction of the new road with the old one, he went

into the old disused road for about 8/10ths of a mile and stopped.

When the appellant stopped, his companion alighted from the car in order to stay with the two women and the girl: and to enable the former to return to the house of Afet Mustafa in order to transport Nevim Mahmut Satik and the small girl. Apparently, the two Turkish women did not like this idea, and eventually Makis Ioannou drove to the house of Afet Mustafa, all the others remaining at the scene. When he arrived at the house, he picked up Nevim Mahmut Satik and Semay Osman Mehmet (aged 3) and two suitcases which were placed in the car. The woman and the girl sat in the front seat. He followed the same route as the appellant had done earlier, and when he arrived at the scene he saw the appellant standing in the argaki on the right hand side of the road as one proceeds to Lania, underneath some carob trees together with the two women and the girl. Makis called out to him in order to leave, but because the appellant informed him that he had seen lights up ahead on the old road, he told him to drive further up and investigate whether those lights belonged to a police van. The driver agreed, but before starting off, Nevim Muhmut Satik, who was in the car together with the three year old girl Semay, called out to Tingen, (her own 7 year old daughter) to get into the car. When she had done so, Makis Ioannou drove north uphill and proceeded from there to the new road, and when he had checked that there were no police up ahead, he returned. He saw that the appellant was still standing underneath the carob tree, and he called out to him. Then the appellant, in reply, told him to ask Nevim to alight and go towards him in order to arrange for the money. Apparently, Nevim Mahmut Satik heard the appellant, because she alighted from the nearside door of the car (being a two-door car) and passed in front of the car and then to the right in order to reach him. At that moment, the appellant walked up to the oktus of the argaki and fired at her. She ran and fell onto the left-hand side door of the car where she had alighted and fell to the ground. Then the appellant ran towards the car and shot the two girls. He then pulled them out

of the car and asked Makis Ioannou (who had also alighted) to help him throw their bodies into the argaki. Because the latter refused, the appellant threw the girls on the oktus and dragged also the body of Nevim Mahmut Satik to the same oktus. Finally, the appellant rolled the bodies down into the argaki. Then, after emptying the handbags which were in the car onto the road, he got into the car holding the gun which was of Czechoslovakian make (given to him earlier) and was followed by Makis Ioannou. Then the appellant drove to Monagri village. When Makis Ioannou asked the appellant as to what had happened to the other two women, the other replied: "I killed them before when you were investigating about the lights." Upon that, Makis Ioannou told the appellant that if they were caught by the police he would have to tell them what happened; and then the appellant said (apparently in anger) :- "If you want to go where they are, tell it".

On their arrival at the village, the appellant handed over to Makis Ioannou the weapon used in the commission of the crime, who, after placing it in a bag, buried it in a field, no doubt intending to conceal such incriminating evidence; and remained silent until the appellant made his confession.

What really reveals the character of the appellant, and is consistent with his whole behaviour is that in spite of those terrible events leading to the murder of five innocent victims, on the following day, he had the audacity to visit the house of Afet Mustafa, and after being asked about the safety of the passengers, his reply was that he had left them safe near the Turkish quarter. There is no doubt that he was lying to this woman with an easy conscience, and, furthermore, he inquired whether there were any more Turks who wanted to be transported to the Turkish area, in spite of his allegations that Makis had threatened to kill him if he ever had anything to do with helping Turks to be taken to the Turkish quarter. What is even far more worse is that he asked Afet Mustafa whether she herself was interested in leaving the Greek quarter to be transported to the Turkish quarter. Although the reply of Afet was that she would consider it later, nevertheless, it is clear in my mind

that his purpose, in trying to persuade her, was to get rid of her so as to conceal further evidence against him.

On the following day, *i.e.* November 12, 1974, he again visited the house of Afet Mustafa and after purchasing a mattress, in the course of a conversation, he told her that his cousin was missing and that he intended to go and look for him because he feared that the Turks of Paramali had captured him. The trial Court, in dealing with the question of the disappearance of appellant's cousin, in my opinion, in the light of the evidence, rightly held the view that the appellant was aware of that prior to the commission of the offences.

On November 16, 1974, Supt. Karayias started an investigation to trace the owner of motor car AQ205, and finally he was told that the owner of the said car was the appellant himself. In the light of that information, Supt. Karayias communicated with the Lania Police Station and instructed P.C. Karaiskos to call the appellant for an interview. Supt. Karayias arrived at the police station at about 3.25 p.m., and he met the appellant in the yard of the station. Then, together with P.C. Panaretou, they proceeded to the office of the Sergeant in charge of the station and there Supt. Karayias put this question to the appellant: "Four days ago you took certain Turkish women from Limassol to take them to Angolemi, where are they?". The accused then in reply said "En hasimies Kyric Karayia", and in English "They are missing, Mr. Karayias". In view of that reply, Supt. Karayias suspected that something was wrong, and thereupon cautioned the appellant, who said: "En skotomenes dje thammenes thame stin Alassa. Imoun monos mou, en ishen allon mazi mou". and in English, "They have been killed and they are buried here at Alassa. I was alone, there was nobody else with me". This statement was written by Supt. Karayias in his police notebook, who having cautioned the appellant, read this statement over to him, and the appellant signed it as correct. The appellant, after signing the statement, then told the Superintendent: "I shall make a statement to you explaining everything". Then Supt. Karayias gave instructions to P.C. 1073 Panaretou who, having cautioned the appellant, took a written statement from him.

Because during the trial this statement was objected to as being obtained by inducement or by promises of favour held out to the accused on behalf of the Superintendent and P.C. Karaiskos, the Court, rightly so, directed a trial within a trial on that issue of the admissibility of the said confession, and came to the conclusion that it was admissible. In spite of the fact that there was no such ground in the notice of appeal, and counsel made no indication to us, (having not opened the case) in view of what was argued, I propose quoting certain extracts of the evidence. Supt. Karayias, when giving evidence, said that he had known the accused for many years and was questioned by counsel on behalf of the appellant to this effect :-

"Q. I put it to you that you told the accused the following : Four or five days ago you took certain Turkish women from Limassol for the Turkish occupied area and they did not reach their destination; if you did anything to them, tell me and do not be afraid. It is not a time for us to think about the Turks. They have burned down the place, they did not leave girls untouched, and shall we take pity on them and take you to Court?

A. No, how could I promise anything to anybody at a time when I did not know whether a crime was committed or not?

Then, after P.C. Karaiskos said that at that time he did not know about the murder of the Turkish women, and after stating that he gave no promises to the appellant, counsel cross-examined him in these terms :-

"Q. Did you not say anything about the present conditions and the war with the Turks?

A. We had a conversation about the invasion and that the Turks have taken half of Cyprus.

Q. Did you not mention anything about what we have sufferred from the Turks?

A. We said that the Turks took half of Cyprus.

Q. I put it to you that you said to the accused, 'If you have harmed Turks, tell the truth and do not be afraid'.

A. No such thing happened.

Q. You went on to say 'We are in wartime now, have they done less harm to us? These cases will not be prosecuted'.

A. No, I did not say such a thing".

Then the Court, quite rightly in my view, acting on the principle that a confession of crime is only admissible against the party making it if it was voluntary, permittted the appellant to testify on oath before them on this side issue.

The appellant was questioned by his counsel regarding the visit of P.C. Karaiskos to him in these terms :-

"Q. Did you consider what he told you as a request to go to the station?

