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

ANDREAS ANASTASSIADES,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3746).

Evidence—Expert evidence—Evaluation of—Whether an expert may be asked the question which the Court has to decide—Expert evidence must be based on facts proved by admissible evidence—Premeditated murder—Expert medical witness—Who has not seen the dead body but has heard its condition described by witnesses in Court—Reconstructing the course of events that had ended in the victim lying where he was found—And giving opinion, based on an assumed state of facts—As to, inter alia, *the position of the supposed assailant while inflicting the fatal blows and as to how blood found its way on his shoe—His evidence a link in the chain of circumstantial evidence which the Court accepted and upon which it made definite findings—It could be relied upon.*

Criminal Law—Premeditated murder—Alternative theory of defence consistent with innocence—It must be such that may be reasonably inferred from the whole of the evidence before the Court—It cannot be a matter of speculation, unless evidence has been adduced raising such other alternative possibilities and defences—No evidence to support any incident which could justify a Court to infer reasonably and not merely act on suspicion or speculation that there have been such acts as to raise the issue of provocation, accident or self-defence.

Criminal Law—Burden of proof.

Evidence—Circumstantial evidence—Case depending wholly or substantially on circumstantial evidence—Principles applicable.

Criminal Law—Motive—Circumstantial evidence—Premeditated murder.

Criminal Law—Trial in Criminal Cases—Probative effect of appellant's refusal to answer questions by the police—Comment by Judge on accused's election to make unsworn statement from the dock when called upon to make his defence—By referring to his conduct immediately after the killing—A legitimate comment in a case resting mainly on circumstantial evidence. 5

Premeditated murder—Premeditation—Concept of—Premeditation is a question of fact to be determined in the light of the circumstances in each particular case—And which must be proved by the prosecution either by direct or indirect evidence—What has to be proved for premeditation to be established—Preditation inferred, by trial Court, from the brutality of the blows on the victim inflicted by a heavy chopping instrument that was not available at the place of the crime, but was brought there—From the fact that appellant had a motive to get rid of the victim—And from his conduct both before and after the murder—Though not everyone of the above items taken by itself would be sufficient to establish premeditation, when viewed cumulatively, in the context of the whole evidence, they do warrant the conclusion reached by the trial Court that the murder was premeditated. 10 15 20

Judgments—Summing-up—Approach to by Court of Appeal.

The appellant was convicted of premeditated murder and sentenced to death. The victim was killed on November 20, 1975 and the scene of the crime was a room at the premises of the S.E.K.E.P. (Cyprus Olive Produce Marketing Board) where the appellant and the victim were working; he died after receiving multiple wounds on the head which were caused by forcible blows with a heavy cutting instrument and the cause of death was due to the laceration of the brain. The lethal weapon, which has not been recovered, was, according to expert evidence, one of the chopping variety with a cutting edge and some weight, such as an axe or chopper. 25 30

The appellant was performing the duties of Secretary-Cashier and Accountant of S.E.K.E.P., and the victim was the Commercial Officer and Supervisor of its Accounting Department. 35

In the morning of the day of the murder the appellant drove to his work at the S.E.K.E.P. offices driving his yellow "Honda" car and after he had parked it near the premises of S.E.K.E.P. he had a conversation with the wife of the victim; it was arranged that he would drive her husband home at lunch time. During this conversation she noticed that the appellant looked to her 40

worried, pale, gloomy and as they were conversing he avoided looking in her eyes, although standing very near.

Between 9.30 and 10.30 a.m. the appellant went to a nearby Supermarket store where he purchased two cartons of milk and a packet of cigarettes and on this occasion he was seen by the charwoman of the S.E.K.E.P. premises both when he left and on his return. The appellant was seen leaving the premises again and on this occasion he told the charwoman that he would be away for about half an hour and reminded her to clean up the basement of the premises; at this time she noticed that he was carrying some papers under his arm.

At about the middle of the morning of the day of the murder the appellant was seen near his house driving his "Honda" car. He drove away from his house driving another car an "Alfa Romeo". Between 11.30–11.45 on the date of the crime he visited the Co-operative Central Bank in order to lodge two cheques; but he did not leave the premises of the Bank immediately; he visited another office in the Bank premises where he enquired whether certain rules relating to a medical scheme for the staff of the co-operative movement were ready.

The victim was found dead at 10.45 a.m. by an employee of the Cyprus Telecommunications Authority who visited the premises of S.E.K.E.P. in the course of his work. The police were thereupon informed and a group of Police Officers visited the S.E.K.E.P. premises and started investigations.

Just after 11.35 a.m. the appellant was seen approaching the S.E.K.E.P. premises through the trees in the backyard; he appeared to be a little nervous in his movements and restless, and he was wiping his face, which seemed to be a little pale, with his hands. As the Police Sergeant on duty at the back door noticed a fresh scratch on the forehead of the appellant and a substance which resembled blood on his left shoe the appellant was there and then interrogated, after duly cautioned, and questions were put to him regarding his movements and the scratch and blood.

Professor Keith Simpson, who is the Senior Home Office Pathologist and a University Professor of Forensic Medicine gave evidence and was asked if he could reconstruct the course of events that had ended in the victim lying where he was found. He was further asked to express an opinion as to how the blood

found on the left shoe of the appellant got there. Professor Simpson had not seen the dead body; he formed his opinion from relevant material which was made available to him. This material consisted of the plan of the premises in which the murder had taken place, photographs of the victim and a post-mortem report. 5

Professor Simpson said* that on the left shoe careful examination showed many blood spottings, some of which have run down the shoe. One of these spottings, in particular, has run down the left side of the shoe in a liquid state and has tailed off underneath the sole of the shoe. The left shoe showed a number of splashes with little spots of blood mostly down its left side and along the top on the right side. 10

Professor Simpson, also, said that it was clearly certain, if not absolutely certain, that if he was right in that the assailant stood in the area he described, the left shoe of the assailant was nearest to the head from where the blood was coming; that the stains appearing on the left shoe came on that shoe whilst repeated blows were splashing blood from the head and face and that this shoe had taken the blood stains which otherwise would have marked the floor. 15 20

The defence suggested to the Professor two alternative ways by which blood would drop on the left shoe of the assailant. The first alternative was that drops could land on the shoe by lifting the head of the victim and dropping it in the pool of blood. This alternative was rejected by the Professor after he explained that if the head was dropped even in blood, that was still liquid, then there might be some displacement of blood but not spraying into the air which was evident from spots found on the shoe. 25

The second alternative suggested by the defence was that the blood that was found on the shoe could be the result of the assailant shaking his hand. Professor Simpson agreed with this alternative but added that the shaking of the hand in order to produce the fine spots that were found on the shoe had to be with the fingers spread, the hand had to be over the left side of the left shoe, it had to be quite heavily stained with blood and the blood had to be running blood and not blood smeared on the hand or in jelly form. 30 35

In his statement from the dock the appellant stated that he

* See the relevant passages of his evidence at pp. 125-130 *post*.

left the office at 9.30 a.m. On his return around 10 o'clock he saw the victim on the floor in a pool of blood. He was shocked and he went near the body and tried to lift the head up. The wounds were so horrible and he dropped the head on the floor. He shook his hand, which was full of blood, trying to get rid of it, feeling sick. Then being panicked he ran out of the office, at the same time wiping his hand on his jacket.

The trial Court rejected both alternatives suggested by the defence; and found that the only possible explanation which was a certainty was that the appellant was standing to the right of the victim and that the stains that got on his shoe dropped there whilst he was repeatedly assaulting the victim.

The trial Court further found that the appellant had a strong enough motive to kill the victim. This motive was found to be the state of the accounts kept by the appellant and the £47,249 deficiency in the cash in hand for which he was responsible. The books which were kept by the victim were in perfect order and through these books one could verify the accounts kept by the appellant.

After finding that the appellant was the person who killed the victim the trial Court considered the issue of premeditation and summarised the case for the prosecution as follows:

" 1. The killing was a very brutal one.

2. It was committed by a heavy chopping instrument that was brought to the S.E.K.E.P. premises and was not one that was available there. This weapon must have been taken by the accused to the office the latest on the morning the murder was committed.

3. The assailant, who is the accused, had a motive to get rid of the victim.

4. The conduct of the accused early in the morning of the 20.11.75 when he met the wife of the victim outside the S.E.K.E.P. offices with whom he had a conversation during which he avoided looking at her face; and,

5. The conduct of the accused immediately after the killing to which conduct we have already referred i.e. his attempt to built up an alibi, to conceal facts and tell lies".

And the trial Court concluded as follows:

" Having in mind the above points which are proved

beyond doubt by the evidence before us we have no hesitation in arriving at the conclusion beyond reasonable doubt that the accused killed the deceased in the execution of a preconceived plan—a plan which he formed in his mind the latest when he went to his work that morning. 5
We further find that the accused proceeded to execute his plan although he had time to reflect on his decision and desist from carrying out his intentions".

Upon appeal Counsel for the appellant contended:

1. That the findings of the trial Court that the appellant 10 delivered the fatal blows on the victim and/or that his left shoe was stained with blood whilst he was delivering the fatal blows and/or with regard to his position whilst so delivering them, were wrong in that

 (a) It was Professor Simpson who tried the case and not 15 the Court;

 (b) The Assize Court failed to evaluate the evidence of the Professor and test the accuracy of his conclusions and in fact the conclusions of the Court were those of the Professor; 20

 (c) The Assize Court failed to draw their own independent conclusions as to how and by whom the fatal blows were delivered;

 (d) The opinion and the conclusions of Professor Simpson were based not on proved facts but on the assumption 25 that the appellant was the culprit and on inaccurate and mistaken material, such as the photographs of the scene and the post-mortem report and also on material, the correctness of which could not be tested either by the expert or the Court; and 30

 (e) Professor Simpson started with the idea that the appellant was guilty by proceeding on the assumption that he who wore the shoe was the assailant.

2. That the trial Court failed to examine the totality of the evidence and in particular, that which was equally 35 consistent with the innocence of the appellant in that the trial Court failed to examine the alternative put to Professor Simpson with which the witness agreed and which

was to the effect that the spots on the left shoe could also get thereon if the head of the victim was shaken.

3. That the trial Court treated the evidence of Professor Simpson as if it were a gospel and tested the rest of the evidence with it; and that in this way the trial Court misdirected itself on the burden of proof which is on the prosecution, by shifting same on the appellant in such a way as he was expected of him to establish his innocence.

4. That the trial Court made up its mind too early about the guilt of the appellant and then examined the rest of the evidence.

(I) *On the question whether the appellant was the person who killed the victim.*

Held, (*Hadjianastassiou, J. dissenting*) that in view of the evidence adduced the judgment of the Assize Court regarding the issue of the murderer's identity must be upheld.

(A) *Per A. Loizou, J., L. Loizou, J., concurring:*

(1) That experts inevitably have to be asked questions requiring them to assume the existence of certain facts and it is for the Court to determine, on the evidence adduced before it, about their existence or not, as at the stage of giving evidence, an expert can only assume of their having been proven; that in this respect, the danger of the expert usurping the functions of the Court, is avoided, inasmuch as the determination of the facts upon which a conclusion may be drawn, is made clear, that it is left to the Court; and that, accordingly, by assuming the existence of certain facts Professor Simpson could be asked how the blood found its way on the shoe (pp. 140–142 *post*).

(2) That the evidence of Professor Simpson was given no more importance either because of his impressive qualifications and long experience, or on account of its substance than it deserved to be given because of its positiveness on all material aspects on which the Court relied and the impartial and fair manner in which it was given; that it is not correct to say that the trial Court accepted only those parts of the evidence of Professor Simpson which were tending to show the guilt of the appellant and not the contrary; that the trial Court examined the whole of the evidence of this witness and it dealt with it in extenso; that on all material points his testimony was unshaken and duly

supported by the proven facts of the case; that though it is correct that the common Law rule is that an expert witness may not be asked the question which the Court has to decide, and though this rule is being eroded, in the present case it cannot be stated that Professor Simpson was asked to answer the very issue that the Court had to decide; and that his evidence was a link in the chain of circumstantial evidence which the Court accepted and upon which it made definite findings. 5

(3) That with regard to the complaint that the trial Court failed to examine the possibility of the splashing on the left shoe having been caused by the shaking of the victim a possibility not excluded by Professor Simpson—the trial Court followed this course as a consequence to its finding that there was nothing in the evidence leaving room for such possibility and that this was particularly so after it excluded the claim that the appellant on seeing his colleague dead was shocked and acted mechanically thereafter; and that, therefore, this is not a case where a trial Court bound as it is, to consider not only the theory of the prosecution but also any alternative theory that is possible and consistent with the evidence it failed or refused to do so or did not do so adequately (See *R.* v. *Turkington*, 22 Cr. App. R. 91; pp. 143-144 *post*). 10 15 20

(4) That the alternative theory has to be possible and consistent with evidence and in this case it was not so after the above finding of the trial Court; that this is not a case where the trial Court failed in its undoubted duty to deal adequately with any other view of the facts which might reasonably arise out of the evidence and the material before them, as it is on the evidence and the evidence alone that an accused person is being tried; that in this case there was no material left to be examined after the trial Court ruled out the possibility of the head having been shaken mechanically through the shock of the appellant and after accepting the rest of the evidence which connected the appellant with the commision of the crime rather than being the person who discovered the victim in that dreadful state; and that, accordingly, the contention of the appellant must fail. 25 30 35

(5) That it is the duty of the prosecution to prove the prisoner's guilt and if at the conclusion of the trial, considering the totality of the case there is reasonable doubt then the prosecution has failed to make out a case against the appellant who is entitled to be acquitted; that in criminal trials in which the case against the accused depends wholly or substantially on circumstantial 40

evidence after the facts sworn are proved a Court must decide not whether these facts are consistent with the prisoner's guilt, but also that they are inconsistent with any other reasonable conclusion, other than that the prisoner committed the act. (See *R.* v. *Hodge*, [1838] 2 Lewin, p. 227; *McGreevy* v. *D.P.P.* [1973] 1 W.L.R. 276); and that in this case the contention that the trial Court misdirected itself on the burden of proof is not borne out by anything said in the judgment of the trial Court.

(6) That the contention that the trial Court made up its mind too early about the guilt of the appellant is an argument relating more to the style and the manner in which a judgment is written rather than to its substance; that three experienced Judges having heard the evidence day after day, for weeks on, reserved their judgment at the conclusion of the trial and delivered it some days later; that it is reasonable to infer and there is nothing in the judgment itself to suggest the contrary—that having deliberated they made their findings, drew therefrom their conclusions and arrived at the verdict they did then they proceeded to write their judgment in the manner and following the sequence that they thought more proper in the circumstances and in view of the mass of evidence adduced; and that it cannot be said that they really made up their mind too soon and then tested their conclusion with the rest of the evidence.

(7) That having carefully and anxiously considered the findings of the trial Court and its conclusions drawn therefrom and bearing in mind the principles upon which this Court will interfere with such findings the Court (A. Loizou, J., L. Loizou, J. concurring) has come to the conclusion that the appellant upon whom the burden of proof lay, has failed to persuade the Court that such findings and conclusions, considering the evidence on record properly assessed, are unreasonable.

(8) That, moreover, there was evidence of motive which, as such, though immaterial so far as regards criminal responsibility in cases like the present one (see s. 9 of Cap. 154), yet, facts which supply a motive for a particular act "are among the items of circumstantial evidence which are most often admitted". (See Cross on evidence p. 34; Will's on Circumstantial Evidence, 7th Ed. p. 64).

(B) *Per Triantafyllides, P.: After referring to the legal nature of evidence given by expert witnesses and to the law relating to the burden of proof—vide pp.* 189–195 *post).*

(1) That having carefully perused the whole judgment of the

trial Court, I am unable to agree with the submission of counsel for the appellant that, at the trial, the question of the guilt or innocence of the appellant was approached in a manner casting improperly on the appellant, as an accused person, the burden to prove his innocence; that I am quite satisfied that the trial 5 Court considered the evidence as a whole and reached, eventually, its verdict on the footing that the prosecution had discharged the onus of proving the appellant guilty as charged.