A. No, I considered that I was under arrest as he said he was instructed by Mr. Karayias.

Q. Was there any moment after that you remained without a policeman near you?

A. No, he opened the door of my car and got in and he said Mr. Karayias would go to the station as he wanted me.

Q. Did he say anything?

A. He said 'It is not possible for Mr. Karayias to come up here for such a small thing, it must be a serious case'. I replied: 'It may be for certain Turkish women'. He said to me 'If you happened to harm Turks, tell the truth and you have nothing to be afraid of, because we are in wartime, and they haven't done less to us. It is not the time now for such cases to be taken before the Court'.

Q. When he told you this, did you think of anything?

A. I thought that on the one hand there was Makis with a gun in his possession threatening me, and on the other hand I had the promise of the police that I would not be taken before the Court and so I decided to tell the truth and say that I committed the crime and thus avoid Makis. I want to say that I

would not have told the truth, I would say that I committed the crime because I felt that I would get rid of Makis who was threatening me and I would have no fear of prosecution?".

Then the appellant was questioned again on these lines :-

"Q. Did anybody tell you what you would reply might be used as evidence against you?

A. No, the only thing Mr. Karayias told me is 'Four or five days ago you took certain Turkish ladies from Limassol re Yianni, to take them to the Turkish occupied area. They did not reach their destination, what happened to them? If anything has happened to them, tell me and you have nothing to fear. You will neither be taken to Court nor will you face any charge'. I then said something to him which he put down in his note-book. I signed it, and then he called Mr. Athanasis Panaretou who came into the office, Mr. Karayias told him 'Take a statement from Yiannis just for the sake of formality so that it will go into the Police file'. And I gave a statement. This statement was taken after promises and deceit. It is not true.

Q. What is not true?

A. The contents of the statement are not true".

Then, this witness was cross-examined by counsel, as follows :-

"Q. And P.C. Karaiskos told you that in the event that you had harmed Turks to tell the truth and you had nothing to fear?

A. Yes.

Q. And you said 'on the one hand was Makis and on the other hand was the police saying I had nothing to fear'. Why?

A. Because Makis would be pleased if I said I did it, and on the other hand the police said the case would not be taken to Court.

Q. On what basis did you form this thought? Did you base yourself on what Karaiskos told you?"

A. Yes.

Q. And you based yourself on the words of Karaiskos?

A. Yes, and later on the words of Mr. Karayias.

Q. And you decided to say what you did say on the basis of what Karaiskos told you?

A. Yes.

Q. Is it a fact that you gave Mr. Karayias information with regard to the gun?

A. Yes.

Q. And is it a fact that you referred to the name of Makis Ioannou?

A. Yes.

Q. Since you were afraid of Makis Ioannou, why did you give the information about the gun?

A. Because on the one hand he would not be charged for having committed the crime and on the other hand I did not have a gun to deliver to the police 'Alios then eyinetoun'.

Q. You said that Makis would not be charged.

A. Since I admitted that I committed the five murders and I would not have been prosecuted, would Makis be prosecuted for possession of the gun?".

The trial Court, having addressed properly their mind on the legal position that the onus remained on the prosecution to establish before them that the said confession was voluntary, that is, that it was not made in consequence of an improper inducement or threat of a temporary nature, held out or made by a person in authority or by oppression, *Commissioner of Customs and Excise* v. *Harz; Reg.* v. *Power* [1967] 1 A.C. 760 at p. 818, and *Rex* v. *Prager,* [1972] 1 All E.R. 1114 at p. 1119). came to the conclusion that the statement in question was free and voluntary and was not induced by the promises alleged. (See *R.* v. *Murray* [1950] 2 All E.R. 925, 927, applied in *Chan Wai-Keung* v. *R.* [1967] 1 All E.R. 948).

Of course, the truth of the confession is not directly relevant at the stage, and the crucial question remains that the method by which a confession was obtained may have an important bearing on the question of its truth, for a statement made in consequence of violence or some other powerful inducement is much less likely to be true than one which was given freely. The present law is summarized in the following statement by Lord Parker, C.J. in *Rex* v. *Burgess* [1968] 2 Q.B. 112 at 117-118 :-

> "The position now is that the admissibility (of a confession) is a matter for the judge; that it is thereafter unnecessary to leave the same matters to the jury; but that the jury should be told that what weight they attach to the confession depends on all the circumstances in which it was taken, and that it is their right to give such weight to it as they think fit". *Chan Wai-Keung* v. *R. (supra)* applied.

In *Rex* v. *Hammond*, 28 Cr. App. Rep. 84, the accused was convicted of murder, and the sole question before the Court of Criminal Appeal, concerned the propriety of questions put to him by the prosecution on the voir dire. The accused had contended that a confession was inadmissible because it had been obtained in consequence of violence. He was asked whether the confession was true, and admitted that it was. The judge held that the confession was voluntary, and the accused did not give evidence before the jury. The Court of Criminal Appeal held that the question concerning the truth of the confession was proper because it was relevant to the credibility of the accused's statements on the voir dire, concerning the way in which the confession had been obtained, and had this to say at p. 87 :-

> "If a man says 'I was forced to tell the story, I was made to say this, that and the other', it must be relevant to know whether he was made to tell the truth or whether he was made to say a number of things which were untrue".

I have already shown in this judgment (at p. 73, *ante*) that the appellant was not forced to tell a story, but decided to tell the truth that he committed the crime. Later on in realizing its damaging effect, he added: "I

want to say that I would not have told the truth....".

Be that as it may, the Assize Court, dealing with the admissible confession of the appellant, said that it was a short concise statement in a narrative form, and the relevant part (as the English translation shows) is as follows:-

"They then went and brought their belongings in two suit-cases. We placed them in the car and we set off in order to go along Alassa—Platres road which is not controlled. My intention was not to convey them but to kill them, as the Turks caught my cousin Christodoulos Menelaou at Sterakon, a few days ago and they won't release him. I brought all five at Alassa, in the old road and I told them to alight. Two of them alighted but the other one with the children stayed in the car. Then I took the 'tsehiko' of Makis Ioannou, which I had with me and shot them, first, those who had alighted from the car and then the others who had stayed in the car. Afterwards I dragged them below the road and covered them with branches. I burned their suit-cases at another place I am going to show you. Then I went to my house and washed my car and cleaned it from the blood. Three bullets penetrated my car when I shot those who would not alight. I believe I have made a mistake, but the reason is as I told you before, for revenge for my cousin whom they caught and perhaps they killed".

After the appellant made and signed the statement to which I have referred earlier, they went together with P.C. Panaretou out into the yard of the police station, and he (the appellant) pointed out to him the three bullet holes in his car, two of them on the dashboard and one on the right door, which he tried to conceal by covering them with black adhesive tape. Later on, in the afternoon, the appellant voluntarily took the police to the scene of the crime, and Supt. Karayias together with P.C. Panaretou accompanied him there. When they alighted from the cars, the appellant led them off the road and showed to them the five bodies in the argaki. Upon this, the appellant was arrested and was escorted by Chief Inspector Vasos Ioannou in order

to take him to Limassol. Before proceeding to Limassol, however, the appellant led him to the locality Staktofagou in the area of Monagri village, and showed to him the burned luggage and clothing, that is, the remnants of the suit-cases of the victims which remained in the car of the appellant.

There is no doubt that the appellant, in burning the luggage and clothing, had in mind to destroy incriminating evidence against him once again.

Because the appellant gave also information to Supt. Karayias about the gun of Makis Ioannou, the latter was also interviewed and when cautioned, he admitted that he had a Tsehiko gun. He was escorted by Supt. Karayias and P.C. Karaiskos to Petrera locality within Monagri village, and there, Makis Ioannou dug up the gun in question which he had buried there before, and handed it over to the police.