(2) That in the present case, as well as in other cases where an attempt is made to dissect the judgment of a trial Court in order 10 to discern, in the process of doing so, the thinking of such Court in reaching its conclusion concerning the guilt or innocence of an accused person, a careful distinction must always be made between what, on the one hand can, properly, be taken as amounting to an error concerning the burden of proof and, on 15 the other hand, merely the method of drafting the judgment which, by itself, cannot be safely relied on as being indicative of the reasoning process of the trial Court in reaching its verdict; that it must not be lost sight of that a trial Court normally considers the case as a whole before reaching its decision as 20 regards its outcome, and then, having done so, it proceeds to write its judgment, giving its reasons for such decision; and that is why its judgment has to be read as a whole and actual errors must be distinguished from mere defects of style (see *Charitonos and Others* v. *Republic* (1971) 2 C.L.R. 40 at p. 97) 25

(3) *With regard to the alternative theory put forwand by the defence viz. the possibility that the head of the victim may have been shaken by the appellant when he lifted it up from the floor, with the result that the appellant's left shoe got splashed in the manner in which Professor Simpson has described (after stating* 30 *the Law on the subject—vide pp.* 198–200 *post):*

That I cannot agree with counsel for the appellant that this was a consistent with the evidence alternative which ought not to have been ignored by the trial Court; that there was no cogent evidence before the trial Court giving reasonably rise to the 35 inference that anything of this sort had happened and, therefore, this was an alternative involving pure speculation, which, consequently, did not have to be considered by the trial Court. (See *Mancini* v. *D.P.P.* [1942] A.C. 1 at p. 12).

(4) That facts which tend to show motive for committing an 40 offence are treated as facts which are relevant, in the sense of

connecting the accused with the commission of the offence; and that once in this case, a possible motive has been established it became a relevant element of circumstantial evidence.

(5) *With regard to the refusal of the appellant to answer further questions when being interrogated by the police and his refusal on the advice of his advocate to answer questions when he had finished making a statement to the Police (after stating the Law on the subject—vide pp.* 204–209 *post*):

That the refusal of the appellant to answer further questions put to him by the police, on November 21, 1975, or to answer any questions after he had made a statement to the police later on on the same day, is not a factor which can properly or safely, in the circumstances of the present case, be taken into account against the appellant, in determining the outcome of the present appeal; to do otherwise would be to render nugatory both the right of the appellant to refuse to answer questions after he had been cautioned that he was not bound to say anything, as well as his right to seek legal advice and to act in accordance with it.

(6) *With regard to the failure of the appellant to give evidence on oath at the trial (after stating the Law on the subject vide pp.* 210–215 *post*):

In the light of the relevant case–law (vide pp. 210–215 *post*) and because, in my view, in the *Vrakas* case, ((1973) 2 C.L.R. 139 at p. 191) the failure of one of the appellants to give evidence, in his own defence, was treated as a factor related to the issue of his guilt in the light only of the particular circumstances of that case, without this Court intending to lay down then an inflexible rule of general application, I have reached the conclusion that the safest course, in the present case, is to disregard the fact that the appellant has elected to make an unsworn statement from the dock, instead of giving evidence on oath, and, thus, not to treat it as a factor influencing the outcome of this appeal, especially as the trial Court itself made no adverse comment in this respect.

(7) *On the question whether or not the appeal of the appellant against his conviction should be allowed:*

(a) That it is a conviction based on circumstantial evidence and, so, in deciding whether or not to uphold it, I have not lost sight of the "rule" expounded in *R.* v. *Hodge*, 168 E.R. 1136 as such "rule" has been commented on, and explained, in *McGreevy*

v. *D.P.P.* [1973] 1 All E.R. 503, at p, 508 (see also, in this respect the *Vrakas* case, *supra*, at pp. 169–170).

(b) That, furthermore, I have borne in mind the approach rightly adopted quite recently by our Supreme Court in *HjiSavva* v. *The Republic*, (1976) 2 C.L.R. 13, namely, that, in deciding whether or not to uphold on appeal, a conviction for a criminal offence a "lurking doubt" should operate in favour of the appellant.

(c) That, with all the foregoing in mind, I have anxiously considered the correctness of the conviction of the appellant and, in the end, I have reached the conclusion that such conviction should be upheld; I really feel no doubt, reasonable, lurking or other, that the appellant is the person who killed the victim in the present case. In forming this view, I have been, particularly, influenced by the manner in which the appellant's shoe was stained with blood and by his conduct after the death of the victim (excluding, of course, his refusal to answer questions put to him by the police and his failure to give evidence on oath at the trial, which are matters which I have decided, as indicated earlier in this judgment, not to allow them to weigh against him).

(C) *Per Stavrinides, J.*:

That the judgment of the trial Court must be upheld both as to the issue of the murderer's identity and as to premeditation.

(II) *On the question whether the murder was committed with premeditation*:

Held, (Triantafyllides P. and Hadjianastassiou J. dissenting) that the murder was committed with premeditation.

(A) *Per A. Loizou, J., L. Loizou, J. concurring:*

(1) That the burden of establishing beyond reasonable doubt the element of premeditation, is upon the prosecution, either by direct evidence or by forming it from the surrounding circumstances of the case, and this inference of premeditation had to be not only consistent with the evidence, but the facts of the case must be such as to be inconsistent with any other rational conclusion than that the act was committed with premeditation.

(2) That though it is correct to say that each one of the five items on which the trial Court relied in order to find premeditation (see pp. 149–150 *post*), taken by itself, does not prove the

existence of premeditation, when viewed cumulatively in the context of the whole of the evidence that was before the trial Court, they were sufficient to justify with the certainty required in criminal cases and beyond reasonable doubt the inference that the fatal blows were delivered by the appellant on the victim in the execution of a preconceived plan which he proceeded to execute, although he had time to reflect on his decision and desist from carrying out his intentions.

(3) That there was premeditation is apparent from the brutality of the blows which started when the victim was standing in the room and continued whilst the victim was lying on the floor with his face and head already severely wounded, which is indicative of the determination of the appellant to finish him off; that connected with this is the instrument used and the fact that it could not have been found there, unless it had been intentionally brought in; and that the nature of the instrument used and the circumstances under which it came to the scene of the crime, are most significant factors with regard to the issue of premeditation (see *Koliandris* v. *Republic* (1965) 2 C.L.R. p. 72 at p. 82 and *R.* v. *Agathocleous*, 8 C.L.R. 97 at p. 98).

(4) That relevant to the question of premeditation was the coolness of the appellant both before and after the killing; that such conduct not only excludes any shock or mechanical movements, as alleged on his behalf, but on the contrary, it reveals a calmness of mind which is a material consideration in determining the length of time that is usually required between the formation of the intention to kill and the reflection and relinquishment of such intention before it is put into execution and from which, calmness, the inference could be drawn that there existed such premeditation that satisfied the test laid down in the case of *R.* v. *Shaban*, 8 C.L.R. 82 which has been consistently applied in all subsequent cases where the issue whether there was premeditation or not in respect of the killing in each one of them, was treated as a question of fact depending on the particular circumstances of each one of them.

(5) *On the question whether looking at the evidence as a whole alternative theories were possible and consistent with the evidence suggesting that the fatal blow were delivered otherwise than with premeditation*:

That alternative possibilities must be such that may be reasonably inferred from the whole of the evidence before the Court;

that otherwise Courts will be invited to speculate as to happenings which cannot be reasonably inferred from the material before it and this is not their function; that it is on the evidence and the evidence alone that the prisoner is being tried and it would only lead to confusion and possible injustice if either Judge or jury went outside it (see *Mancini* v. *D.P.P.* [1942] A.C. 1); that in this case there is no evidence to support any incident which could justify a Court to infer reasonably and not merely act on suspicion or speculation that there have been such acts as to raise the issue of provocation, accident or self-defence —in fact the undisturbed state of the scene excludes any quarrel having taken place—or such other acts as they could possibly render the act of the killing of the victim unpremeditated or justified on account of passion or other state of mind.

(6) *On the question of the probative effect of appellant's refusal to answer questions or further questions in statements to the Police and on the question of the principles governing the comments that may be made by trial Courts when an accused person elects to make an unsworn statement from the dock when called upon to make his defence*:

That the trial Court did not comment on appellant's failure to answer questions or on the fact that he elected to make an unsworn statement from the dock; that what the Court commented upon, was appellant's conduct immediately after the killing which was a legitimate comment to be made in a case resting on circumstantial evidence (see *Charalambous* v. *Rex*, 18 C.L.R. 61 and Wills on Circumstantial Evidence, 7th ed. p. 413).

(7) For all the above reasons the Court (A. Loizou, J., L. Loizou, J. concurring) is satisfied that the trial Court was justified in convicting the appellant of premeditated murder, it not been persuaded that there are any grounds justifying its interference either with the findings of fact or the conclusions of the trial Court or that there has been any misdirection in the case, nor has it been persuaded by the appellant that the conviction, having regard to the evidence, was unreasonable.

This appeal, therefore, should be dismissed.

(B) *Per L. Loizou, J. on the question of premeditation*:

(1) That the issue as to whether a killing is premeditated or not has to be resolved in the light of all the circumstances of each

particular case; that premediation is a question of fact which must be proved by the prosecution either by direct or indirect evidence; that the time which elapses between the formation of the intention to kill and the execution of that intention is a relevant factor in determining whether there was sufficient opportunity to reflect whether to kill or not and in this respect the state of a person's mind is an essential element; that, in other words, if there was or was not premeditation does not merely depend on the length of the period that elapsed between the formation of the intention and its execution but also on the state of mind of the assailant as an element affecting his capacity to reflect on his decision and desist from it within such period; that for premeditation to be established it is, therefore, essential to show intention to cause death which was formed and continued to ex st before the time of the act causing the death as well as at the time of the killing notwithstanding that having regard to the assailant's state of mind, he had the opportunity to reflect upon and desist from such decision.

(2) (After dealing with the facts of the case—vide pp. 161–174 *post*) That it may well be that not everyone of the items relied upon by the trial Court in order to find premeditation (vide pp. 173–174 *post*) would be sufficient to establish premeditation but when taken together they do warrant the conclusion reached by the Court that the murder was premeditated; that the evidence as accepted, and the facts as found by the trial Court, disclose careful preparation and unwavering determination on the part of the appellant to kill the victim and his whole behaviour on that day indicates coolness of mind all through, elements which can hardly be consistent with absence of premeditation.

Appeal dismissed.

Cases referred to:

Davie v. *Edinborough Magistrates* (1953) S.C. 34 at p. 40;

R. v. *Mason,* 7 Cr. App. R. 67;

Mitas v. *Rex*, 18 C.L.R. 63 at pp. 66, 67;

R. v. *Lanfear* [1968] 1 All E.R. 683 at p. 685;

R. v. *Turner* [1975] 1 All E.R. 70 at pp. 73, 74;

R. v. *Turkington,* 22 Cr. App. R. 91, at p. 92;

Mancini v. *Director of Public Prosecutions* [1942] A.C. 1 at pp. 7, 8, 11, 12;

Halil v. *Republic,* 1961 C.L.R. 432 at pp. 433, 434, 437, 438, 439;

Woolminghton v. *D.P.P.* [1935] 25 Cr. App. R. 72; [1935] A.C. 462 at pp. 481, 482;

R. v. *Hodge* [1838] 2 Lewin 227; 168 E.R. 1136;

McGreevy v. *D.P.P.* [1973] 1 W.L.R. 276 at p. 282; [1973] 1 All E.R. 503 at pp. 508, 510, 511; 5

R. v. *Mentesh,* 14 C.L.R. 232 at p. 245;

HjiSavva alias Koutras v. *The Republic* (1976) 2 C.L.R. 13 at pp. 38–39, 57–58;

Vrakas and Another v. *The Republic* (1973) 2 C.L.R. 139 at pp. 169, 170, 175, 176, 177, 191; 10

R. v. *Treacy* [1944] 2 All E.R. 229 at p. 232;

The Republic and Loftis, 1 R.S.C.C. 30 at p. 33;

R. v. *Shaban,* 8 C.L.R. 82 at p. 84;

Aristidou v. *Republic* (1967) 2 C.L.R. 43 at pp. 74, 81, 82, 83, 84, 95, 99, 103, 104, 105, 106, 107; 15

Koliandris v. *The Republic* (1965) 2 C.L.R. 72 at p. 82;

R. v. *Agathocles,* 8 C.L.R. 97 at pp. 98, 99;

Kalli (No. 2) v. *The Republic,* 1961 C.L.R. 440;

Halil v. *The Republic,* 1962 C.L.R. 18 at pp. 21–23;

Pieris v. *The Republic* (1963) 1 C.L.R. 87 at pp. 91–92; 20

Pavlou v. *The Republic,* 1964 C.L.R. 97 at pp. 100–101;

Ioannides v. *The Republic* (1968) 2 C.L.R. 169 at pp. 190–191, 195–196;

Ayres v. *The Republic* (1971) 2 C.L.R. 16 at pp. 21, 35;

Charalambous v. *Rex,* 18 C.L.R. 61; 25

R. v. *Matheson* [1958] 2 All E.R. 87 at p. 89;

R. v. *Lobell* [1957] 1 Q.B. 547 at pp. 550, 551;

Kafalos v. *The Queen,* 19 C.L.R. 121 at p. 126;

Charitonos and Others v. *The Republic* (1971) 2 C.L.R. 40 at pp. 97, 107, 113–114; 30

Kyprianou v. *The Republic* (1976) 2 C.L.R. 75;

Vouniotis v. *The Republic* (1975) 2 C.L.R. 34 at pp. 54–61, 103–104;

R. v. *Naylor,* 23 Cr. App. R. 177 at pp. 180–181;

R. v. *Leckey,* 29 Cr. App. R. 128 at p. 135; 35

R. v. *Gerard,* 32 Cr. App. R. 132 at pp. 134–135;

R. v. *Davis,* 43 Cr. App. R. 215;

R. v. *Hoare,* 50 Cr. App. R. 166 at p. 170;

Hall v. *Reginam* [1971] 1 All E.R. E.R. 322 at pp. 323, 324;
Parkes v. *The Queen* [1976] 3 All E.R. 380 at p. 382;
R. v. *Chandler* [1976] 3 All E.R. 105 at pp. 107, 109;
R. v. *Frost and Another*, 48 Cr. App. R. 284 at pp. 290–291;
5 *R.* v. *Coughlan* [1976] Crim. L.R. 629;
R. v. *Pratt* [1971] Crim. L.R. 234;
R. v. *Mutch* [1973] 1 All E.R. 178 at pp. 181, 182;
R. v. *Sparrow* [1973] 2 All E.R. 129 at p. 135;
R. v. *Brigden* [1973] Crim. L.R. 579;
10 *R.* v. *Gallagher* [1974] 3 All E.R. 118 at pp. 124, 125;
R. v. *Chakoli*, 8 C.L.R. 93 at p. 94;
Furman v. *State of Georghia* 33 L. Ed. 2 d. 346;
Koumbaris v. *The Republic* (1967) 2 C.L.R. 1;
Patsalides v. *Afsharian* (1965) 1 C.L.R. 134;
15 *Mamas* v. *The Firm Arma Tyres* (1966) 1 C.L.R. 158;
Miliotis v. *The Police* (1971) 2 C.L.R. 292;
Varnava v. *The Police* (1973) 2 C.L.R. 317;
Loftis v. *The Republic*, 1961 C.L.R. 108;
Kirzis v. *The Medical Department of Famagusta* (1969) 2 C.L.R.
20 213;
R. v. *Cooper* [1969] 1 All E.R. 32 at p. 33;
Stafford v. *D.P.P.* [1973] 3 All E.R. 762 at p. 764;
R. v. *Nowell*, 32 Cr. App. R. 173;
Abinger v. *Ashton*, L.R. 17 Eq. 358 at pp. 373–374;
25 *Aitken* v. *McMeckan* [1895] A.C. 310 at pp. 315, 316;
Newton v. *Ricketts*, 9 H.L. Cas. 262 at p. 266;
Perera v. *Perera* [1901] A.C. 354 at p. 359;
James Frank Rivett, 34 Cr. App. R. 87 at p. 94;
Thomas Mason, 7 Cr. App. R. 67 at pp. 68, 69;
30 *Lowery* v. *The Queen* [1973] 3 All E.R. 662;
D.P.P. v. *Jordan* [1976] 3 All E.R. 775 H.L.;
Reg. v. *Frances*, 4 Cox C.C. 57 at p. 58;
R. v. *Kusmack* (1955) 20 C.R. 365 at p. 383;
R. v. *Mitchell* [1892] 17 Cox C.C. 503 at p. 508;
35 *D.P.P.* v. *Christie* [1914–1915] All E.R. Rep. 63 at pp. 67, 71;
R. v. *Turnbull* [1976] 3 All E.R. 549 at p. 552;
Nestoros v. *The Republic*, 1961 C.L.R. 217;

Petrides v. *The Republic*, 1964 C.L.R. 413;
HjiCosta (*No*. 2) v. *The Republic* (1965) 2 C.L.R. 95;
Zanettos v. *The Police* (1968) 2 C.L.R. 232;
Pierides v. *The Republic* (1971) 2 C.L.R. 263 at pp. 271, 276;
Anderson v. *Reginam* [1971] 3 All E.R. 768 at pp. 772, 773. 5

Appeal against conviction.