As I said earlier, the Assize Court, having ruled that the confession of the appellant was free and voluntary, considered the weight they would attach to the confession and also whether it was true. Having also addressed their minds to common sense tests of the truth of a confession, approved in *R.* v. *Sykes*, 8 Cr. App. R. 233, and after stating that most of the statements in the confession were established by independent evidence to be true, came to the conclusion that it was quite safe for them to act upon the confession of the appellant.

Having given the version of the prosecution, I turn now to the testimony of the appellant. The appellant gave a long statement on oath alleging that his statement to Supt. Karayias and his confession to P.C. Panaretou were not true, and that he made them because he believed that since the victims were Turks, the police would not have wanted to present a case of such a nature before a Court; and that he would have avoided the consequences threatened by Makis Ioannou. He denied that he met Makis Ioannou on Saturday, November 9, 1974, and that he was given on that date, or indeed, any other date, a gun by him.

He further denied that he carried the said gun with

him to the scene of the crime and/or that he shot the victims with that gun. Although he alleged that he saw that gun for the first time when he saw Makis Ioannou shooting at the victims, yet it appears that he knew where the gun was earlier, and the very defence he was setting up, as indicated by the cross-examination, which he instructed his counsel to administer to the accomplice, seems to me to show, in the strongest possible way that he must have known where the gun was hidden on that Saturday. This was the question put to the accomplice: "You went, took the weapon which you had hidden there the day before, that is Saturday, leaving at the scene a second magazine which you had as spare"; and the answer was "No". Therefore, this is consistent, in my view, with the statement given to P.C. Panaretou (*i.e.* that he took the Tsehiko of Makis Ioannou); and also supports the evidence of the accomplice that the said gun was given to him on Saturday, November 9, 1974.

Reverting again to the testimony of the appellant, briefly he said :-

> "Makis got into the car and drove in the direction of Platres on the old road by himself. Nevim went down with the others and the child. I stayed on the road for some time watching the car leaving; after about 10 minutes or a quarter of an hour Makis came back and parked the car on the left-hand side of the road at a point where the berm is wide. I was below the road with the Turkish women. I had stayed up on the road for some time and then I went down where the Turkish women were. He left the parking lights on. Makis alighted and he came down near us and said to us :-
>
> 'Alright, there is nothing. get ready and we shall leave'.
>
> He then said to me :
>
> 'Two minutes, I'll pass water and I am coming'.
>
> I went up first to help the two children up the oktus as it was slippery... I was holding the younger child by the hand. Nevim was behind me and the other two were further behind. I got onto the berm together

with the children, and I was walking towards the car when I heard three or four shots. I let the child's hand go and I went to the berm. When I heard the shots I was almost in the middle of the asphalt. After the shots I heard shouts and when I came to the oktus I saw two human bodies falling down. I concluded that it was Meyrem and Ulfet, since Nevim was on the road with me. It was dark and I could not see well; behind them was Makis holding a gun, but I could not see what kind of a gun it was. I then saw Makis getting up the oktus and firing at Nevim who was exactly in front of the car by the left headlamp. I saw her taking one or two steps and falling next to the left door of my car which was open at that moment. Then I saw Makis run and fire inside the car. He went to the left door of the car which was open and from there I heard 3 - 4 shots inside the car. I heard the children crying and then there was silence. I could see the children in the car, they were both in the front passenger seat".

The appellant further stated that when he saw Makis Ioannou shooting the victims he was frightened and he ran towards the curve in order to leave the scene, but Makis pointed the gun at him and told him to stop. He begged Makis not to kill him, to have pity on his children, and Makis replied :

"I shall not kill you for your children's sake, but if I hear again that you have helped Turks go to the North or if you say anything to anybody about what has happened tonight, you will not escape from me".

Now, the uncontradicted and unchallenged evidence of Dr. Panos Stavrinos who carried out the post-mortem examination on all the victims was that the cause of their death was shock, and haemorrhage, due to gun-shot wounds. Dr. Stavrinos then described the injuries which each victim had received, and upon this uncontradicted evidence it is clear that murder had been committed, and the question is by whom.

The trial Court, in order to answer the question as to who killed the victims, as I said, tested both the weight and value to be attached to the confession of the

appellant, and whether it could be relied upon as a statement of truth; they came to the conclusion that it was a true statement and that they could rely upon it. There is no doubt that although in law a defendant may be convicted on his own confession without corroborating evidence once the *corpus delicti* was established by some evidence other than the mere confession of the accused, nevertheless, the Court in the case in hand, looked for further evidence, and dealt with the evidence of Makis Ioannou. Having treated him as an accomplice after the fact, he proceeded to state that they could not act upon his evidence without corroboration and looked to find evidence corroborating his testimony.

The trial Court, after reviewing further the evidence as a whole, and after considering the explanations given by the appellant, (having rejected his evidence), found the accused quilty beyond reasonable doubt, and that he had an intention to kill the victims, which was formed at least since the time he picked up his victims from the house of Afet Mustafa, as it clearly appeared in his own confession.

The appeal was argued by counsel on behalf of the appellant on the ground that the conviction was wrong, and that the Court misdirected themselves in law as to their approach to the case, regarding the question of corroboration of the evidence of Makis Ioannou, the accomplice. The wrong approach complained of was that the Court wrongly decided that the testimony of the accomplice was corroborated by the medical evidence, and particularly having regard to the injuries inflicted on Nevim Mahmut Satik. In order to appreciate and consider counsel's complaint regarding the wrong approach, it is necessary to quote the relevant extract from the judgment in which the trial judges directed themselves as to the law with regard to corroboration. The impugned passage is at p. 198 :-

> "We hold the view that such corroborative evidence exists and it is to be found mainly in the medical evidence. Makis Ioannou stated on oath that 'the accused fired at Nevim when Nevim was facing the accused. Then Nevim turned back and the accused fired at her again... So Nevim must have been injured

by two shots, one in front, when she was proceeding towards the accused, facing the accused, and the other one at the back when she turned away from the accused'. This description of Makis tallies fully with the medical evidence".

It is true that the testimony of Dr. Panos Stavrinos regarding the injuries of Nevim Mahmut Satik was to the effect that anteriorly there was a 1½" circular penetrating wound corresponding at the middle region of the sternum, and multiple exit wounds were noted at the right scapular; and secondly that an entry wound was present 5 cm. posteriorly below the left elbow, and an exit wound corresponding at the middle region internally of the left arm. Irrespective whether this piece of evidence corroborates or not the evidence of the accomplice, it appears that the trial Court mistakenly thought that the accomplice stated in evidence that he saw the appellant firing twice at Nevim Mahmut Satik. In fact, this passage comes from the evidence of the appellant himself, and I have no difficulty to say that the Court was wrong to treat this piece of evidence as corroborating the accomplice's testimony. But the question remains whether this is a material misdirection which would vitiate the proceedings, particularly so, when there is other evidence supporting or confirming the accomplice and tends to show that the story of the witness that the appellant had committed the crime is true.

The general rule of English law is that the Court may act upon the uncorroborated testimony of one witness, although there are statutes requiring two or more witnesses. In *R. v. Mullins* [1848] 3 Cox C.C. 526 at p. 531, it was said that confirmation does not mean that there should be independent evidence of that which the accomplice relates, otherwise, his testimony would be unnecessary, as it would merely be confirmatory of other independent testimony.

In the leading case of *R. v. Baskerville*, [1916] 2 K.B. 658, it was said that what is required is some additional evidence rendering it probable that the story of the accomplice is true, and that it is reasonably safe to act upon his statement. To quote Lord Readings, L.C.J., at p. 667 :-

"Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime.... The test applicable to determine the nature and extent of the corroboration is thus the same, whether the case falls within the rule of practice at common law or within that class of offences for which corroboration is required by statute. The language of the statute, 'implicates the accused', compendiously incorporates the test applicable at common law in the rule of practice".

In a recent case of *D.P.P.* v. *Kilbourne,* [1973] 1 All E.R. 440, Lord Hailsham, dealing with the question of corroboration, said at pp. 446-447 :-

"In my view, there is no magic or artificiality about the rule of practice concerning corroboration at all. In Scottish law, it seems, some corroboration is necessary in every criminal case. In contrast, by the English common law, the evidence of one competent witness is enough to support a verdict whether in civil or criminal proceedings except is cases of perjury (cf Hawkins * and Foster**). This is still the general rule, but there are now two main classes of exception to it. In the first place, there are a number of statutory exceptions. The main statutory exceptions are contained in (i) Treason Act 1795, *** s. 1 (compassing the death of the Sovereign etc.); (ii) Perjury Act 1911, s. 13 (re-enacting the common law exception); (iii) Children and Young Persons Act 1933, s. 38 (i), proviso (dealing with the unsworn evidence of young children and re-enacting a statute of 1908); (iv) Representation of the People Act 1949, s. 146(5) (personation at elections); (v) Sexual Offences Act 1956, ss. 2(2), 3(2), 4(2), 22(2) and 23(2) (procuration etc.); (vi) Road Traffic Act 1960, s. 4(2) (speeding); (vii) Affiliation Proceedings Act 1957, s. 4(2) (complainant's evidence against putative father).

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* Pleas of the Crown (8th ed., 1824) Bk 2, c. 25, s. 129 c. 46, s. 2, pp. 351-590.

** Crown Cases (3rd ed., 1809), c. 3, 58, p. 233.

*** 36 Geo 3 c. 7.

In each of these cases the different, but closely similar, provisions of the different statutes override the common law. The other main statutory exception in civil proceedings, the evidence of a plaintiff in breach of promise case is, of course, now obsolete.

But side by side with the statutory exceptions is the rule of practice now under discussion by which judges have in fact warned juries in certain classes of case that it is dangerous to found a conviction on the evidence of particular witnesses or classes of witness unless that evidence is corroborated in a material particular implicating the accused, or confirming the disputed items in the case. The earliest of these classes to be recognised was probably the evidence of accomplices 'approving" for the Crown, no doubt, partly because at that time the accused could not give evidence on his own behalf and was therefore peculiarly vulnerable to invented allegations by persons guilty of the same offence. By now the recognised categories also include children who give evidence under oath, the alleged victims, whether adults or children, in cases of sexual assault, and persons of admittedly bad character. I do not regard these categories as closed. A judge is almost certainly wise to give a similar warning about the evidence of any principal witness for the Crown where the witness can reasonably be suggested to have some purpose of his own to serve in giving false evidence (cf *R.* v. *Prater* * and *R.* v. *Russell* **). The Supreme Court of the Republic of Ireland has apparently decided that at least in some cases of disputed identity a similar warning is necessary (*People* v. *Dominic Casey* (No. 2) ***). This question may still be open here (cf *R.* v. *Williams* **** and *Arthur* v. *A.-G. for Northern Ireland* *****).

Since the institution of the Court of Criminal

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* [1960] 1 All E.R. 298; [1960] 2 Q.B. 464.
** [1968] 52 Cr. App. R. 147.
*** (1963) I.R. 33 at 39, 40.
**** [1956] Crim. L.R. 833.
***** [1970] 55 Cr. App. R. 161 at 169.

Appeal in 1907, the rule, which was originally discretionary in the trial judge, has acquired the force of a rule of law in the sense that a conviction after a direction to the jury which does not contain the warning will be quashed, unless the proviso is applied: See *R.* v. *Baskerville* * and Davies v. *Director of Public Prosecutions* ** per Lord Simmonds L.C.

However, it is open to a judge to discuss with the jury the nature of the danger to be apprehended in convicting without corroboration and the degree of such danger (cf *R.* v. *Price* ***) and it is well established that a conviction after an appropriate warning may stand notwithstanding that the evidence is uncorroborated, unless, of course, the verdict is otherwise unsatisfactory (*R.* v. *Baskerville* *). There is, moreover, no magic formula to be used (*R.* v. *Price* ***). I agree with the opinion expressed in this House in *Director of Public Prosecutions* v. *Hester* **** that it is wrong for a judge to confuse the jury with a general if learned disquisition on the law. His summing-up should be tailor-made to suit the circumstances of the particular case. The word 'corroboration' is not a technical term of art, but a dictionary word bearing its ordinary meaning: since it is slightly unusual in common speech the actual word need not be used, and in fact it may be better not to use it. Where it is used it needs to be explained".

Thus, it appears from the trend of the authorities that evidence in corroboration of an accomplice's evidence must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular, not only the evidence that the crime has been committed,

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* [1916] 2 K.B. 658; [1916-17] All E.R. Rep. 38.
** [1954] 1 All E.R. 507 at 512; [1954] AC 378 at 398.
*** [1968] 2 All E.R. 282 at 285; [1969] 1 QB 541 at 546.
**** [1972] 3 All E.R. 1056; [1972] 3 W.L.R. 910.

but also that he personally committed it. The nature of the coroboration will necessarily vary according to the particular circumstances of the offence charged, but it must tend to show that the story of the accomplice that the accused has committed the crime is true. (*R.* v. *Hartley* [1941] 1 K.B. 5 (C.C.A.), *R.* v. *Jones* [1939] 27 Cr. App. R. 33; and also *Liatsos* v. *The Police* (1968) 2 C.L.R. 15 which was adopted and followed in a number of cases).

In *Credland* v. *Knowler,* [1951] 35 Cr. App. R. 48, it was contended on behalf of the appellant that there was no evidence corroborative of the evidence of the children, and that the appellant's denial of facts which he has subsequently admitted was consistent with the conduct of an innocent man who was shocked by the allegation made against him and did not desire his wife to hear of it. On the contrary, on behalf of the respondent, it was contended that the appellant's admittedly deliberated and untrue denial of a material fact in the story alleged against him was corroborative evidence entitling the appeal committee to act on the evidence of the two children. The Lord Chief Justice, in dealing with the question as to whether or not a lie told by the appellant is in itself corroboration, had this to say at pp. 54 and 55 :-

> "If a man tells a lie when he is spoken to about an alleged offence, the fact that he tells a lie at once throws great doubt upon his evidence, if he afterwards gives evidence, and it may be very good ground for rejecting his evidence, but the fact that his evidence ought to be rejected does not of itself amount to there being corroboration. In fact, I do not think we can put the proposition better than it was put by Lord Dunedin in *Dawson* v. *McKenzie,* 1908 45 Sc. L. Rep. 474, and the passage to which I am about to refer was approved by this Court in *Jones* v. *Thomas,* [1934] 1 K.B. 323. Lawrence, J., giving judgment, with which Avory, J., concurred, and which certainly had the approval of the Lord Chief Justice (Lord Hewart), said (at p. 330): 'Mere opportunity alone does not amount to corroboration, but two things may be said about it. One is, that the opportunity may be of such a character as to bring in the element of suspicion.

That is, that the circumstances and locality of the opportunity may be such as in themselves to amount to corroboration. The other is, that the opportunity may have a complexion put upon it by statements made by the defender which are proved to be false. It is not that a false statement made by the defender proves that the pursuer's statements are true, but it may give to a proved opportunity a different complexion from what it would have borne had no such false statement been made'. That is a very concise and clear statement of the law".