Appeal against conviction by Andreas Anastassiades who was convicted on the 8th July, 1976 at the Assize Court of Nicosia (Criminal Case No. 736/76) on one count of the offence of premeditated murder, contrary to sections 203 and 204 of the 10 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 Demetriades, P.D.C., Boyiadjis, S.D.J. and Michaelides, D.J.

E. Efstathiou with *L. Georghiadou* (*Mrs*.), *S. Mamantopoulos* and *D. Koutras*, for the appellant. 15

L. Loucaides, Deputy Attorney-General of the Republic, with *A. Evangelou*, Counsel of the Republic, for the respondent.

Cur. adv. vult. 20

TRIANTAFYLLIDES, P.: The first judgment will be delivered by Mr. Justice A. Loizou.

A. LOIZOU, J.: This is an appeal from the judgment of the Assize Court of Nicosia, by which the appellant was found guilty and convicted of the offence of the premeditated murder 25 of Kimon Ioannou Charalambous, alias Kimon Charal, contrary to sections 203 and 204 of the Criminal Code, Cap. 154, as amended by section 5 of the Criminal Code (Amendment) Law, 1962, (Law 3/62), and sentenced to death.

The numerous grounds of law set out in the Notice of Appeal, 30 may conveniently be grouped under two main headings, namely,

(a) that the conviction was, having regard to the evidence adduced, unreasonable, and

(b) in any event, premeditation which is an essential ingredient of the offence of which the appellant was 35 found guilty, had not been proved beyond reasonable doubt.

The facts of the case are as follows:

The appellant and the victim were employees of the Marketing

Board for Olive Produce, known as "S.E.K.E.P.". The appellant was its secretary, cashier and accountant and as such, kept the petit-cash, the cash-book, the receipt register, receipt books and invoices. The victim was the commercial officer and supervisor of the Accounting Department and kept a second set of books. They were both working in the same room of the S.E.K.E.P. offices which are situated at 29 Achaeon Street, Nicosia. Their houses were in the same neighbourhood by the Cyprus Broadcasting Corporation; they had social relations and shared common hobbies.

In the morning of the 20th November, 1975, the appellant driving his yellow Honda car, left his home for his work. On his way he called at the ELEANA bookshop which belonged to himself and his family.

At about the same time the victim left his house for his work with his wife and child which he dropped at the day nursery and arrived at the S.E.K.E.P. premises where they saw the appellant coming out of his yellow Honda car and they greeted each other. The victim went towards the offices and his wife went round the car so that she would get into the driver's seat and drive it away. The appellant approached her, they met at the back of the car and she asked him to give a lift home to her husband at noon.

The appellant was wearing at the time a light beige imitation swede jacket, reaching below the waist, which the appellant had bought in London. It was apparently impressive in style, as there had been comments by Mrs. Charal and the victim when they saw him wearing it on a previous occasion. This jacket was also noticed by the Manager of S.E.K.E.P., Mr. Andreas Charalambous. It had a belt to go with it, but Mrs. Charal was not certain if he had it on on that day. She noticed also that the appellant looked to her worried, pale, gloomy and as they were conversing he avoided looking in her eyes, although standing very near.

The other people normally employed at the S.E.K.E.P. offices, besides the appellant and the victim, were Andreas Charalambous, its Manager, Elli Andreou, the typist, Georghios Andreou, the messenger who, however, was stationed at the factory of S.E.K.E.P. at Latsia on the suggestion of the appellant, and Maria Vartholomeou, the char-woman. Elli Andreou had been on leave on the 17th and the 18th of November. On

the 19th she went to work, but left in the course of the day, as she was feeling ill; on the day of the offence she did not go to the office at the normal hour and at about 9 a.m. her husband telephoned to the appellant and on informing him that his wife was ill the appellant said that he had understood it. 5

The Manager, Charalambous, also left the premises at 8.30 a.m. for duty at Lythrodonda. Before doing so, however, he informed the appellant and the victim about it and told them that he wanted the report of the auditors forthwith, or reasonable excuse for not having it, otherwise he would take up the matter 10 personally in order to find out what impediments existed for its non preparation. There had been successive postponements of this audit mainly at the request of the appellant, the previous time was on the 17th of November, when a few minutes before the audit was due to take place, the appellant rang up N. 15 Yiamakis, their auditor and asked him to postpone his visit on that day. The excuse he gave was that the victim was not feeling well and he himself had to go out for some payments and also attend the Court about a relative's case. Yiamakis agreed to this request and they arranged that the audit would 20 take place on Thursday the 20th November, at 8.30 a.m. Yiamakis, however, remarked that he hoped that that would be the last postponement, but it was not to be so, as events turned out subsequently.

In fact, on the 20th and before Charalambous told the appel- 25 lant had already, as from 8.20 a.m. asked Yiamakis to defer, if possible, the appointment to 11 a.m., giving the excuse that he had to go out to make some payments; to this request, Yiamakis agreed.

At about 8.30 a.m. Koumides, a chemist at the S.E.K.E.P. 30 factory at Latsia, telephoned to the offices and told the appellant that he should have had by then an invoice of Michalios, a timber merchant, and asked him whether he had issued the cheques for the payment of that firm so that he would pass and get it and pay the timber merchant. The appellant told him 35 that the General Manager would call at the factory and that he should delay his departure therefrom, so that they would meet. This witness then came to Nicosia after the Manager called at the factory. On his way, he went first to the timber merchant, then to another commercial shop and he arrived at the 40 S.E.K.E.P. premises at about 11.20 a.m. where he met a policeman in civilian clothes. He was then asked to, and he identified

the victim. After that, the appellant arrived and asked him what was going on, but the witness did not reply.

On that morning, Maria Vartholomeou saw the appellant and the victim in the corridor going towards their office. She went to the kitchen and soon afterwards the appellant went there and told her that she had to clean on that day the basement as it was dirty.

She started cleaning the kitchen, then the office of the Manager, the auditors' office and the verandah at the back of the store room. When she reached the cemented part of the front yard and whilst sweeping it, the appellant passed by and she heard him say, "put the water on, I shall be back by the time it boils", which, remark she understood to be addressed to the victim. She then continued with her work and whilst on the verandah of the Manager's office, she saw the appellant return, carrying a nylon bag with cartons of fresh milk in it. He had, in fact, bought them from the nearby grocery of Takis Charalambides for the victim, together with a packet of cigarettes. This shopping was regularly done either by the appellant or the victim. The nylon bag and the milk were later found in the kitchen of the premises.

Vartholomeou remained on the verandah and washed its floor; she then went into the kitchen to make some coffee and on her way back to the verandah to get the broom, she heard the footsteps of the appellant in the corridor, who said to her: " Mrs. Maria, I am going away and I shall return in half an hour. Don't forget the basement". She then looked towards the corridor and saw the appellant entering the hall, carrying under his left arm some papers. When she got the broom she went to the basement and cleaned it. She came up, washed the buckets, picked some lemons from the trees in the yard and when she returned to the building in order to finish her work, she heard a voice and met Nicos Andreou, a Cyprus Telecommunications employee who visited the offices of S.E.K.E.P. to deliver a letter.

The time was approximately 10.45 a.m. in respect of which the trial Court made a finding with which I shall be dealing later. Andreou had rang the bell of the front door, but there was no reply. In fact, the bell was not functioning, and he entered the corridor trying to attract somebody's attention, when he met Vartholomeou. Together they went along the corridor, when

they heard a telephone ring and stop without anybody answering it. He was then about to leave, when on something being told by Vartholomeou, he turned opened a door and saw a dead man, eventually identified as the victim, lying on the floor. Andreou, on finding the dead man, attempted to telephone the Police 5 from there, but as he could not operate the telephone switch board, he drove to the Central Bank which is nearby; there, he met Police Sergeant Myriantheas, to whom he spoke, and who rang up the C.I.D. office. The time was 10.55 a.m. Myriantheas then went to the S.E.K.E.P. premises, where several C.I.D. 10 officers had already arrived.

The first police officer to arrive at the scene of this crime, was Police Constable Periclis Efstathiou, attached to the C.I.D. at Ayios Dhometios Police Station. He received the message at 11.05 hours and arrived at S.E.K.E.P. at 11.10 hours, where 15 he met the char-woman, Vartholomeou. As a result of what she told him he went into the room where he saw the victim with wounds on his head and face and with blood around his head and bloodstains on the floor of the room. The scene of the crime was, later, on that day, photographed by a Police 20 Photographer, Aristofanous, and from the bundle of photographs produced as *exhibit* 6, photograph 7 shows the scene of the crime, as found by P.C. Efstathiou.

Nothing was disturbed in that room; he looked also into the corridor and the other rooms in search of *exhibits* or anyone who 25 might have been there, but he found nothing. In the meantime Inspector Komodikis in charge of the C.I.D. of Ayios Dhometios Police Station arrived at the scene, and shortly afterwards, Chief Superintendent Aristocleous, the then second-in-command of the C.I.D. at Police Headquarters, accompanied by 30 Inspector Adradjiotis, the officer in charge of the Nicosia Divisional C.I.D. Sgt. Paphitis was then detailed to guard the back of the building, with another policeman. Whilst there, Sgt. Paphitis noticed the appellant arrive, holding a briefcase and approach the building through the trees in the back yard. This 35 witness noticed that the appellant seemed somehow nervous in his movements, he was restless, wiping his face with his hand, and a little pale. The appellant asked him what was going on, but he did not reply to him. He then asked Sgt. Paphitis whether his colleague had been assaulted, but as by that time 40 the Sergeant had noticed that on his forehead there was a fresh scratch and on his left shoe a substance that resembled blood, he

did not reply, and asked him to wait and that he would hear about it and went and informed Superintendent Aristocleous and Inspector Adradjiotis, about the arrival of the appellant. Then all went back and Superintendent Aristocleous identified
5 himself to the appellant, told him that he was investigating into the murder of Kimon Charal, cautioned him and informed him that he intended to put to him a number of questions, which he did and which, together with the answers given by the appellant, were recorded by Adradjiotis on statement sheets. The
10 record of these questions and answers was produced at the trial as *exhibit* 37. It reads:

"*Q*. What is your name?

A. Andreas Anastassiades. Are you going to tell me at last what is happening?

15 *Q*. I am Superintendent Aristocleous and I am investigating the murder of Kimon Charal and I want to put certain questions to you. From what time are you absent from your office? You are not obliged to reply unless you want but whatever you say will be
20 recorded and may be given in evidence.

A. From 10.00–12.00.

Q. I see on your forehead a scratch. Can you explain to me how it was caused?

A. Perhaps it is from a tree or I hit on a door.

25 *Q*. The spectacles that you wear appear as if they have blood on them as well as your left shoe. Can you give me an explanation?

A. I do not know. Bring me water to drink. (The accused then sat on a step).

35 *Q*. How did you leave the office?

A. With my car Alfa Romeo and I have it parked nearby".

After that, the appellant led them to the place where he had parked his car which was searched, but nothing connected with the crime was found therein. From there, the appellant
35 was driven to the Nicosia Divisional Police C.I.D. offices at Strovolos.

The clothes and the shoes which the appellant was wearing when seen by the Police at the back yard of S.E.K.E.P. premises were seized and kept as *exhibits* ((*exh.* 17 and 16 respectively). They were given to Mr. Ashiotis, an Advisor to the Government Pathological Laboratory and till December, 1975 the Medical Laboratory Superintendent of the Government, possessor of a diploma in haematology and blood transfusion, who has been examining medicolegal *exhibits* for 25 years, including examinations of blood stains and other biological products.

In fact, Mr. Ashiotis arrived at the scene of the crime at about 12.12 hours of the 20th November. On entering the room this witness noticed that there was a big pool of blood, 2' x 3', the middle of which was in semi-fluid condition, whilst its edges started to dry up. There were many blood stains on the floor of the room, blood stains on the north wall beside the head of the victim and very few blood stains on the window. There were also blood stains on a waste-paper basket, approximately 8 inches from the head of the victim and on a chair that was on the right of the victim. The blood stains were becoming rare towards the door of the room and the last stain was at about 1 foot from the door. The surface of the pool of blood around the head of the victim was undisturbed. The blood stains beside the pool were, in his opinion, radiating from the head of the victim, and judging from the tails which they appeared to have, reached the floor in almost acute angle. A few stains gave him the impression that they had fallen from a small height. He arrived at this conclusion because they were round and vertical. They were very few, in the middle of the room, towards the door. There were also a few vertical stains in line with the left upper arm of the victim. Three similar stains were observed on a sheet of paper that was on the top of the appellant's office-desk in that room. One of these stains was caused by blood falling vertically and the other two after having fallen on the sheet of paper, were smeared by somebody.

This witness collected blood sample from an open wound of the victim and from blood stains on the floor. He also picked seven fragments of bone which he found on the left side of the body, 2 or 3 feet away from the head. On the floor he saw locks of hair encrusted with dry blood. These locks of hair were compared with hair from the head of the victim and found to be in agreement in details, that most of the hair of the locks had their edges forcibly cut and also agreeing in detail with the

hair on the bones he picked at the scene. He left the scene when the body of the victim was removed for transportation to the Nicosia General Hospital, when he noticed that the area which was occupied by the head of the victim was clear of blood, that
5 there was what looked like blood serum which exuded from the blood pool and that its diameter was more or less the same as that of the head of the victim.

At about 14 hours of the 20th November, the house of the appellant was searched by the Police, but nothing incriminating
10 was found.

On the following day and at about 4 p.m. Insp. Frangos found, in the presence of the wife of the appellant and another police officer in the open site near a hen-coop and at a distance of 250 ft. from the house of the appellant, a metal container
15 full of fresh soil and fresh chicken manure. This container had been seen a day or two prior to the offence, outside the yard of the house of the appellant by Periclis Georghiou and on the day of the offence his wife Efthymia, saw the wife of the appellant carrying it towards the witness's hen-coop where it was found
20 by Inspector Frangos.

Mr. Ashiotis examined the contents of this container and in addition to the fresh wet earth, feathers and chicken faeces, he also found remains of burnt clothing material, 4-5 half-burnt buttons and two pieces of half-burnt white material which
25 looked like being a part of a towel and of a handkerchief. He could not find any blood on them, as the material was completely destroyed by burning and also having been soaked in water the blood must have seeped away.

The burnt clothing material recovered from the container
30 was put in a glass jar and eventually taken to Mr. Lovarides, the Government Analyst, for examination. He compared the burnt pieces of cloth, other than the handkerchief and towel like material, with a piece from the belt of the imitation suede, and after carrying out a test, he found that both were made of
35 cotton and man-made fibre glued together, of the same weave, colour and characteristics.

The trial Court had no difficulty, on the evidence of Mrs. Charal and Mr. Lovarides, in arriving at the conclusion that the belt belonged to the jacket that the appellant was wearing
40 on the morning of the 20th November, when he went to his

office and that the half-burnt pieces of cloth found in the container belonged to that jacket, and that the remains of the clothes found in the container were burnt before it was filled in with the fresh soil, the feathers and the chicken faeces, because of the fact that the internal walls of the container and its bottom were covered with soot. 5

On the 21st November, a post mortem examination on the dead body of the victim was carried out by Dr. A. Kyamides, a Government Pathologist. His findings, in so far as the injuries were concerned, were the following: 10

"(a) On the left aspect of the forehead and on the scalp there was a vertical cut wound, 4" long, 1/2" wide, deep into the brain substance;

(b) On the middle region of the forehead involving the right eyebrow towards the scalp there was a cut wound, 5" long, 1/2" wide, deep into the brain substance; 15

(c) On the vertex of the skull, between the aforementioned wounds (a) and (b), there were two smaller cut wounds near each other, the one 2" long and the other 1 ½" long, deep into the skull bone, which was fractured; 20

(d) On the left aspect of the forehead there was a cutting wound starting from the left eyebrow, going horizontally through the forehead and reaching the far end, 4" long, 1/2" wide, and deep into the brain substance;

(e) On the left aspect of the skull, posterior region, there was a cut wound, about 2" long, 1/2" wide, deep to the bone, which was a superficial cut; 25

(f) On the right corner of the mouth, involving the right cheek, was a cut wound, 2" long, 1/2" wide, deep into the mouth cavity and fracturing the lower jaw; 30

(g) On the left corner of the mouth, involving the left cheek, there was a cut wound, 2" long, 1/2" wide, deep into the mouth cavity, fracturing the lower jaw;

(h) On the chin there was a cut wound, 2 ½" long, 1" wide, deep into the mouth cavity; 35

(i) On the anterior aspect of the throat, at the region of the larynx, there was a linear bruise, 1" long, 1/4" wide;

(j) On the lower region, anterior aspect of the chest, there was a linear bruise 2" long, 1/4" wide;

(k) On the dorsolateral aspect of the left hand, near the small finger, there was a cut wound, 1" long, 1/4" wide and 1/2" deep into the underlying fractured bone;

(l) On the dorsolateral aspect of the right hand there was a cut wound, 1" long, 1/2" wide and 1/2" deep;

(m) Internally the brain substance was damaged multiply and free blood was in the cranial cavity;

(n) The stomach contained little quantity of digested food".

In his opinion, the aforesaid wounds were caused by forcible blows with a heavy cutting instrument and the cause of death was due to laceration of the brain substance.

Four photographs which the trial Court described as purporting to show the injuries of the victim, were taken by P.C. Akamas, on instructions from Dr. Kyamides. They were numbered 1–4 (*exh.* 9). The trial Court came to the conclusion that neither the evidence of Dr. Kyamides, nor the photographs taken gave a complete and accurate picture of the injuries on the victim. In particular injury (d) above, was found to be inaccurate and incorrect, as the photographs revealed no such injury to the left side of the forehead.

The trial Court, on the expert evidence before it, came to the conclusion that the death must have occurred within two or three minutes after the infliction of the wounds on the head of the victim, and was accelerated by some blood going into the wind–pipe when the victim was lying on his back with the chopped wounds on the face.

The leathal weapon was not found, inspite of extensive searches carried out by the Police at the scene, at the house of the appellant, the routes followed by him and in their vicinity.

The opinions of both Dr. Kyamides and the British expert, Dr. Simpson, to whose evidence I shall be shortly referring in extenso, coincide on the fact that the wounds on the victim were caused by forcible blows with a heavy cutting instrument. Dr. Simpson went further to say that it was one of the chopping

variety with a cutting edge and some weight, such as an axe or chopper. He disagreed, however, with Dr. Kyamides who was of the opinion that it was half an inch broad, as it was unsafe to rely on the width of the wounds, because when a wound is caused, the skin gapes and you cannot tell therefrom the width of the instrument used.

It was part of the case for the prosecution that the appellant was in possession of a chopper, and the evidence for that came from three witnesses, namely, Stavros Philippou, his wife Maroulla and Takis Kokkinos, who claimed to have seen such an instrument in a flat they rented from the appellant and the latter in the garage of the house of the appellant lying on a piece of fire wood.

The credibility of these witnesses was forcibly attacked by the defence, on the ground that they had many differences with the appellant, the first two with regard to the non-payment of rents, and the latter with regard to annoying the wife of the appellant; a defence witness was called and testified to that effect. The trial Court did not find the differences between the appellant and the Philippou couple of such a nature, as to render their testimony unreliable. Likewise, although they accepted the evidence of defence witness Fridas, they did not consider it as sufficient reason for Kokkinos telling lies as to the existence of the chopper. They accepted the evidence of the three witnesses for the prosecution that the appellant possessed a chopper, as true, and that it was immaterial if the instrument used was found by the Police or not, so long as from the evidence, a chopping instrument or an axe, with some weight, was used to kill the victim. One wonders if the possession of such a common household appliance was so significant to be established.

Professor Keith Simpson who is an M.A. Oxon, Doctor of Medicine at the University of London, Fellow of the Royal College of Physicians, Senior Home Office Pathologist, a University Professor of Forensic Medicine, a Member of the Home Office Scientific Advisory Council, author of books on this field and editor of the current two volumes of "Taylor's Principles and Practice of Medical Jurisprudence", lecturer, specialist in forensic medicine with forty years behind him and personal file records of more than 100,000 post-mortem examinations, was approached by the Cyprus Police for his professional assistance in the case under investigation. For the purpose, he

was requested and attended, on the 16th December, the offices of the Cyprus High Commission in London and there he met Inspector Adradjiotis who produced to him a plan of the S.E.K.E.P. premises, the bundle of photographs (*exhibits* 6–9), 5 the post–mortem report of Dr. Kyamides and a pair of shoes (*exhibit* 16), which, on the following morning were examined in the presence of Inspector Adradjiotis, at New Scotland Yard Laboratory under filtered light and by photography. The photographs were taken in his presence and are *exhibit* 102. 10 Inspector Adradjiotis further recounted to him such evidence as he knew of the case, in his capacity as a police officer, so as to set the background for him. He was asked a number of questions and in particular, if he could reconstruct the course of events that had ended in the victim lying there dead where he 15 was found.

The plan in question (*exhibit* 2), was prepared by Inspector Seimenis to scale, several days after the removal of the dead body from the scene and it was based on measurements and information given to him by Inspector Komodikis. That was 20 based on a rough plan the witness first prepared, but a comparison of this plan with the photographs in *exhibit* 6, reveals that it gives wrong measurements and information. In fact, Professor Simpson did no keep it, he returned it to Inspector Adradjiotis without using it as material for his opinion. 25 He only looked at it in order to get an idea of the layout of the premises where the dead body was found.

The testimony of Professor Simpson runs into 74 pages of the transcribed record, of which 12 pages contain the examination–in–chief, and with the exception of five pages for the re–examina- 30 tion, the remaining 59 contain the extensive cross–examination of this witness by Mr. Gorman, the counsel who led the defence at the trial. As the full force of the argument of learned counsel for the appellant has been directed at the testimony of this witness, and the approach of the Court to it, I consider it essential 35 to quote verbatim the relevant part of the judgment which deals with the testimony of Professor Simpson:

"Professor Simpson told us that on the left shoe careful examination showed many blood spottings, some of which have run down the shoe. One of these spottings, in parti- 40 cular, has run down the left side of the shoe, in a liquid state and has tailed off underneath the sole of the shoe. Other spottings, notably those on the upper surface of the

tongue of the shoe, are seen better, he said, in the coloured photographs. The left shoe, Professor Simpson said, shows a number of splashes with little spots of blood mostly down its left side and along the top on the right side. Some of these have dried up as spots. Some of the spottings that are seen over the tongue and on the left side have been smeared, possibly by the trouser touching them. One of them, a little larger clot of blood, had flowed down underneath the sole.

We have already dealt with the evidence of Professor Simpson as to what, in his opinion, was the type of weapon used for the infliction of the wounds found on the head and face of the victim.

In the opinion of Professor Simpson, the course of events that had ended in the victim lying dead where he was found was this:–

The deceased must have at first been assaulted whilst standing in the region shown in photograph 12 where the locks of hair and a few drops of blood are seen. These locks of hair are an indication that these were from the first wounds the victim received. It was highly unlikely that the locks of hair found could fall from the weapon used because the weapon would by that time be heavily stained with blood and the Professor went on to say that if the victim was alert and able to see that he was about to be attacked, that is to say, if he was facing and able to see his assailant, he would raise his hands to his head in a protective way in an attempt to protect himself from the assault. This, the Professor said, explains the two shallow wounds found on the head of the victim and the injuries to his hands. The victim then partly disabled, perhaps by the first injuries he received, had either staggered or turned round to fall on his head on the spot where there is an area of blood and which appears in photograph 7 of *exh.* 6 on his right–hand hip region and then he fell and rolled onto his back to lie in the position he was found.

Professor Simpson said that the more major injuries to the brow and face were virtually certain to have been inflicted whilst the victim was lying on the ground, after he was perhaps unable to raise his hands because of the injuries he had already received.

The splashing of blood, which is seen in the photographs of *exhibit* No. 6 around the head, on the floor, the waste-bin, the wall and further back on the chair, were caused by repeated blows whilst the victim was unconscious or partly 5 unconscious.

Two types of drops of blood are seen at the scene, Professor Simpson said, and these he would expect to be there. They are drops falling perhaps nearly vertically and drops, further away, perhaps running or half-running 10 splashes showing the pear shape or tailed shape which comes when the splashes strike the floor at an angle. These splashes were undoubtedly the result of wounds being repeated into a bleeding head whilst the victim was lying in the position he was found. He further said that when 15 blood is welling up into the injured tissues and you strike that, the blood splashes.

The Professor went on to say that the assailant must have been in that area in front of the chair which is virtually free of blood and which is shown in photographs 7 and 14 20 of *exhibit* No. 6. This area is on the right-hand side of the victim and except for a mark that looked like a footprint, which appears above the figure '14' of the photograph and which Professor Simpson said must have been that of the victim, the rest of the area is virtually free from 25 the splashing which is around the head, on the chair and the waste-bin. This fact, the evidence of Dr. Ashiotis to the effect that the stains on the chair were not so much on the edge but on the back of the seat, the fact that the chopping wounds on the face were set almost straight across the 30 mouth and were deeper on the right-hand side than on the left, are evidence that the blows were inflicted from the right-hand side of the victim and that the assailant was almost certainly in the free of blood area immediately in front of the chair and that the assailant was either standing, 35 stooping or kneeling protecting that piece of floor from blood stains.

Professor Simpson said that it is clearly certain, if not absolutely certain, that if he was right in that the assailant stood in the area he described, that the left shoe of the 40 assailant was nearest to the head from where the blood was coming; that the stains appearing on the left shoe came on

that shoe whilst repeated blows were splashing blood from the head and face and that this shoe had taken the blood stains which might otherwise have marked the floor. The other shoe, he said, did not get stained because it was out of the way. It was at the time of chopping that the spla- 5 shing occurred and Professor Simpson was almost certain that the assailant would have blood going onto his clothes. Professor Simpson said that the blood on the shoe did not get on it because it wiped against the bloody clothing of the body nor have the stains on it come from stepping into 10 the blood because if the shoe had stepped into the pool of blood, he should see blood coming over the walls of the shoe and over the sole. The splashes on the shoe were quite inconsistent, Professor Simpson said, with the accused approaching the body as they are not smeared in any way 15 as they would be by going close to the body and touching it. If that were the case, there would be markings down the sole. The splashes on the shoe are of the same type that are to be found on the floor and they must have gone on the shoe at the same time when those splashes were caused, 20 that is to say, when the head wounds were inflicted. Dr. Simpson expressed the view that it might have been almost impossible to go near enough to the body to see it properly or feel it without marking the shoe on the floor or without smashing or spoiling any of the blood stains and he did not 25 see any of them that have been squeezed out or pushed into a new shape on either side of the body.

Professor Simpson excluded the possibility that the victim had been killed in any other place and moved to the place where he was found because if this happened, he would 30 expect to see signs of the body being dragged or brought there or moved.

The explanation he gave about the splashing getting on the shoe is really, he said, the only likely explanation and he could not accept any other acceptable explanation. 35

As regards the blood found on the left sock, Professor Simpson said that he would be surprised if there was no blood on that sock.

Professor Simpson was cross-examined for long on the opinions he expressed; he was also cross-examined 40 rigorously on each and every particular or material which

he had at his disposal and on which he said that he based his opinions. He was asked what is the practice that he himself follows in carrying out postmortem examinations, what is his method of obtaining the necessary information which will help him to form his opinion and he was also asked to tell us at what time he formed the opinions he expressed in this case.

Professor Simpson in cross-examination told us that the standards he sets for carrying out post-mortem examinations and for obtaining the information that will help him to form his opinions are higher than those supplied to him in the present case. He conceded that both the post-mortem report of Dr. Kyamides as well as the photographs of the victim, *exhibit* No. 9, which show only a few of the wounds, were inadequate and not perfect in every respect but in re-examination he said that his conclusions were based on the evidence he had and though it may have been inadequate in some respects, in general it set out the facts that he needed clearly enough for him to form his opinion.

The defence suggested to the Professor two alternative ways by which blood could drop on the left shoe of the accused. The first alternative is that drops could land on the shoe by lifting the head of the victim and dropping it in the pool of blood. This alternative Professor Simpson rejected after he explained that if the head was dropped even in blood, that was still liquid, then there might be some displacement of blood but not spraying into the air which is evident from spots found on the shoe. If this took place, he said, then he would expect to find a lot of blood in the area of the sole of the shoe. Fresh blood, he said, in the circumstances suggested by the defence, would go sideways at about that same level and he would expect to find blood on the part of the shoe that was closest to the floor. Blood could not be lifted into the air as high as the shoe and then drop on it. Blood in order to drop on the shoe had to rise above it and drop on it.

The second alternative suggested by the defence was that the blood that was found on the shoe could be the result of the accused shaking his hand. With this alternative the Professor agreed but added that the shaking of the hand in order to produce the fine spots that were

found on the shoe had to be with the fingers spread, the hand had to be over the left side of the left shoe, it had to be quite heavily stained with blood and the blood had to be running blood and not blood smeared on the hand or in jelly form. Professor Simpson also said that spots could also get on the shoe if the head of the victim was shaken but no such allegation was put forward by the accused, and we need not, therefore, examine in our judgment this possibility".

I revert now to the movements of the appellant on the day of the offence as from the time he was seen by Vartholomeou leaving the premises carrying some papers under his arm and when he told her that he would be returning in half an hour, and not to forget to clean the basement, until just before 11.50 when he was seen by Sgt. Paphitis arrive in his Alfa Romeo car at the back of the S.E.K.E.P. premises. In this respect, there is the evidence of several witnesses who saw the appellant at different parts of the town, and the statements of the appellant himself, regarding his movements.