Later on he said :-

"In this case, speaking for myself, I am prepared to hold that there was corroborative evidence, and I think strong corroborative evidence, apart from the lie which the appellant told. He told a lie first of all by saying that he was not there at all with the children. Then he admitted that he was there, and finally said : 'I did go to the top of the hill at the back of my house with the two little girls Stark and Richardson. We sat down on the grass for about only two minutes, and I did kiss the girl of Richardson's but I didn't do anything else and I did not undo the front of my trousers, in any case there were too many people about. I didn't do any wrong to them.' As has been pointed out over and over again, where the question is whether a person's evidence is corroborated, the whole story has not to be corroborated, because if there is evidence independent of the person whose evidence requires corroboration which covers the whole matter, there is no need to call that first person at all.... Of course, the appellant's own statement is material evidence and it seems to me that the statement which he made was most material and did afford strong corroboration. It did not corroborate the whole of the children's story, but it corroborated the children's story to such an extent that it showed that the appellant, who had never taken either of these children for a walk before, had gone with them to the place to which they said he took them, that he sat down not for the purpose of resting or telling them a story or anything like that, merely for two minutes, and then kissed one of them. That seems

to me to be the strongest corroboration of the children's evidence that he not only did that, but went on to do something further, because it shows that the children had been telling a perfectly true story up to the time when he said that he did not do anything and they said that he did.

The lie which he told, in my opinion, would come within the dictum of Lord Dunedin which I have read. But for myself I do not want to lay down any particular proposition of law with regard to the lie, except to say that I entirely agree with what was said in *Jones* v. *Thomas* (*supra*), approving *Dawson* v. *McKenzie (supra)*. I should prefer to say that the statement which the appellant made, which I have already read, in itself afforded corroboration and that therefore this appeal fails".

It goes without saying that the corroboration need not be direct evidence that the accused committed the crime, nor need it amount to confirmation of the whole of the story of the witness to be corroborated, so long as it corroborates the evidence in some respects material to the charge under consideration. *R.* v. *Baskerville* [1916] 2 K.B. 658. It is sufficient if it is merely circumstantial evidence of the accused's connection with the crime, it must be independent evidence and it must not be vague. *R.* v. *Hughes* [1949] 33 Cr. App. R. 59.

In *R.* v. *Frederick Valentine Russell* [1968] 52 Cr. App. R. 147, Diplock, L.J., after dealing with the point that the learned chairman did not give the jury sufficient direction on the need for corroboration of the evidence which Levy gave in the witness box which inculpated the appellant, said at pp. 149-150 :-

"There was, of course, ample corroboration in the police evidence and in the appellant's own conduct of Levy's inculpation of him, but it is said that there is a rule of law or a rule of practice that the jury must be warned in terms of the need for corroborative evidence. In the view of this Court, where a co-defendant gives evidence there is no rule of law to that effect. The correct position is set out in the case of *Prater* [1960] 44 Cr. App. R. 83; [1960] 2 Q.B. 464, in which this Court (at p. 86 and 466 of the

respective reports) said: 'It is desirable...' and I emphasise the word 'desirable' — '... in cases where a person may be regarded as having some purpose of his own to serve, the warning against uncorroborated evidence should be given'.

In a more recent case, *Stannard* [1962] 48 Cr. App. R. 81; [1965] 2 Q.B. 1, again in this Court, the law laid down in *Prater (supra)* was considered and I can summarise what was there recited in the head-note which says that it was at most a rule of practice that a judge when summing-up a case where two or more defendants have given evidence, parts of which reflected on the case of one or of the other defendants, should warn the jury in similar terms which as a rule were proper to be employed by recalling the evidence of accomplices. Finally, in the most recent case *O'Reilly* [1967] 51 Cr. App. R. 345; [1967] 3 W.L.R. 191, I should like to adopt the words of Salmon L.J. at pp. 349 and 195 of the respective reports: 'But the rule that the jury must be warned does not mean that there has to be some legalistic ritual to be automatically recited by the judge, that some particular form of words or incantation has to be used and, if not used, the summing up is faulty and the conviction must be quashed. The law, as this Court understands it, is that there should be a solemn warning given to the jury, in terms which a jury can understand, to safeguard the accused. In this case, the learned Deputy Chairman gave such a warning, although he never used the magic word 'corroboration'; and it is doubtful if the jury would have undestood what it meant if he had. Indeed, when the actual word is used, it is necessary for the Court to go on and tell the jury what it does mean".

Corroboration, of course, may be also afforded by answers given by the prisoner in cross-examination. (*R.* v. *Kennaway* [1917] 1 K.B. 25 C.C.A., but silence of the prisoner may in some cases amount to corroboration. but not silence on the occasion when he is formally charged. *R.* v. *Keeling* [1942] 1 All E.R. 507, also *Tumahole Bereng* v. *R.* 1949 A.C. 253. In *Director of*

Public Prosecutions v. *Hester* H.L., [1972] 3 All E.R. 1056, the House of Lords dismissed the Crown's appeal, since in the circumstances of the case, and in particular in the absence of any direction on the danger of convicting on the evidence of children of the ages of V and J. it would be unsafe and unsatisfactory to allow the conviction to stand.

Per Lord Morris of Borth-y-Gest, Lord Pearson, Lord Diplock and Lord Cross of Chelsea :

"If the prosecution calls as one of its witnesses a child who has given unsworn evidence which is not corroborated, it does not follow, that under the proviso to s. 38(1) of the 1933 Act, the accused must be acquitted. The jury must disregard such uncorroborated evidence but may, nonetheless convict the accused if there is sufficient other evidence".

Furthermore, their Lordships laid down that the word 'corroborate' has no special legal meaning; it means merely 'support' or 'confirm'.

In *R.* v. *Boardman*, [1974] 2 All E.R. 958, Orr L.J., delivering the judgment of the Court of Appeal, Criminal Division, said at p. 963 :-

"Counsel next attacked a direction given by the judge with reference to certain evidence given by Inspector Baker and by the appellant at the trial. The inspector's evidence was that when he interviewed the appellant and read to him a statement by S the appellant said, 'It's all lies, he only said this because I expelled him'. In his own evidence the appellant denied saying to the inspector that he had expelled S but agreed that he had not in fact expelled him and said that the reason why S had told lies was that the appellant had caught him in a homosexual act with another boy, and S had then threatened to implicate the appellant unless he kept quiet about it.

In relation to this evidence the judge directed the jury that if they were satisfied that the appellant had lied, either to the police before the trial or in the witness box, such lies were capable of amounting to corroboration. Counsel has attacked this direction on the grounds that if the appellant lied to the inspector

it was only on a peripheral matter and that, on the authority of *R.* v. *Chapman* [1973] 2 All E.R. 624, lies told by the appellant in evidence at the hearing cannot amount to corroboration. We are unable to accept the first of these arguments. In our view if the appellant lied to the inspector in saying that he had expelled S it was not a lie on a peripheral matter but 'of such a nature', and made in such circumstances, as to lead to an inference in support of (the complainant) (see *Credland* v. *Knowler*, [1951] 35 Cr. App. R. 48 at 55, citing earlier authorities, *Dawson* v. *McKenzie*, (1908) 45 SLR 473 and *Jones* v. *Thomas* [1934] 1 K.B. 323, [1933] All E.R. Rep. 535). As to lies by the accused in Court we accept the correctness of the decision in *R.* v. *Chapman* on the facts of that case, and that it will be applicable in most cases. Whether the judgment should be treated as authority for the proposition that a lie told by the accused in evidence can never, whatever the circumstances, be capable of amounting to corroboration is a matter on which to feel some doubt but which does not arise for determination in the present case. In our view the short answer to the present problem is that the question of lies in Court was inextricably bound up with that of lies before the hearing to Inspector Baker, for the jury could not be satisfied that the appellant had lied to the inspector unless they disbelieved his evidence at the trial that he had never mentioned expulsion of S, and in these circumstances, to the extent that there was misdirection we have no hesitation in applying the proviso".