After the appellant was remanded in custody by the Court, he asked to make a statement which, as he said, should have been made the day before, so that certain points should be clarified, but which, on account of his psychological state was unable to do, and intended to give the statement, having seen his lawyer. This is *exhibit* 34 and reads as follows:-

"After the threatening telephone call to my colleague Kimon Charal yesterday, 20th November, 1975 by unknown person or persons and after short conversation with Kimon Charal and after he requested me to go to the kindergarten of his son and to Parissinos quarter for the discovery of possible suspicious material for the safety of his son, I did it. On my return from the Parissinos quarter, I circulated with my car in the vicinity of our offices, and after I parked my car I returned to my office. When I entered our office I found the body of my colleague Kimon Charal with the wounds. On seeing him lying in the blood, I was shocked and with mechanical movements I approached the body and bent over it. At the same time I noticed blood on my right hand and after from the blood and the state of the body which had been hit and connecting the crime with the relevant telephone call which he had received that morning, I ran away. On leaving, I went to my house

under shock from panic, with mechanical movements I changed clothes, took the Alfa Romeo car, as it was in the road outside the garage, and mechanically I went to the Bank, Post Office and returned to my office where I found 5 the Police, I mean you, Mr. Aristocleous and others. On strict instructions from my lawyer I shall not reply to your questions or make any other statement.

I intend to put to you certain questions for clarification of the points you stated. Are you prepared to answer?

10 Answer: I am obliged on account of instructions from my lawyer to refuse to answer".

When formally charged (*exhibit* 16), his reply was, "I have already given you statements with regard to this subject, and whatever I have to say, I shall mention it to the Court. I am 15 innocent".

The next statement of the appellant is the one he made from the dock at his trial, when called upon to defend himself. It reads as follows:

"Your Honour, Kimon Charal was my best friend. I 20 did not kill him. This I have continuously mentioned to the Police ever since and during interrogation. On the 20th November, I went to the offices of S.E.K.E.P. in the morning as usual, where I met Kim. Just after nine I went to the Supermarket Store nearby where I purchased two 25 cartons of milk and a packet of cigarettes. I returned to the offices of S.E.K.E.P., went into the kitchen and made drinks; nescafe and tea. Then I returned to the office, our office, where I gave the nescafe and the cigarettes to Kim. Seeing that he was disturbed, I asked him what was wrong 30 and he mentioned that he received a threatening phone-call a while ago and that they asked him to go to the Parissinos area. While drinking our drinks, he requested that I pay a visit to the area of the kindergarten of his son and also to the Parissinos area, to see or observe anything suspicious 35 or of a suspicious nature. I did so, leaving the office about 9.30. Before leaving, I mentioned to the cleaner that I would be out of the office for about half an hour and left. I returned back to the offices of S.E.K.E.P. around 10 o'clock and upon entering the office, I saw Kim on the 40 floor in a pool of blood. I was shocked and I went near

the body and tried to lift the head up. The wounds were so horrible and I dropped the head on the floor. My hand, which was full of blood, I shook trying to get rid of it, feeling sick. Then being panicked I ran out of the office, at the same time wiping my hand on my jacket. I went into the car and drove off. I was mixed up, I did not know what to think, but I thought that now that I saw the body, touched it with blood on my hand, the Police will suspect me. Also I was the only one in the room with Kim. I went home, I changed my jacket and trousers and returned back to the offices of S.E.K.E.P. There I realised that my fears that the Police would suspect me were real, because their manner when they approached towards me was far from friendly. We walked later to the car-park and then we went to the Strovolos Police Station where I repeatedly asked for a lawyer to consult with, to give me some advice as to what to do. The following day I did see a lawyer and then I made a statement which is the truth.

Your Honour, I did not kill Kimon Charal".

The picture would not be complete if no reference was made to the statement of the appellant of the 21st November, 1975 (*exhibit* 33) when the Police signified to him, after caution, *their intention to question him. He answered one question* regarding his duties at his work and when asked whether he was depositing the money he was collecting in the cash of the Council when received, his answer was, "I shall answer to all your questions when I come in touch with an advocate, and I prefer advocate Mr. Efstathios Efstathiou".

It is opportune now to deal with the rest of the evidence and the findings of the trial Court regarding the movements of the appellant on that tragic morning. We have seen him leave the premises of S.E.K.E.P. with the papers under his arm and remark to Maria Vartholomeou that he would be returning in half an hour and not to forget to clean the basement.

For the purpose of ascertaining the time this incident happened, Sgt. Paphitis timed Maria Vartholomeou on the 1st December, whilst performing the same work she did on the 20th November, but the trial Court felt that it could not rely as regards time either on the evidence of Maria Vartholomeou or on the timing of her work by Sgt. Paphitis, as it left a gap of

35 minutes between 10.10 hours when she must have finished her work, according to the witness's timing and the unquestionable time of 10.45 hours when witness Andreou went to the S.E.K.E.P. premises and I say unquestionable because about 5 five minutes later, this witness met Police Sgt. Myriantheas at the Central Bank premises nearby and the discovery of the dead body of the victim was reported over the phone to the C.I.D.

The trial Court came to the conclusion that the appellant 10 must have left the offices of S.E.K.E.P. at about 10.05 hours and that at that time the victim was already dead. It arrived at this conclusion having considered the testimony of a number of other witnesses. Efthymia Pericleous, almost a next–door neighbour of the appellant, on her way home, saw the wife of the appellant 15 driving the white Alfa Romeo car; they stopped, had a chat in the road and shortly afterwards she went to the house of the appellant where they had coffee and breakfast on its back verandah. Whilst there, she heard the sounding of a horn and the wife of the appellant left her and went to the front of 20 the house. On her return, the witness left and saw the appellant driving away in the small Honda car. About ten minutes later, whilst at her house, she saw the appellant return to his house, stay there for another ten minutes and then she heard and saw the wife of the appellant drive the Alfa Romeo car and park it 25 outside the gate of their house, with which the appellant drove away; Efthymia then went to her house. Shortly afterwards she heard foot–steps and saw the wife of the appellant carrying a barrel, in effect the metal container in which the burnt clothing of the appellant was found later by the Police.

30 On the other hand the appellant was seen by Charalambos Sofocleous, the butcher, driving the Alfa Romeo car along Athalassa Avenue towards Strovolos. From the various distances and the time that it normally takes one to cover them, and the time the witness left his shop, the Court came to the 35 conclusion that the time when the appellant was seen by this witness could not be later than 10.45 hours.

From this, the Court substracted the time of 14 minutes that it takes one normally to drive from the premises of S.E.K.E.P. to the house of the appellant and the time he was seen spending 40 to, from and at his house by Efthymia Pericleous, and the time it took him to reach the spot where he was seen by Sofocleous, and arrived at the conclusion that the appellant left the premises

of S.E.K.E.P. at 10.05 hours. From his house, the appellant went to the Central Co-operative Bank and met Savvas Charalambides, the secretary of the Co-operative Savings Bank and the Loans to Students' Fund. He stepped into the witness's office, he said good morning and asked about some rules regarding a scheme for sickness benefits for the staff of the Co-operative movement, as they would use them as a model for the staff of S.E.K.E.P. Apparently, before he had visited this witness he had gone to the second floor of the offices of the Co-operative Central Bank, where he met witness Michalakis Eracleous of the Co-operative Central Bank, according to whose testimony the time must have been between 11.30 and 11.45 hours, to make a lodgment for the S.E.K.E.P. It consisted of one lodgment for the current account of the Provident Fund of the employees and the other one in the deposit account. The appellant, however, unlike previous occasions when he would himself fill in lodgment slips, on this occasion, being in a hurry to go to the third floor, he left two cheques with witness Eracleous and the lodgment slips were completed, one by this witness and the other one by a colleague of his. Five minutes later, he was seen by this witness leaving the Bank.

According to the appellant's own testimony, he also called at the Post Office and then went back to the scene, though he knew as from 10 a.m. when he returned from his alleged trip to Parissinos and the kindergarten, that his colleague and friend had been chopped to death. Of all the days that he had to find out if the Regulations for the medical care of the Co-operative officers were ready so that they would be used also for the S.E.K.E.P. employees, he had chosen that fateful day to hurriedly make certain payments into the accounts of S.E.K.E.P. and the Provident Fund of his employees and visit witness Charalambides to find out about Regulations that should really not have been given such priority and importance than going back to the scene of the crime and find out about the developments regarding the death of his friend and colleague.

The motive for this brutal crime was found to be the state of the accounts kept by the appellant and the deficits of the cash in hand. The so-much postponed audit took place as part of the Police investigations and a deficit amounting to £47,249.— was discovered, for which the appellant was solely responsible. Also, a number of cheques which were given to the appellant for the payment of S.E.K.E.P. products sold to them, were paid

into the personal account of the appellant or the account of ELIANA CO. LTD. After the murder, eight uncashed cheques given to the appellant in payment of olive oil bought by prosecution witness Afxendis Petrou of the total value of £26,000.— were found locked in one of the drawers of the appellant's desk. They had been received by him long before the murder was committed and they were not deposited in the bank account of S.E.K.E.P.

The audit for the year 1973 which was carried out during the coup d' etat and the Turkish invasion in July 1974 was not very thorough and debts amounting to £28,000 were not in fact verified by the accountants.

In June—July, 1975, Charalambous, the Manager, checked the books kept by the appellant and noticed that he had made no entries in them for the preceding three months. He asked explanations from the appellant who said that it would be a matter of days for him to make the necessary entries in the accounts and bring the books up-to-date.

In October, 1975, employees of Yiamakis carried out a preliminary audit of the books kept by the appellant and it was found that although the receipts of money collected had been entered in separate loose statements, the invoices for these sales were missing and when the appellant was asked about them his answer was that they were not available as they remained at Kyrenia where they had been taken for checking purposes. The allegation of the appellant about the missing invoices was the subject of a discussion between himself and Yiamakis. There were missing entries in the loose leaf sheets and generally speaking the books kept by the appellant were untidy as compared with the books kept by the victim which were in perfect order and properly kept and which were not needed by the accountants for preliminary audit, but they would be vital during the final stages of the audit, as would verify the accounts kept by the appellant and in particular the collections of money from sales.

The trial Court found that the appointments made for the visit of the auditors at the S.E.K.E.P. premises for the purpose of auditing the accounts were, on several occasions, adjourned at the instance of the appellant.

The trial Court further observed that "these books therefore, could prove to be a very unpleasant source of information against the appellant when checked and audited and would

expose him, coupled with the presence of the victim, who could be a further source of information, a live one, and who could verify the entries he had made in his books to the auditor and to the Board of S.E.K.E.P. these would be damning evidence against the accused because then these books would not be just mere numbers recorded on sheets of paper which the accused could easily say that he had no knowledge of. If the victim got out of the way, the accused could stick to his version that the invoices had been lost in Kyrenia and nobody could question his allegation. The victim, was, therefore, the stambling block for the efforts of the accused to conceal his embezzlement and, if alive, he could further disprove accused's allegation that the invoices were left behind at Kyrenia and that was the reason that they were missing. The victim definitely knew that no invoices or receipts were left behind as he was the supervisor of the accused and he had already entered their particulars in his books".

The trial Court then considered whether this deficit and the state of the accounts kept by the appellant might be considered as a possible motive for him to kill the victim and on this point it concluded:

" Having considered the evidence regarding the deficiency, the conduct of the accused during the period that the auditors were ready to carry out the audit, i.e. the postponements of the appointments with the auditors at his instance and the fact that on the day the murder was committed, Yiamakis would visit S.E.K.E.P. for the final stage of the audit, we find that the accused had a possible motive, in fact a strong motive, to kill the victim.

One may wonder, and the defence has made a point of this, that if this was the motive for the accused to kill the victim, why he left the books that the victim kept behind him. The defence has suggested that these books in themselves might afford evidence implicating the accused with the deficiency and one would have expected the accused guarding against such probability to take away the books and destroy them. We feel that if the accused had at that moment taken the books away, it would be as if he was pointing his finger to himself as the killer and would have given the police good cause to treat him as the No. 1 suspect.

Considering all the above, we find that the prosecution

proved that the accused had a strong enough motive for wanting to get the victim out of his way".

The alternatives suggested by the defence as to how the blood spots found on the shoe of the appellant got there, were examined by the trial Court, on the basis of the evidence before them with a view to ascertaining whether any one of them could be accepted in lieu of the "original opinion expressed by Professor Simpson". In that respect, they examined the contents of the statement of the appellant to the Police (*exhibit* 34), hereinabove set out, his unsworn statement before them, as well as the rest of the evidence.

The suggestion that blood could drop on the shoe of the appellant when he released the head of the victim and it fell on the ground, was dismissed, not only because of the opinion of Professor Simpson, but also because of the findings of Mr. Ashiotis who noticed, after the body was removed, that the area which was occupied by the head of the victim was clean of blood.

The other alternative to the effect that the blood spots found on the left shoe could be the result of the appellant shaking his hand, was also rejected by the Court. Professor Simpson said that for that to happen, the blood shaken from the hand must have been running blood, not smeared on the hand and not in jelly form. The hand had to be shaken with the fingers spread and it had to be over the left side of the shoe and had to be heavily stained with blood, which meant that the appellant should have arrived at the scene of the crime when the blood was still in liquid form. Further, the foot at the time the splash landed on the shoe and ran down to reach the instep, must have been resting on the toes. This splash must have taken quite some time to reach the instep of the shoe or very near its top, in fact, much longer time than when the foot remains on the toes when one walks. Even if the accused was standing with the whole foot resting on the floor, the flow of the splash could not be oblique, but it would be vertical and also, had the appellant shaken his hand whilst standing, it could not be possible for the splash to get on the left top of the shoe and the sock, as that part of the shoe and the sock would be covered by his trousers.

The claim that the appellant was standing at the left of the victim, was also dismissed, as there were splashes and spottings of blood covering the area and none of them were tampered with, trodden upon, squeezed out or pushed into a new shape

which would have happened had the appellant approached the victim from that side.

The trial Court also concluded, and that, having regard to what had earlier been said by it, that the only possible explanation which, in their view, was a certainty, was that the appellant was standing at the clear area in front of the chair, to the right of the victim, and that the stains that got on his shoes and on his sock dropped there, whilst he was repeatedly assaulting the victim and that by standing there he prevented with his legs and body, the splashing of the blood of the victim onto the floor.

The trial Court made further a number of findings regarding the conduct of the appellant on the day of the murder which, conduct, revealed an effort on his part to avoid being implicated in the crime and in order to lead the Police to a wrong track, by attempting to build up an alibi, to conceal facts and tell lies. In this respect, it was pointed out that although the appellant was himself alleging in his statement to the Police (*exh.* 34) and his evidence in Court that he had seen his colleague and friend dead on that morning lying in a pool of blood, yet, he pretended ignorance when he met on his return to S.E.K.E.P. Sgt. Paphitis and merely asked if his colleague had been assaulted. He pursued that pretence when soon afterwards he met witness Koumides. His explanation for that was that he was afraid that he would be suspected by the Police and he said in fact his fears proved to be well founded, judging from the unfriendly manner, as he claimed, the Police approached him. Also, he was not telling the truth, when asked by Chief Superintendent Aristocleous as to how he left the office on that morning, he said, that he did so in his Alfa Romeo car, whereas the truth was that he left in the Honda car, an opportunity used to dispose also of the weapon that he used to kill the victim, which, weapon, was the chopper that had been seen by the Philippou couple and Kokkinos. In fact, later in their judgment they made a finding that the heavy chopping instrument with which the killing was committed, was brought to the S.E.K.E.P. premises, was not one that was available there and that it was taken by the appellant to the office, the latest on the morning of the murder. They concluded also that the appellant after killing the victim, went to his office desk holding the chopper for the purpose of wrapping it up, hence the Police found on a piece of paper on the desk one round vertical and two smeared drops of blood, and that the papers he was seen by Vartholomeou carrying when he left, contained the leathal weapon.

They further dismissed his claim that after he found his friend murdered he acted with mechanical movements, both when he approached the dead body and when he went home and changed his clothes, changed car and visited the Post Office and the Co-operative Bank for purposes, as already seen, that were neither pressing nor necessary and could only be explained as an attempt on his part to build up an alibi, behaving at the same time coolly and without any indication of shock or nervousness. They did not also accept as true the allegation of the appellant that he went to the kindergarten of the son of the victim or to Parissinos quarter.

Learned counsel for the appellant has argued at length that the findings of the trial Court that the appellant delivered on the victim the fatal blows and/or that his left shoe was stained with blood whilst he was delivering the fatal blows and/or with regard to his position whilst so delivering them, were wrong, for a number of reasons. To put it briefly, it was claimed that it was Professor Simpson who tried the case and not the Court; that they failed to evaluate his evidence and test the accuracy of the conclusions of this expert and in fact the conclusions of the Court were those of Professor Simpson who was considered by the Court, according to counsel, as possessing supernatural powers; they failed to draw their own independent conclusions as to how the fatal blows and by whom were delivered; that the opinion and the conclusions of Professor Simpson were based not on proven facts but on the assumption that the appellant was the culprit and on inaccurate and mistaken material, such as the photographs of the scene and the post mortem report and also on material, the correctness of which could not be tested either by the expert or the Court. It was urged, that Professor Simpson started with the idea that the appellant was guilty by proceeding on the assumption that he who wore the shoe was the assailant. It was also argued that this witness changed his opinion in the course of his testimony and that at parts he was more positive and at others not so.

In the second set of arguments it was claimed that the trial Court failed to examine the totality of the evidence and in particular, that which was equally consistent with the innocence of the appellant. For that purpose, reliance was placed on the fact that a third alternative put to Professor Simpson with which this witness agreed and which was to the effect that the spots on the left shoe (*exhibit* 16) could also get thereon if the head

of the victim was shaken, was not examined by the trial Court because, as they say in their judgment, no such allegation was put forward by the appellant.

Another set of arguments relates to the findings of the Court as to the lethal weapon, the possession of a chopper and the evaluation of the evidence on this issue, the conduct of the appellant and the failure of the trial Court to examine the friendly relations that existed between him and the victim. Also, the situation of the scene of the crime as regards the road and its accessibility to various people which rendered improbable the commission of the offence by the appellant who, working there, was aware of all these circumstances that could enable one accidentally to witness its commission and, therefore, unwise for him to commit same.

In view of the role that the expert evidence has played in this case, I consider it pertinent to summarize the law on the matter. As pointed out in Cross on Evidence 4th Ed. p. 384, "the Courts have been accustomed to act on the opinion of experts from early times. As long ago as 1553 Saunders, J., said:

> " If matters arise in our law which concern other science or faculties we commonly apply for the aid of that science or faculty which it concerns. This is a commendable thing in our law. For thereby it appears that we do not dismiss all other sciences but our own, but we approve of them and encourage them as things worthy of commendation". (*Buckley* v. *Rice–Thomas* (1554), 1 Plowd. 118, at p. 124).

Of course, it was much later that expert witnesses began to play their modern role and progressively more and more use is made of them, consistent with the progress in the field of science.

The functions of expert witnesses were stated by Lord President Cooper in *Davie* v. *Edinborough Magistrates* (1953) S.C. 34 at p. 40, where he said, "their duty is to furnish the Judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the Judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence". Of course, an expert's opinion must be based on facts proved by admissible evidence.

In *R.* v. *Mason*, 7 Cr. App. R., 67, a trial for homicide, an

expert medical witness, who had not seen the dead body but had heard its condition described by witnesses in Court and where the defence was that the deceased had committed suicide, was asked whether it was his opinion that the fatal wounds had been inflicted by someone other than the accused. It was held that his evidence was clearly admissible and was rightly dealt with in the summing up as an opinion based on an assumed state of facts. This principle is to be found also in the case of *Mitas* v. *Rex*, 18 C.L.R. p. 63, where, in respect of the evidence of an expert who had not seen the corpus delicti was said that evidence of that kind must clearly be received with the greatest caution and it is usually given with no less. The *Mason* case, however, (*supra*) has also, in my view another significance, because of the phrase "on an assumed state of facts" appearing at the end of the judgment. It suggests, that experts inevitably have to be asked questions requiring them to assume the existence of certain facts, and it is for the Court to determine, on the evidence adduced before it, about their existence or not, as at the stage of giving evidence, an expert can only assume of their having been proven. In this respect, the danger of the expert usurping the functions of the Court, is avoided, inasmuch as the determination of the facts upon which a conclusion may be drawn, is made clear, that it is left to the Court. This is why I see no objection to a question against which extensive argument was advanced on behalf of the appellant. This happened when, in the course of his testimony, Professor Simpson was asked as follows: "Considering the position of the body, as it is shown in the photograph, *exhibit* 6, the nature of the wounds, the distribution of the blood around the body and the stains on the shoe, on the left shoe, *exhibit* 16, and assuming that the left shoe was worn by the person who was at the scene and that the blood on the shoe was human blood belonging to the victim, can you tell the Court how the blood found its way on the shoe?". His answer was, "I think it is clearly certain, if not absolutely certain, that if I am right in that the assailant stood in that area, his left shoe was nearest to the head where the blood was coming from". And then he went on to say that "whilst repeated blows were splashing blood from the head and face this shoe has taken the blood stains which might otherwise have marked the floor. And the other shoe having none, was out of the way, further away and not likely to be stained". The use of the phrase "assuming that the left shoe was worn by the person who was at the scene", suggests, to my view, not the conclusion that the appellant, who, according to the evidence

was wearing that shoe on that fateful morning but assuming the Court will reach that conclusion how was it blood stained, a matter which presupposes expert knowledge within the field of the witness's science.

Two more cases may be worth mentioning. The one is *R.* v. *Lanfear* [1968] 1 All E.R. 683, where Diplock L.J. said, that "The evidence of a doctor giving medical testimony at a criminal trial should be treated, as regards admissibility and other matters of that kind, like that of any other independent witness, but, though a doctor may be regarded as giving independent expert evidence to assist the Court, the jury should not be directed that his evidence ought, therefore, to be accepted by the jury in the absence of reasons for rejecting it".

The other is *R.* v. *Turner* [1975] 1 All E.R. p. 70 where it was held that an expert's opinion is admissible to furnish the Court with scientific information which is likely to be outside the experience and knowledge of a Judge or jury. Provided, however, that if on the proven facts a Judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary. Relevant is also the remark of Lawton, L.J. at p. 74 that "The fact that an expert witness has impressive scientific qualifications, does not by that fact alone, make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves".

Having considered the evidence of Professor Simpson in the context of the totality of the evidence and the manner approached by the trial Court, I have come to the conclusion that it was given no more importance either because of the witness's impressive qualifications and long experience, or on account of its substance than it deserved to be given because of its positiveness on all material aspects on which the Court relied and the impartial and fair manner in which it was given. In fact, the main alternative upon which the defence has tried to build up their own case, comes from this witness who did not exclude the possibility of the splashing of the blood on the left shoe being caused by the shaking of the head of the victim, it is rather ironic, than the testimony of a witness so forcibly attacked as being self-contradictory at parts and containing elements of uncertainty should be also sought to be relied in support of the innocence of the appellant. This evidence constituted a link in the chain of circumstantial evidence which

the prosecution built around the appellant. It is not correct to say that the trial Court accepted only those parts of the evidence of Professor Simpson which were tending to show the guilt of the appellant and not the contrary. The trial Court examined the whole of the evidence of this witness, and it dealt with it in extenso, that can only be explained by the length at which this witness was cross-examined, suggesting also the importance the defence attached to this link of circumstantial evidence. This witness never failed to allow room for doubt and use words like, "likely", etc., where that was possible on the scientific tests he was using. But that does not make him, as suggested on behalf of the appellant that it was not the sort of evidence that could be relied upon. On all material points his testimony was unshaken and duly supported by the proven facts of the case. It is correct that the Common Law rule is that an expert witness may not be asked the question which the Court has to decide, although, as pointed out in Cross on Evidence (*supra*) at p. 388, "several criminal cases suggest that it is being eroded", yet, in the present case, it cannot be stated that Professor Simpson was asked to answer the very issue that the Court had to decide. As already pointed out, the evidence of Professor Simpson, was a link in the chain of circumstantial evidence which the Court accepted and upon which it made definite findings most of which have already been referred to in this judgment.

With regard to the complaint that the trial Court failed to examine the possibility of the splashing on the left shoe and socks of the appellant having been caused by the shaking of the head of the victim—a possibility not excluded by Professor Simpson—it should be pointed out that the trial Court followed this course as a consequence to its finding that there was nothing in the evidence leaving room for such possibility. This was particularly so after it excluded the claim that the appellant on seeing his colleague dead, was shocked and acted mechanically thereafter.

Therefore, this is not a case where a trial Court bound as it is, to consider not only the theory of the prosecution but also any alternative theory that is possible and consistent with the evidence it failed or refused to do so or did not do so adequately, as pointed out in *R.* v. *Turkington*, 22 Cr. App. R. p. 91, where it was held that the Court was bound to consider not only the theory of the Crown, but also the theory that was strongly

urged on behalf of the defendant and that if that alternative theory was possible and consistent with the evidence, the appellant was entitled to be acquitted. But of course, the alternative theory has to be possible and consistent with the evidence, which was not so after the finding of fact made by the trial Court. In fact, in the *Turkington* case there was evidence by the appellant and nothing to contradict it as to the circumstances the fatal blow was delivered on the victim in that case. Nor is it a case where the trial Court failed in its undoubted duty to deal adequately with any other view of the facts which might reasonably arise out of the evidence and the material before them, as it is on the evidence and the evidence alone that an accused person is being tried. (See *Mancini* v. *Director of Public Prosecutions* [1942] A.C. 1).

In this case, there was no material left to be examined after the trial Court ruled out the possiblility of the head having been shaken mechanically through the shock of the appellant and after accepting the rest of the evidence which connected the appellant with the commission of the crime rather than with being the person who discovered the victim in that dreadful state. But I shall be referring further to the *Mancini* case cited with approval in the case of *Dervish Halil* v. *The Republic*, 1961 C.L.R. p. 432, when I shall be dealing with the question of premeditation and the possibilities, if any, of there being any provocation or other circumstances that could reduce the offence from premeditated murder to homicide. Suffice it to say now, that in view of the very statements of the appellant and the findings of the trial Court already referred to, it would be a mere speculation to say that the splashing on the left shoe of the appellant was caused by a mechanical shaking of the hand which the appellant though being shocked did not notice, hence he did not speak about it.

It was argued that the trial Court treated the evidence of Professor Simpson as if it were a gospel and tested the rest of the evidence with it. In this way, the trial Court misdirected itself on the burden of proof which is on the prosecution, by shifting same on the appellant in such a way as he was expected of him to establish his innocence. I have already dealt with the significance of the evidence of Professor Simpson and the way the Court approached same. This proposition is not borne out from anything said in the judgment of the trial Court.

No doubt, it is the duty of the prosecution to prove the

prisoner's guilt and if at the conclusion of the trial, considering the totality of the case, there is reasonable doubt, then the prosecution has failed to make out a case against the accused who is, therefore, entitled to be acquitted. I need not cite the much quoted passage from the case of *Woolminghton* v. *D.P.P.* [1935] 25 Cr. App. R. 72. Of course, in criminal trials in which the case against the accused depends wholly or substantially on circumstantial evidence after the facts sworn are proved a Court must decide not whether these facts are consistent with the prisoner's guilt, but also that they are inconsistent with any other reasonable conclusion, other than that the prisoner committed the act. The reiteration of this principle is to be found in the case of *R.* v. *Hodge* [1838] 2 Lewin, p. 227, in the case of *McGreevy* v. *D.P.P.* [1973] 1 W.L.R. p. 276 at p. 282, as a case reported not because it laid down a new rule of law, but because it was thought to furnish a helpful example of one way in which a jury could be directed in a case where the evidence was circumstantial for which, as pointed out in Kenny's Outlines of Criminal Law, 19th Ed. 1966, p. 466, "no distrust ...... has been shown by English Law". It may be interesting to observe that in the *McGreevy's* case, reference is made to the painstaking research of counsel appearing for the appellant which showed that in some countries in the commonwealth both Judges and legal writers made reference to the "rule in *Hodge's* case" which was not given such very special prominence in the home to the Common Law, as observed by Lord Morris of Borth-y-Guest (at p. 282).

One wonders if the Cyprus case of *R.* v. *Mentesh*, 14 C.L.R., 232 where at p. 245 reference is made to the *Hodge's* case and the principle laid down therein was one of those cases from commonwealth countries cited as an example of giving prominence to the *Hodge's* case, a situation which reveals the close links of our country the legal system of which stems from the English Common Law.

Connected also with the burden of proof is the contention of the defence that the trial Court made up its mind too early about the guilt of the appellant and then examined the rest of the evidence. This is an argument relating more to the style and the manner in which a judgment is written rather than to its substance. Three experienced Judges having heard the evidence day after day, for weeks on, reserved their judgment at the conclusion of the trial and delivered it some days later. It is

only reasonable to infer—and there is nothing in the judgment itself to suggest the contrary—that having deliberated they made their findings, drew therefrom their conclusions and arrived at the verdict they did and then they proceeded to write their judgment in the manner and following the sequence that they thought more proper in the circumstances and in view of the mass of evidence adduced. I cannot subscribe to the view that they really made up their mind too soon and then tested their conclusion with the rest of the evidence. In fact, as it appears from the judgment itself, they were all along comparing the various pieces of evidence with what they thought was materially relevant to each other, as well as with the relevant parts of the case for the defence.

Having carefully and anxiously considered the findings of the trial Court and its conclusions drawn therefrom and bearing in mind the principles upon which this Court will interfere with such findings as set out in a number of cases, I have come to the conclusion that the appellant upon whom the burden of proof lay, has failed to persuade me that such findings and conclusions, considering the evidence on record properly assessed, are unreasonable. (See, *inter alia*, *HjiSavvas alias Koutras* v. *The Republic* (1976) 2 C.L.R. 13 and the authorities cited therein at pp. 57–58).

The whole of the relevant evidence has been critically examined at length by learned counsel on both sides and it does not seem to me necessary to discuss it again. Suffice it to say that those circumstances accepted by the trial Court were not only consistent with the appellant having committed the act, but also the facts were such as to be inconsistent with any other rational conclusion.

In addition to all other circumstances, there was evidence of motive which, as such, is immaterial so far as regards criminal responsibility in cases like the present one, as expressly provided by section 9 of our Criminal Code, Cap. 154, yet, facts which supply a motive for a particular act "are among the items of circumstantial evidence which are most often admitted". (See Cross (*supra*) p. 34). "It is always a satisfactory circumstance of corroboration when in connection with convincing facts of conduct an apparent motive can be assigned" (Wills on Circumstantial Evidence, 7th Ed. p. 64) though it is not necessary for the prosecution to adduce any evidence as to why an offence, and in particular a murder was committed. As

pointed out in *Vrakas and another* v. *The Republic* (1973) 2 C.L.R. 139 at p. 177 and after referring to the case of *R.* v. *Treacy* [1944] 2 All E.R. 229 at 232, "It was not, therefore, necessary that the Assize Court should have reached absolutely definite conclusions regarding the motive of each of the appellants; and it was open to the Assize Court to make findings about possible or alternative motives, constituting circumstantial evidence which tended, together with the rest of the evidence, to establish the guilt of each one of the appellants". Therefore, the claim that the appellant did not commit the act in question, fails.