In *R.* v. *Jackson* [1953] 1 All E.R. 872, the appellant appealed against his conviction on the ground, *inter alia*, that the judge in his summing-up, had misdirected the jury by directing them that they might think that the failure of the appellant to give evidence amounted to corroboration of evidence given against him by accomplices, to the effect that they had arranged the whole transaction with him. The Court of Criminal Appeal had this to say at p. 873 :-

> "Juries are always warned that they ought, if they can, to have corroboration because that is the only satisfactory way of coming to a decision where the

evidence consists of the evidence of accomplices, but the day has long gone by when this Court will quash a conviction merely because it has been obtained on the evidence of accomplices, because it is perfectly open to the jury, if they choose, to accept their evidence.

The difficulty that arises here is on the direction that the learned judge gave, because having pointed out who might be regarded as accomplices emphasised the danger of acting on their evidence, in commenting on the fact that the appellant had not gone into the witness box to give evidence, he said :

'You, members of the jury, will attach just what weight you think right to that, and if you say 'Well, that, in our view, forms ample corroboration that those thieves were telling the truth. We think he has refrained from going into the witness box because he does not dare, he thinks he will only make matters worse if he does'—if you come to that conclusion—the weight you attach to his silence is entirely a matter for you'.

That came just at the end of the learned judge's summing-up and could only have been understood by the jury as meaning that the fact that the appellant had not gone into the witness box might amount to corroboration if they thought fit to treat it as such.

That is not correct. One cannot say, because a man has not gone into the witness box to give evidence, that of itself is corroboration of the evidence of accomplices. It is a matter which the jury could very properly take into account and very probably would, but it is not a right direction to give to a jury, and it should be clearly understood that it is wrong in law. However, the jury evidently thought this was an overwhelming case because, after a trial of a day and a half, they were out for exactly five minutes and came back and found the appellant Guilty. In view of the circumstances the Court thinks that this is a case in which it is bound to apply the proviso to s. 4(1) of the Criminal Appeal Act, 1907, which says that if, in the opinion of the Court, no mis-

carriage of justice has occurred, the Court may dismiss the appeal although it decides the point of law in the appellant's favour. That the appellant here received the tyres and that they were stolen, there was no doubt. The only question was whether he knew they were stolen, and the very defence he was setting up, as indicated by the cross-examination which he instructed his counsel to administer to the witness for the prosecution, seems to this Court to show in the strongest possible way that he must have known that these goods were stolen. Therefore, although we cannot approve the learned judge's direction to the jury, that they could take the fact that the appellant did not go into the witness box as amounting to corroboration, the case was so clear that the jury, after a proper warning, must have accepted the evidence of the accomplices, and so the Court thinks it right to apply the proviso".

Thus, it appears that the fact that there was a misdirection on corroboration does not oblige the Court to quash a conviction. Where, of course, there is a proper caution, in considering whether the conviction should be allowed to stand, the Court of Criminal Appeal will, on appeal, review all the facts of the case, bearing in mind that the jury had the opportunity of seeing and hearing the witnesses, and will quash the conviction if it thinks the verdict unreasonable or one that cannot be supported by the evidence. *R.* v. *Baskerville*, 12 Cr. App. R. 81; *R.* v. *Bryant*, 13 Cr. App. R. 49; and where there is sufficient warning but in summing up matters are suggested as being corroborative which in fact are not, and where there is in fact no corroboration at all, the conviction may be quashed on appeal. *R.* v. *Rudge*, 17 Cr. App. R. 113; *R.* v. *Smith*, 18 Cr. App. R. 19; *R.* v. *Parker*, 18 Cr. App. R. 103; *R.* v. *Phillips*, 18 Cr. App. R. 115; *R.* v. *Charavanmuttu*, 22 Cr. App. R. 1; *R.* v. *Martin*, *Ansell* and *Ross*, 24 Cr. App. R. 177.

In considering whether or not the conviction should stand, I have reviewed the facts and circumstances of this case, and bearing in mind that the Assize Court consisting of 3 judges had the opportunity of hearing and seeing the witnesses when giving their testimony, I have decided that this is a proper case in which I can

exercise my powers and apply the proviso to s. 145(1)(b) of the Criminal Procedure Law, Cap. 155, which says that "The Supreme Court, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, shall dismiss the appeal if it considers that no substantial miscarriage of justice has actually occured".

That the appellant here was the instigator of transporting the five victims and agreed with the accomplice to share the money, there is no doubt. That he was given the gun by the accomplice on Saturday, November 9, 1974, again there is no doubt, because he himself admitted it in his voluntary confession to P.C. Panaretou, which was found by the Assize Court to be a true confession. The very defence he was setting up, as I said earlier, seems to me to show that the appellant knew where the gun was hidden, and I have no difficulty in drawing the inference that his knowledge was due to the fact that the said gun was given to him by the accomplice on Saturday, November 9, 1974. This also shows that the gun in question could not have been carried by the accomplice at the time they were sitting at the cafe at Alassa, and in my view, it confirms the evidence of the accomplice that the gun was given to him on Saturday, November 9, 1974.

As I said earlier, the fact that most of the statements of the confession were established by independent evidence to be true, corroboration of the evidence of the accomplice need not be direct evidence on all points, because it is sufficient if it is merely circumstantial evidence of appellant's connection with that crime; and it must tend to show that the story of the accomplice that the appellant has committed the crimes is true. Were the law otherwise, many crimes which are usually committed between accomplices in secret would never be brought to justice. One also must remember that confirmation does not mean that there should be independent evidence of that which the accomplice relates, or his testimony would be unnecessary. Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be

essential to the case, it would merely be confirmatory of other and independent testimony.

In the case in hand, once the trial Court rightly found that the appellant was in possession of the gun at the time of the crime, and that he shot and killed the victims, speaking for myself, in view of all the circumstances, including the deliberate lies to Afet Mustafa that the victims had been transported safely to the Turkish occupied area, such lies were not only inconsistent with innocence, but seen in the whole background of his efforts to conceal incriminating evidence against him, before his confession of the crime to the police, disclosed, in my opinion, his guilty mind and leads to the inevitable conclusion that he is quilty of the offences charged. (Cf. *Philotas* v. *The Republic* (1967) 2 C.L.R. 13). Therefore, although I cannot approve the Assize Court's misdirection that the medical evidence amounted to corroboration of the accomplice, once there was other corroborating evidence, I think this is a proper case in which to apply the proviso, because no substantial miscarriage of justice has occurred; and particularly in view of what is said by Erle, J. in *R.* v. *Baldry*, 5 Cox C.C. 523 :- "Where a confession is well proved, it is the best evidence that can be produced".