I turn now to the question of premeditation. By the introduction of the Criminal Code in 1928 and the provisions of section 3 thereof that its interpretation was to be in accordance with the principles of legal interpretation obtaining in England and expressions used therein were to be presumed so far as consistent with their context and except as may be otherwise expressly provided to be used with the meaning attached to them in English Criminal Law and be considered in accordance therewith, the door was opened to a concurrent reception of the English Common Law. This introduced also the concept of malice aforethought under the English Common Law, a fact, which brought strong opposition to the enactment of the Code. Ironically, some 33 years later, and upon Cyprus becoming independent, the concept of malice aforethought introduced by the Criminal Code in 1928 was found to be unconstitutional as being inconsistent with the notion of premeditation to be found in Article 7.2 of the Constitution, whereby no person would be deprived of his life except in the execution of a sentence of a competent Court following his conviction for an offence for which his penalty is provided by law and a law may provide for such penalty only in cases of premeditated murder, high treason, piracy, jure gentium and capital offences under military Law. In the case of *The Republic* v. *Nicolaos Pantopiou Loftis*, 1 R.S.C.C. p. 30 at p. 33, it was held that the word "premeditated" in the said context limited the imposition of death penalty to premeditated murder. The use of such words conveys the notion of premeditated murder, as understood by Continental legal systems and in particular by the French Code Penal from which the above notion was adopted by the Ottoman Penal Code which applied in Cyprus until the enactment of the Criminal Code Order in Council in 1928.

The Supreme Constitutional Court then adopted in that

connection the exposition of premeditation, as laid down in 1908 by the High Court of Cyprus in the case of *R.* v. *Shaban*, 8 C.L.R. p. 82, at p. 84, which reads as follows:-

> " The question of premeditation is a question of fact. A test often applicable in such cases is whether in all the circumstances a man has had sufficient opportunity after forming his intention to reflect upon it and relinquish it. 5
>
> Much must depend on the condition of the person at the time—his calmness of mind, or the reverse. There might be a case in which a man has an appreciable time between the formation of his intention and the carrying of it into execution, but he might not be in such a condition of mind as to be able to consider it. 10
>
> On the other hand, a man might be in such a calm and deliberate condition of mind that a very slight interval between the formation of the intention and its execution might be sufficient for premeditation". 15

The Supreme Constitutional Court was seized of the matter by the question having been reserved for its decision under Article 144 of the Constitution; it also expressed the opinion that a case of ambiguity under paragraph (b) of Article 149 of the Constitution had arisen as it was apparent on the face of the question reserved as to whether or not the effect of paragraph (2) of Article 7 of the Constitution was to be interpreted as altering the substantive law of murder as it existed on the 16th August, 1960, or as being only a limitation affecting the imposition of the death penalty and it concluded that in view of the said ambiguity its decision in that case in so far as is related to the interpretation of paragraph (2) of Article 7 should also be regarded as a decision under paragraph (b) of Article 149 which gave to the Supreme Constitutional Court exclusive jurisdiction. It followed thereby that a binding interpretation of paragraph (2) of Article 7 of the Constitution was given and a Court could apply section 205 of the Code as modified until amended by legislation. 20 25 30 35

As a result of the decision in *Loftis* case (*supra*) the Criminal Code was amended and sections 203, 204 and 205 of the Criminal Code, Cap. 154 as re-enacted by section 5 of the Criminal Code (Amendment) Law, 1962, (Law 3/62) read as follows:-

> " Premeditated murder and homicide. 40

203.—(1) Any person who with premeditation by an unlawful act or omission causes the death of another person is guilty of the felony of premeditated murder.

(2) Any person convicted of premeditated murder shall be sentenced to death.

204. Premeditation is established by evidence proving whether expressly or by implication an intention to cause the death of any person, whether such person is the person actually killed or not, formed before the act or omission causing the death is committed and existing at the time of its commission.

205.—(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony of homicide.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty though such omission may not be accompanied by an intention to cause death.

(3) Any person who commits the felony of homicide is liable to imprisonment for life".

With regard to premeditation the trial Court referred to the case of *R.* v. *Shaban* (*supra*) and a passage from the judgment of Zekia, J. in *Halil* v. *The Republic*, 1961 C.L.R. p. 432 at p. 434 where he said:-

"The phrase 'premeditated homicide and murder' unlike the phrase 'malice aforethought', is not a term of art and it has to be taken in its ordinary meaning. When a person makes up his mind either by an act or omission to cause the death of another person and notwithstanding that he has time to reflect on such decision and desist from it, if he so desires, goes on and puts into effect his intent and deprives another of his life, that person commits a premeditated homicide or murder which entails capital punishment".

It also mentioned that they had in mind the case of *Aristidou* v. *The Republic* (1967) 2 C.L.R. 43, to which I shall refer shortly, and then said the following:-

"The case for the prosecution on the issue of premeditation can be summarised in the following points:-

(1) The killing was a very brutal one;

(2) It was committed by a heavy chopping instrument that was brought to the S.E.K.E.P. premises and was not one that was available there. This weapon must have been taken by the accused to the office, the latest, on the morning the murder was committed; 5

(3) The assailant, who is the accused, had a motive to get rid of the victim;

(4) The conduct of the accused early in the morning of the 20.11.1975 when he met the wife of the victim outside the S.E.K.E.P. offices with whom he had a 10 conversation during which he avoided looking at her face; and,

(5) The conduct of the accused immediately after the killing to which conduct, we have already referred, i.e. his attempt to build up an alibi, to conceal facts 15 and tell lies.

Having in mind the above points which are proved beyond doubt by the evidence before us, we have no hesitation in arriving at the conclusion beyond reasonable doubt that the accused killed the deceased in the execution of a 20 preconceived plan—a plan which he formed in his mind the latest when he went to his work on that morning. We further find that the accused proceeded to execute his plan although he had time to reflect on his decision and desist from carrying out his intentions. 25

Having considered the whole evidence before us, we find that the prosecution have proved their case beyond any reasonable doubt and that the accused is guilty of premeditated murder as charged".

It is correct to say that each one of the aforesaid five points 30 taken by itself, does not prove the existence of premeditation; but viewed cumulatively in the context of the whole of the evidence that was before the trial Court, a fact emphasized in the last paragraph of their judgment, hereinabove set out, were sufficient, to my mind, to justify with the certainty required in 35 criminal cases and beyond reasonable doubt, the inference that the fatal blows were delivered by the appellant on the victim in the execution of a preconceived plan which he proceeded to execute, although he had time to reflect on his decision and desist from carrying out his intentions. 40

Undoubtedly, the burden of establishing beyond reasonable

doubt the element of premeditation, is upon the prosecution, either by direct evidence or by inferring it from the surrounding circumstances of the case, and this inference of premeditation had to be not only consistent with the evidence, but the facts of 5 the case must be such as to be inconsistent with any other rational conclusion than that the act was committed with premeditation.

That there was premeditation is apparent from the brutality of the blows they started when the victim was standing in the 10 room, as suggested by the locks of hair found on the floor and continued whilst the victim was lying on the floor with his face and head already severely wounded, which is indicative of the determination of the appellant to finish him off. Connected with this, is the instrument used and the fact that it could not 15 have been found there, unless it had been intentionally brought in. The nature of the instrument used and the circumstances under which it came to the scene of the crime, are most significant factors with regard to the issue of premeditation.

It is worth noting that in the case of *Koliandris* v. *The Republic* 20 (1965) 2 C.L.R. 72, Zekia, P. in delivering the judgment of the Court at page 82, had this also to say:-

> " It was open, no doubt, to the trial Court to weigh the evidence of the expert witnesses with other evidence available before them and, no doubt, it was open to them 25 to infer, as they did, premeditation from the fact that the prisoner was in possession of a big knife which was incommodious even to carry on his person".

The aforesaid is consistent with what was said in the case of *R.* v. *Agathocles*, 8 C.L.R., p. 97, where the Chief Justice at p. 30 98 said:-

> " When a person carries lethal arms for use against others and uses them with fatal result it is strong evidence that he carried those weapons after consideration and that he had formed a design to use them as he has used them and 35 if the circumstances are not such as to justify their use in the manner they were used, his life will be demanded by the law for the life which he himself has taken".

Relevant also to the issue of premeditation, were the efforts of the appellant to postpone the audit and to delay the arrival of Koumides, the chemist of S.E.K.E.P. so that the scene would

have been clear of the embarrassing arrival of those who, tò his knowledge were likely to come there. Relevant also was the coolness in the behaviour of the appellant both before and after the killing. It was remarkable how the appellant left with that pretended concern about the cleanliness of the basement, 5 inquiring and giving instructions to Maria Vartholomeou about it. Equally significant was also his in and out of his house, the disposal of his blood stained clothes, his visits to the Post Office and the Bank where he inquired about matters of no significance and unconnected with the tragedy that had fallen on his colleague 10 and friend, which, as he alleged, he had just discovered. This conduct of the appellant not only excludes any shock or mechanical movements, as alleged on his behalf, but on the contrary, it reveals a calmness of mind which is a material consideration in determining the length of time that is usually 15 required between the formation of the intention to kill and the reflection and relinquishment of such intention before it is put into execution and from which, calmness, the inference could be drawn that there existed such premeditation that satisfied the test laid down in the *Shaban* case (*supra*). 20

The test in *Shaban's* case has been consistently applied in all subsequent cases, and the issue whether there was premeditation or not in respect of the killing in each one of them, was treated as a question of fact, depending on the particular circumstances of each one of them. This is apparent from a perusal of the 25 judgments of this Court in *Halil* case (*supra*), *Kalli* (*No.* 2) v. *The Republic*, 1961 C.L.R. p. 440, *Halil* v. *The Republic*, 1962 C.L.R. p. 18, *Pieris* v. *The Republic*, (1963) 1 C.L.R. p. 87, *Pavlou* v. *The Republic*, 1964 C.L.R. p. 97, a case where a disease of the mind was found not to amount to insanity as compared 30 with the case of *Koliandris* v. *The Republic* (1965) 2 C.L.R., p. 72, where the appellant's affliction with mental disease made it sufficient for the defence to raise reasonable doubt in the minds of the Court that there might have been premeditation, *Aristidou* v. *The Republic* (1967) 2 C.L.R. p. 43, *Ioannides* v. *The Republic* 35 (1968) 2 C.L.R. 169 and a number of other cases, as well as the case of *Vrakas* v. *The Republic* (1973) 2 C.L.R. 139.

What has been stressed in the case of *Aristidou* (*supra*) in my view, was the fact that the time to reflect and desist between the formation of the intent to kill and its execution, is not to be 40 examined merely with regard to its length alone, but in conjunction with all the relevant circumstances, including the

condition of the culprit at the time, "his calmness of mind or the reverse" and that in that case, due regard ought also to have been had to the actual condition of the appellant at the material time who was then under the influence of drink and strong passion. Nowhere in all these cases there is a measure set for the length of time needed by a culprit to reflect and desist between the formation of the intention and its final execution. It need not be a long interval, it all depends on the circumstances of the case. Considering the normal speed at which the human mind works, even a slight interval may be enough.

The next question to be considered is whether, looking at the evidence as a whole, alternative theories were possible and consistent with the evidence suggesting that the fatal blows were delivered otherwise than with premeditation. This is a duty that a trial Court has to perform, provided at the end of the case the evidence contains material on which a reasonable man could come to a verdict other than that of premeditated murder. The alternative possibilities, however, cannot be a matter of speculation, unless evidence has been adduced raising such other alternative possibilities and defences.

As stated in the case of *Mancini* v. *D.P.P.* [1942] A.C. p. 1 at pp. 11 and 12:-

> " *Woolmington's* case [1935] A.C. 462 at 482, was one in which the defence to the charge of murder was that of pure accident in circumstances not alleged to amount to criminal negligence. The prisoner gave evidence to that effect and my noble and learned friend, Lord Sankey, lays it down that 'if the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional .... the prisoner is entitled to be acquitted'. A proposition to the same effect, but in different language, had been laid down by Lord Reading C.J., in connection with a charge of receiving recently stolen goods, in *Rex* v. *Abramovitch* [1914] 11 Crim. App. Rep. 45 at 49, and was approved in the *Woolmington* decision. The law on this subject is thus finally established and is, I think, perfectly clear.
>
> (2) The language employed by Lord Sankey does not assert and does not imply that in every charge of murder, whatever the circumstances, the Judge ought to devote

part of his summing-up to directing the jury on the question of manslaughter or the jury ought to consider it. If the evidence before the jury at the end of the case does not contain material on which a reasonable man could find a verdict of manslaughter instead of murder, it is no defect in the summing-up that manslaughter is not dealt with. Taking, for example, a case in which no evidence has been given which would raise the issue of provocation, it is not the duty of the Judge to invite the jury to speculate as to provocative incidents, of which there is no evidence and which cannot be reasonably inferred from the evidence. The duty of the jury to give the accused the benefit of the doubt is a duty which they should discharge having regard to the material before them, for it is on the evidence, and the evidence alone that the prisoner is being tried, and it would only lead to confusion and possible injustice if either Judge or jury went outside it".

The aforesaid passage was cited with approval and followed in the case of *Dervish Halil* v. *Republic*, 1961 C.L.R. 432, with regard to the submission of the defence that there was room for a reasonable doubt as to the alleged provocative words. Justice Zekia said also at page 438:-

> " But as there is no evidence to support such an intervening incident—the alleged conversation between the prisoner and the victim—on the contrary the evidence being to exclude any such conversation at or immediately before the commission of the offence, we are bound to assume that nothing of the kind has taken place".

The *Mancini* case (*supra*) as well as the case of *R.* v. *Turkington*, 22 Cr. App. Rep. 91 at p. 92, were also referred with approval in the case of *Ayres* v. *The Republic* (1971) 2 C.L.R. 16, where the appellant was convicted of the offence of homicide, contrary to section 205 of the Criminal Code, but as the medical evidence was not excluding the possibility that the pressure that caused the death of the victim might have been applied without the intent necessary to establish the offence of homicide and as it was reiterated that it is up to the prosecution to establish beyond reasonable doubt the guilt of an accused person and the defence suggested the alternative theory of accident which was possible and consistent with the evidence, the appellant was acquitted. But the whole defence was possible and consistent with the evidence and it was not a matter of speculation.

Useful reference may also be made to the case of *Koliandris* v. *The Republic* (1965) 2 C.L.R. p. 72, a case where the conviction for premeditated murder was set aside and a conviction for homicide under section 205 of the Criminal Code, as amended, was entered against the appellant, on the ground that though open to the trial Court to infer premeditation, it could not be lost sight of the facts that the prisoner was afflicted with a mental disease, that he had no motive or reason to attack and kill the unfortunate victim and that it was sufficient for the defence to raise reasonable doubt in the minds of the Court that there might not have been premeditation in that case. In other words, the prisoner might all of a sudden have conceived the idea of attacking and killing. It is worth noting that the doubts regarding the existence of premeditation or not, arose out of the evidence adduced and the clarifications made by the recalling of the medical expert, and the fact, that as stated by the Court in its judgment, at p. 82,

> " After considering the evidence as a whole and taking into serious consideration the omission on the part of the police of placing the patient under medical examination and observation soon after the commission of the offence ......' and it being clear from the evidence of expert witnesses that if the patient was examined soon after the commission of the offence they would have been in a better position to testify as to his mental condition at the material time and that this omission might as well amount to depriving the prisoner of a possible defence".

In the case of *Charalambous* v. *Rex*, 18 C.L.R., p. 61 a murder case, it was held that "once the appellant's story of the events immediately preceding the killing of his father had been rejected, there was no evidence at all before the trial Court from which they could possibly have inferred that provocation had been offered by the deceased. To have done so, would have been to go outside the evidence altogether and would have amounted to pure speculation".

It is clear from the authorities that alternative possibilities must be such that may be reasonably inferred from the whole of the evidence before the Court. Otherwise, Courts will be invited to speculate as to happenings which cannot be reasonably inferred from the material before it, and this is not their function. As stated in the *Mancini* case (*supra*) and I find no better words to put it, "it is on the evidence and the evidence alone that the

prisoner is being tried and it would only lead to confusion and possible injustice if either Judge or jury went outside it".