The second complaint of counsel was that, having regard to the evidence adduced, the said convictions were unreasonable because the Court, being influenced by the evidence of the accomplice, failed to weigh properly the evidence of the defence as a whole. Let me say at once that with great respect to the trial Court, and appreciating their difficult task, in weighing the evidence of the appellant, particularly having regard to the injuries on Nevim Mahmut, they failed to appreciate that part of the evidence because they said "If we were to accept his version in the position he placed the five victims, Nevim at least should have been fired at only from behind, whilst it is clear from the medical evidence that she was shot on the sternum, from the front and that was the main injury that caused her death". But I think that counsel went too far in his criticism in inviting the Court to take the view that the trial Court were so influenced because of the evidence of Makis Ioannou that they reached the conclusion in finding

the appellant guilty without considering the evidence of the defence as a whole. On reading the judgment, I am not prepared to accept the criticism that they failed to weigh properly the evidence of the defence as a whole, because they give reasons why they did not accept the evidence of the appellant and Demetrakis Stylianides particularly.

The duty of this Court in considering whether we should disregard certain evidence and to give effect to the evidence in favour of the appellant, is laid down in s. 145(1) of the Criminal Procedure Law, Cap. 155. We must allow the appeal if we "think that the conviction should be set aside on the ground that it was having regard to the evidence adduced, unreasonable or that the judgment of the trial Court should be set aside on the ground of a wrong decision on any question of law or on the ground that there was a substantial miscarriage of justice".

I have given anxious consideration to the case, and have examined the evidence most carefully, and during the appeal we have gone through the evidence again with the assistance of Mr. Dermosoniades, who has materially helped us by directing our attention to the various important passages in the evidence. No doubt, all these arguments were advanced before the trial Court who are the proper tribunal of fact, and although if I were the trial judge I might have taken a different view of one of the defence witnesses, it is not for me, sitting as a Court of Appeal, to substitute my own opinion for that of the trial Court. Anyone reading the judgment of the trial Court cannot validly say or take the view that their judgment shows that they did not keep an open mind until the end of the case, or that they failed to consider at the end of and on the whole of the case whether there was a reasonable doubt created by the evidence given by the prosecution or by the appellant and his witnesses. In fact, it is evident from the judgment that after considering the whole evidence, they were satisfied beyond reasonable doubt that the appellant had "an intention to kill the victims, which was formed at least since the time he picked his victims up from the house of Afet, an intention which existed at the time of the killing, despite the fact that more than one and

a half hours had elapsed from the time when he left Afet's house, about 8.00 p.m. up to the time when the killing was committed".

Reverting once again to the scene of the crime, I have no doubt at all, that the gun with which the five murders were committed, after it was given to the appellant by the accomplice, must have been taken by him to the scene of the crime sometime prior to transporting the victims there, because he was afraid lest he might be caught by the police at the check points (a fact known to him) whereupon his plans might have been jeopardized.

Finally, the trial Court, after considering the whole evidence and after drawing rightly the inference that the gun with which the appellant shot and killed all five victims was at the scene sometime prior to the arrival of the accused and the accomplice there, they were satisfied of the guilt of the appellant beyond reasonable doubt, and this was the unanimous decision of all three judges of the trial Court.

Having given the matter my best consideration, I am satisfied that the appellant has failed to satisfy me that the judgment of the trial Court was either wrong or not supported by the evidence, or that the inferences drawn by the Court were unreasonable having regard to the primary facts found by them. I am, therefore, of the view that it cannot be said that the conviction was unreasonable having regard to the evidence as a whole.

For these reasons, and excluding the impugned evidence, I have come to the conclusion that the trial Court who had seen and weighed also the credibility of the witnesses, after properly directing themselves, would, without doubt, have convicted the appellant. In the circumstances, the appeal fails and is dismissed accordingly.

MALACHTOS, J.: I have discussed this case with my brother judge Mr. Justice Hadjianastassiou and I have had the opportunity to read in advance his judgment just delivered and I must say, that I fully agree with the conclusions reached by him.

I would like, however, to add a few words of my

own, particularly on what I consider to be the main ground of appeal argued before us, *i.e.* that the Assize Court misdirected themselves in finding that the evidence of the accomplice P.W. 15, Makis Ioannou, was corroborated by the medical evidence as regards the wounds of the victim Nevim Mahmout Satik. This finding appears in the judgment of the Assize Court at pp. 197 to 198 of the record and reads as follows:

"This witness stated *inter alia* that he left the scene of the crime in the car of the accused—after witnessing 3 of the murders—and when they reached Monagri village, he received the gun *(exhibit* 14)—the weapon by means of which the murders were committed—from the accused, took it to a field 500 meters from the village at locality Petrera and buried it.

S. 23 of our Criminal Code, Cap. 154, provides as follows :-

'A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence...'.

By hiding the weapon used for the murders, the witness Makis was enabling the accused to escape punishment, and thus he was becoming an accessory after the fact to the murders.

In the case of *Michael John Davies* [1954] 38 Cr. App. R. 11, the House of Lords held that 'The term Accomplice' includes (i) persons who are *'participes criminis'* in respect of the actual crime charged, whether 'as principals or accessories before or after the fact (in felonies) or persons committing, procuring or aiding and abetting (in the case of misdemeanours...').

Therefore we hold that Makis Ioannou, P.W. 15 is an accomplice.

The position in connection with the evidence of accomplices is well illustrated in the cases of *Lazaris Demetriou* v. *The Republic*, 1961 C.L.R. 309, and *Charalambos Zacharia* v. *The Republic*, 1962 C.L.R.

52, decided by the then High Court of Justice of Cyprus.

We feel that we cannot act upon the evidence of the witness Makis Ioannou without corroboration, and we have searched for corroborative evidence connecting the accused with the commission of the crime. We hold the view that such corroborative evidence exists, and it is to be found mainly in the medical evidence.

Makis Ioannou stated on oath that when he returned to the scene (after going round along the old and the new road) with Nevin and the two girls sitting by his side, he called out to the accused who was standing underneath a tree, and the accused told him to tell Nevin who was in the car to go down so that they would arrange for the money. Nevin heard this, she alighted from the left hand side door of the car and proceeded towards the accused. At that moment the accused walked up to the 'ohtos' towards the road and fired at her. That is, the accused fired at Nevin when Nevin was facing the accused. Then Nevin turned back and the accused fired at her again. Nevin finally fell by the side of the nearside door of the car. So Nevin must have been injured by two shots, one in front, when she was proceeding towards the accused, facing the accused, and the other one, at the back when she turned away from the accused. This description of Makis tallies fully with the medical evidence."

It is clear from the evidence on record that Makis Ioannou never said that the victim Nevin was fired at by the appellant twice. On the contrary, it is the appellant who said in cross-examination when giving evidence before the trial Court that Nevin was fired at by Makis twice. So, there is no doubt that the trial Court made a mistake and this certainly amounts to a misdirection.

Therefore, what has to be considered is whether this misdirection has led to a substantial miscarriage of justice in the sense of the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155. This proviso reads as follows :

"Provided that the Supreme Court, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, shall dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred."

The said proviso to section 145(1)(b) corresponds with the proviso to section 4(1) of the Criminal Appeal Act 1907, in England. In England the proper approach to the application of the proviso to section 4(1) of the Criminal Appeal Act 1907 was laid down by the House of Lords in *Stirland* v. *The Director of Public Prosecutions* [1944] 2 All E.R. page 13.

In this case Viscount Simon L.C. had this to say at page 14:

"Apart altogether from the impeached questions (which the Common Serjeant in his summing up advised the jury entirely to disregard), there was an overwhelming case proved against the accused. The trial had lasted two full days, but the jury took only a few minutes to consider its verdict and the judge stated that he considered the verdict 'perfectly right'. When the transcript is examined it is evident that no reasonable jury, after a proper summing up, could have failed to convict the appellant on the rest of the evidence to which no objection could be taken. There was, therefore, no miscarriage of justice and this is the proper test to determine whether the proviso to the Criminal Appeal Act. 1907, s. 4(1) should be applied. The passage in *Woolmington* v. *Director of Public Prosecutions,* at p. 483, where Viscount Sankey, L.C., observed that in that case, if a jury had been properly directed, it could not be affirmed that they would have 'inevitably' come to the same conclusion should be understood as applying this test. A perverse jury might conceivably announce a verdict of acquittal in the teeth of all the evidence; but the provision that the Court of Criminal Appeal may dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred in convicting the accused assumes a situation where a reasonable jury, after

being properly directed, would, on the evidence properly admissible, without doubt convict. That assumption, as the Court of Criminal Appeal intimated, may be safely made in the present case. The Court of Criminal Appeal has recently in *R.* v. *Haddy* correctly interpreted section 4(1) of the Criminal Appeal Act and the observation above quoted from *Woolmington's* case in exactly this sense."

In the present case the evidence as accepted by the trial Court was sufficient to convict the appellant without taking into account the evidence of the accomplice; but, irrespective of that, the evidence of the accomplice is amply corroborated by the evidence of the appellant himself. The principle that the accused's own evidence can afford corroboration to the evidence given by an accomplice has been laid down in the case of *R.* v. *William Bernard Medcraft*, 23 Cr. App. R. 116. At page 118 of this report Avory J. had this to say :-

> "No one who has read appellant's own evidence could fail to find corroboration.
>
> There is evidence corroborating the accomplices in the evidence of the appellant himself. It is admitted that his course of conduct was entirely inconsistent with innocence and was consistent with the story told by the accomplices, and thus materially corroborated them. The summing-up was not perfect, but the proviso to section 4 of the Criminal Appeal Act of 1907 was passed to meet such cases; there was no 'substantial miscarriage of justice'."

The appellant admitted in giving evidence before the trial Court that he and the accomplice were at all material times together. He admitted that at the time of the shooting of the victims the accomplice was also present. As counsel for appellant put it before us, there were two versions agreeing on nearly all points except as to which one of the two fired the shots at the victims that resulted in their death.

The kind of corroboration required is not confirmation by independent evidence of everything the accomplice relates, as his evidence would be unnecessary if

that were so. (*R.* v. *Mullins*, 3 Cox C.C. 526, 531). What is required is some independent testimony which affects the prisoner by tending to connect him with the crime; that is, evidence, direct or circumstantial, which implicates the prisoner, which confirms in some material particular not only the evidence given by the accomplice that the crime has been committed, but also the evidence that the prisoner committed it. (*R.* v. *Baskerville*, 12 Cr. App. R. 81).

I am, therefore, of the view that this is a proper case for the application of the proviso to section 145(1)(b) of the Criminal Procedure Law, as no substantial miscarriage of justice has actually occurred.

As regards the grounds of appeal, that the trial Court wrongly accepted the evidence of P.W. 14 Afet Mustafa as well as the confession of the appellant, *exhibit* 24, as true, and rejected his version, I have listened very carefully to all the arguments advanced by counsel for the appellant and I must say that I have not been convinced that the trial Court erred on any of these matters. On the contrary, I am of the view that the conclusions reached by the trial Court were fully warranted by the evidence adduced.

A somewhat forceful argument in connection with the above grounds of appeal put forward by counsel for the appellant is the failure of the trial Court to make any reference in its judgment to the evidence of D.W. 2 Sgt. HjiIoannou. This witness stated that at about 1 a.m. of the 10th November, 1974, whilst on mobile patrol on the main Nicosia Troodos road, met the accused, who was in charge of a stationary car under Registration No. AQ 205 at a distance of about 200 yards away from the junction where the main road branches off to Angolemi village. From Angolemi village the road leads to Lefka. Accused signalled to the Police car to stop and told the witness that he had ran short of petrol and asked him to give him some. The witness said to the accused that he could not give him any petrol as this was government property and asked him for his driving licence as well as his identity card, and accused said that he did not have them with him. He mentioned that he had visited Nicosia and that he left his passport at

the office of Messrs. Paraskevaides because on the following Thursday he was due to leave for Lybia. In view of the fact that the witness did not believe him he took the registration number of his car and sent a message through the wireless to the District Police Headquarters Morphou, which at the time was stationed at Pedhoulas. He then searched the car of the accused and found nothing incriminating.

As regards this incident the version of the accused in giving evidence before the trial Court was that he was found there because he went to find out about the police road blocks as his intention was always to take the victims to the Turkish occupied area of Cyprus. At the time he was found by the police he had ran short of petrol as the fuel indicator of his car was defective and his engine went off about 50 metres after the cross-road Lefka, Karvounas - Evrychou.

Counsel for the appellant submitted that the evidence of D.W. 2 P.S. HjiIoannou strengthens the version told by the appellant as to his intention to transport the victims to the Turkish occupied area of Cyprus. He submitted that the failure of the trial Court to direct their minds to this point, which was in favour of the appellant, may reasonably be considered to have brought about the verdict of guilt, whereas if the trial Court properly directed their minds they might fairly and reasonably, taking into account all the facts of the case, have found the appellant not guilty.

In the case of *R.* v. *Max Cohen and Leonard Nelson Bateman* [1909] 2 Cr. App. R. 197 at page 207, Channell J. had this to say:

> "A mistake of the judge as to fact, or an omission to refer to some point in favour of the prisoner, is not, however, a wrong decision of a point of law, but merely comes within the very wide words 'any other ground', so that the appeal should be allowed according as there is or is not a 'miscarriage of justice'. There is such a miscarriage of justice not only where the Court comes to the conclusion that the verdict of guilty was wrong, but also when it is of opinion that the mistake of fact or omission on the part of the judge may reasonably be considered

to have brought about that verdict, and when, on the whole facts and with a correct direction, the jury might fairly and reasonably have found the appellant not guilty. Then there has been not only a miscarriage of justice but a substantial one, because the appellant has lost the chance which was fairly open to him of being acquitted, and therefore, as there is no power of this Court to grant a new trial, the conviction has to be quashed. If, however, the Court in such a case comes to the conclusion that, on the whole of the facts and with a correct direction, the only reasonable and proper verdict would be one of guilty, there is no miscarriage of justice, or at all events no substantial miscarriage of justice within the meaning of the proviso, notwithstanding that the verdict actually given by the jury may have been due to some extent to such an error of the judge, not being a wrong decision of a point of law."

The reason why the appellant was found there at that time of the night only he himself knows. It is not for a Court of law, to find out how the mind of an accused person works at a given time. The object of the appellant in going there might have been, as counsel for the Republic submitted, to find on the way a suitable place for the execution of his illegal purposes. But even if we assume that his version was true, then there was ample time to change his mind either before or after he met at the village of Monagri, later on the same day, P.W. 15 Makis Ioannou, the accomplice. So, the omission of the trial Court to refer to the evidence of D.W. 2 P.S. HjiIoannou in its judgment, even if it is taken for granted that this point would be decided in favour of the appellant, I do not think it is so strong, taking into account all the other evidence adduced at the trial, to reverse the scales in his favour.

As regards the question of premeditation, which is the last ground of appeal, I think that the trial Court very rightly found on the evidence adduced by the Prosecution as it had been accepted by them, that the appellant must have formed the intention to kill the victims at least from the time he picked them up from the house of P.W. 14 Afet, an intention which existed

at the time of the killing despite the fact that more than 1½ hours elapsed.

For the reasons stated above I would dismiss the appeal.

TRIANTAFYLLIDES, P.: In the result this appeal is dismissed.

Appeal dismissed.