In our case, there is no evidence to support any incident which could justify a Court to infer reasonably and not merely act on suspicion or speculation that there have been such acts as to raise the issue of provocation, accident or self-defence—in fact the undisturbed state of the scene excludes any quarrel having taken place—or such other acts as they could possibly render the act of the killing of the victim unpremeditated or justified on account of passion or other state of mind.

Before concluding, there is one more matter with which I feel I should deal briefly, that arose in the course of the hearing of this appeal, that is, the probative effect of the appellant's refusal to answer questions or further questions as shown in his statements to the Police (*exhibits* 33 and 34) and also the principles governing the comments that may be made by a trial Court when an accused person elects to make an unsworn statement from the dock when called upon to make his defence. In my opinion, the trial Court did not comment on his failure to answer questions or on the fact that he elected to make an unsworn statement from the dock. What the Court commented upon, was his conduct "immediately after the killing, to which conduct, we have already referred, i.e. his attempt to build up an alibi, to conceal facts and tell lies", which, in my view, was a legitimate comment to be made in a case resting mainly on circumstantial evidence. That this is legitimate it appears also from the *Charalambous* case (*supra*), where reference is made to the conclusions that the trial Court drew from the conduct of that appellant after the crime or as to the motive which he might have had for the killing. Relevant also is what is stated in Wills on Circumstantial Evidence 7th Edition at page 413 by reference to what was said by the Lord Chief Justice Lord Campbell in a charge to the jury: "It is impossible that you should not pay attention to the conduct of the prisoner and there are some instances of his conduct as to which you will say whether they belong to what might be expected from an innocent or a guilty mind".

For all the above reasons I am satisfied that the trial Court was justified in convicting the appellant of premeditated murder. I have not been persuaded that there are any grounds justifying my interference either with the findings of fact or the conclusions of the trial Court or that there has been any misdirection in the

case, nor have I been persuaded by the appellant that the conviction, having regard to the evidence, was unreasonable.

This appeal, therefore, should be dismissed.

L. LOIZOU, J.: I have read the judgment of A. Loizou, J. in which he sets out fully the facts with which I am in full agreement as well as with the conclusion reached by him. I only wish to deal briefly with the issue of premeditation but I do not propose to restate the facts except where they have some bearing on this issue.

I will first deal with the legal aspect.

In so far as our law is concerned the locus classicus on the issue of premeditation is the judgment in the case of *Rex* v. *Halil Shaban* decided as far back as 1908 ((1903–1909) 8 C.L.R. p. 82). The prisoner in this case was charged for having killed with premeditation a zaptieh near the village of Agia Anna. It appears that the prisoner was carrying a gun without a licence. The zaptieh, who was passing through Agia Anna on his way to Larnaca saw him from the road and rode down towards him. The prisoner shot the zaptieh but the circumstances under which he did so were left in obscurity. It was not clear whether he shot him while parleying or while being pursued or while the zaptieh was attempting to cut off his retreat across the river. It was held by the majority of the Court that premeditation was not proved. Tyser C.J., in delivering the majority judgment of the Court states the legal position as follows:

> "The question of premeditation is a question of fact.
>
> A test often applicable in such cases is whether in the circumstances a man has had sufficient opportunity after forming his intention, to reflect upon it and relinquish it. Much must depend on the condition of the person at the time—his calmness of mind, or the reverse.
>
> There might be a case in which a man has an appreciable time between the formation of his intent and the carrying of it into execution, but he may not be in such a condition of mind as to be able to consider it.
>
> On the other hand, a man might be in such a calm and deliberate condition of mind that a very slight interval between the formation of the intent and its execution might be sufficient for premeditation".

The law in force when this case was decided was the Ottoman Penal Code and the relevant Article was Article 169 which reads as follows:

> " 169. To kill premeditatedly is for a person to have conceived and resolved upon in his mind the act of killing before committing it". 5

The Ottoman Penal Code was applicable in Cyprus until the enactment of the Criminal Code Order-in-Council in 1928.

The notion of premeditated murder in its present form was introduced in our legal system with the coming into force of the 10 Constitution and particularly by Article 7 thereof the relevant part of which reads as follows:

> "7.1 Every person has the right to life and corporal integrity.
>
> 2 No person shall be deprived of his life except in the execution of a sentence of a competent Court following 15 his conviction of an offence for which this penalty is provided by law. A law may provide for such penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law".

As a result the Criminal Code (Amendment) Law, 1962 was 20 enacted which, *inter alia*, repealed and substituted sections 203–207 of the Criminal Code (Cap. 154) which deal with murder and manslaughter. The relevant sections of the Criminal Code are now sections 203 and 204 which read as follows:

> " 203(1) Any person who with premeditation by an unlawful 25 act or omission causes the death of another person is guilty of the felony of premeditated murder.
>
> (2) Any person convicted of premeditated murder shall be sentenced to death.
>
> 204. Premeditation is established by evidence proving 30 expressly or by implication an intention to cause the death of another person whether such person is the person actually killed or not formed before the act or omission causing the death is committed and existing at the time of its commission". 35

Quite obviously the notion of premeditation as set out in s. 204 above-quoted must be understood, construed and applied

in a manner consistent with the provisions of Article 7 of the Constitution; and in this respect it may be usefully noted that the then Supreme Constitutional Court in the case of *The Republic and Nicolas Pantopiou Loftis*, 1 R.S.C.C. p. 30 adopted the exposition of premeditation as laid down in the *Shaban* case.

In a more recent case, that of *Dervish Halil* v. *The Republic*, 1961, C.L.R. p. 432, Zekia, J., as he then was, had this to say on the issue of premeditation at p. 434:

> " The appellant in this case killed his wife by stabbing. The issue is whether the killing amounted to premeditated murder or not. The trial Court found that the person was guilty of premeditated murder and sentenced him to death. The phrase 'premeditated homicide or murder' unlike the phrase 'malice aforethought' is not a term of art and it has to be taken in its ordinary meaning. When a person makes up his mind either by an act or omission to cause the death of another person and notwithstanding that he has time to reflect on such decision and desist from it, if he so desires, goes on and puts into effect his intent and deprives another of his life that person commits a premeditated homicide or murder which entails capital punishment.
>
> There is no presumption of law in the case of premeditation but this has to be inferred in each particular case from the surrounding circumstances".

There followed a number of cases including *Mustafa Halil* v. *The Republic*, 1962 C.L.R. 18, *Yiannis Pieris* v. *The Republic* (1963) 1 C.L.R. 87, *Evangelos Pavlou* v. *The Republic*, 1964 C.L.R. 97, *Christos Koliandris* v. *The Republic* (1965) 2 C.L.R. 72, *Aristidou* v. *The Republic* (1967) 2 C.L.R. 43, *Vrakas and Another* v. *The Republic* (1973) 2 C.L.R. 139. With the exception of the *Aristidou* case which was repeatedly cited in this appeal I do not propose to go into any detail with regard to the above case law. It is sufficient to say that it is clear from all the cases that the issue as to whether a killing is premeditated murder or not has to be resolved in the light of all the circumstances of each particular case.

In the *Aristidou* case the appellant was convicted by the Assize Court of Limassol of the premeditated murder of his mistress and sentenced to death. The appellant, a taxi-driver, admitted having caused the death of the victim, a married woman of 28

years of age, at her own home by shotgun fire. He admitted in effect firing not less than eleven shots but he alleged that he did so while under the influence of drink with the object of frightening the husband of the deceased. His version was rejected by the Court as being inconsistent with the evidence as a whole. His defence was briefly that having regard to the totality of the evidence including intoxication the prosection failed to prove beyond reasonable doubt that at the material time he had an intention to kill and (b) that having regard to the evidence as a whole the prosecution failed to establish premeditation.

The appeal was allowed by majority and the conviction for premeditated murder was set aside and substituted by a conviction for homicide. I do not think that apart from the general principles involved this case is of much help in the present case because the reason for allowing the appeal was that the trial Court in reaching the conclusion that there was premeditation on the part of the appellant appears to have based itself solely on the space of time which intervened between the formation of the intention to kill and the carrying of it into execution and it made no allowance for the state of appellant's mind as an element affecting his capacity to reflect on his decision and desist from it within such period. And this the Court found was a misdirection sufficiently serious to warrant the setting aside of the conviction for premeditated murder and the substitution therefor of a conviction under s. 205.

In Sir Hari Singh Gour's Penal Law of India, 9th ed. vol. 3 at p. 2299 one reads the following on the issue of premeditation:

> " To constitute a premeditated killing it is necessary that the accused should have reflected with a view to determine whether he would kill or not; and that he should have determined to kill as the result of that reflection: that is to say, the killing should be a pre-determined killing upon consideration and not a sudden killing under the momentary excitement and impulse of passion upon provocation given at the time or so recently before as not to allow time for reflection".

and at p. 2301:

> " Premeditation may be established by direct or positive evidence or by circumstantial evidence. Evidence of premeditation can be furnished by former grudges or

previous threats and expressions of ill-feelings; by acts of preparation to kill, such as procuring a deadly weapon or selecting a dangerous weapon in preference to one less dangerous, and by the manner in which the killing was committed. For example, repeated shots, blow or other acts of violence are sufficient evidence of premeditation. Premeditation is not proved from the mere fact of a killing by the use of a deadly weapon but must be shown by the manner of the killing and circumstances, under which it was done or from other facts in evidence".

It follows from all the foregoing that premeditation is a question of fact which must be proved by the prosecution either by direct or indirect evidence. The time which elapses between the formation of the intention to kill and the execution of that intention is a relevant factor in determining whether there was sufficient opportunity to reflect whether to kill or not and in this respect the state of a person's mind is an essential element. In other words if there was or was not premeditation does not merely depend on the length of the period that elapsed between the formation of the intention and its execution but also on the state of mind of the assailant as an element affecting his capacity to reflect on his decision and desist from it within such period. For premeditation to be established it is, therefore, essential to show intention to cause death which was formed and continued to exist before the time of the act causing the death as well as at the time of the killing notwithstanding that having regard to the assailant's state of mind, he had the opportunity to reflect upon and desist from such decision.

I will now deal briefly with the facts relevant to this issue and particularly with the events of the 20th November, 1975, the day the murder was committed.

The appellant was the secretary, cashier and accountant of S.E.K.E.P. and in the course of his duties he was responsible for keeping the accounting books such as petit-cash, the cash-book, the receipt register, the receipt books for collection of money and invoices.

It is an undisputed fact that an audit carried out after the commission of this offence disclosed a deficiency in the cash in hand amounting to C£47,249.— and that payments made by customers of S.E.K.E.P. to the appellant for the purchase of olive oil found their way either in his personal account or in the

account of a family company by the name of Eleana Ltd. Also a number of cheques representing a total of C£26,000.— handed to the appellant for the purchase of olive oil from his employers long before the murder were found locked in a drawer of his desk instead of being deposited in his employers' bank account. 5

In fact the appellant was very untidy with his accounts and his books contained so many irregularities that he had to be warned by the manager that he will be reported to the Board. This in antithesis to the books kept by the victim, who was the commercial officer and supervisor of the accounting department 10 of the same firm and the two were occupying the same room in the premises of the firm, which were properly kept and were in fact in perfect order.

A relevant aspect of this case that has a bearing on the question of motive is the audit of the books which would 15 inevitably result in the discovery of the deficiency. For several months prior to the date of the commission of this offence the auditor had communicated on various occasions both with the appellant and the victim to enquire whether the books were ready for audit but under various pretexts the appellant used to 20 put it off and on several occasions when appointments were made for the audit to take place they were postponed at the request of the appellant. But things came to a head when the Board decided, on the 4th December, 1975, to apply that the business be declared as a stricken business because it had suffered great 25 losses due to the Turkish occupation of Kyrenia. As such application had to be accompanied by the audited accounts for the year 1974 and the first half of 1975 the manager gave instructions to the auditor to audit the books and also informed both the appellant and the victim that the audit had to take place 30 forthwith. Even after this there were delays and postponements of appointments at the request of the appellant.

On the 9th October, 1975, two employees of the auditor carried out a preliminary audit of the books kept by the appellant which revealed that although the receipts of money collected 35 had been entered in separate loose statements the invoices for the sales were missing. The explanation given by the appellant when asked was that the invoices had been left in Kyrenia where they were taken for checking purposes. The total amount of sales as shown in the books kept by the appellant were in excess 40 of C£33,000.— below the sales shown by the books kept by the

victim which showed analytically the sales for 1974. After the commission of the crime the missing invoices and receipt books with the exception of one invoice and one receipt book were found locked in the desk of the appellant. The particulars shown in the invoices and receipt books found had been entered by the appellant in loose leaf sheets but there were no entries of any particulars from the missing books.

The last appointment for the final audit was fixed for 8.30 a.m. of the 20th November, 1975. At 8.20 a.m. the auditor received a telephone call from the appellant informing him that he had to go out that morning in order to make some payments and as a result it was arranged between them that the auditor should go at 11.00 a.m. instead of 8.30 a.m. This meeting never took place because by that time the victim was found dead. Whilst on this point it may be added that although the books kept by the victim were not needed for the preliminary audit they were vital for the final stages of the audit as they were verifying the accounts kept by the appellant relating to the collection of money from sales. The trial Court's judgment on this point runs as follows:

"These books, therefore, could prove to be a very unpleasant source of information against the accused when checked and audited and would expose him. Coupled with the presence of the victim, who could be a further source of information, a live one, and who could verify the entries he had made in his books to the auditor and to the Board of S.E.K.E.P., these would be damning evidence against the accused because then these books would not be just mere numbers recorded on sheets of paper which the accused could easily say that he had no knowledge of. If the victim got out of the way, the accused could stick to his version that the invoices had been lost in Kyrenia and nobody could question his allegation. The victim was, therefore, the stumbling block for the efforts of the accused to conceal his embezzlement and, if alive, he could further disprove accused's allegation that the invoices were left behind at Kyrenia and that was the reason that they were missing. The victim definitely knew that no invoices or receipts were left behind as he was the supervisor of the accused and he had already entered their particulars in his books.

Having considered the evidence regarding the deficiency,

the conduct of the accused during the period that the auditors were ready to carry out the audit, i.e. the postponements of the appointments with the auditors at his instance and the fact that on the day the murder was committed, Yiamakis would visit S.E.K.E.P. for the final stage of the audit, we find that the accused had a possible motive, in fact a strong motive, to kill the victim.

One may wonder, and the defence has made a point of this, that if this was the motive for the accused to kill the victim, why he left the books that the victim kept behind him. The defence has suggested that these books in themselves might afford evidence implicating the accused with the deficiency and one would have expected the accused guarding against such probability to take away the books and destroy them. We feel that if the accused had at that moment taken the books away, it would be as if he was pointing his finger to himself as the killer and would have given the police good cause to treat him as the No. 1 suspect.

Considering all the above, we find that the prosecution proved that the accused had a strong enough motive for wanting to get the victim out of his way".

I will now once more revert to the events of the 20th November.

At about 7.30 or 7.45 hours the appellant, as was his usual habit, before going to the office drove first to the Eleana bookshop which belonged to Eleana Ltd., the family company mentioned before. The car he used was the small yellow Honda. At about the same time the victim and his wife, who was on leave on that day, left their house which is only some 100 or 150 metres from the appellant's house almost on the other side of the town in the area of C.B.C. They took their child with them and left it at a kindergarten and then proceeded to the S.E.K.E.P. premises. At the parking place they met the appellant; they greeted each other and it was there arranged that the appellant would give a lift to the victim back home after they left office. Mrs. Charal, the victim's wife, noticed that the appellant was pale and gloomy and he looked worried and that he avoided looking her in the eyes although they were standing near each other talking. She noticed that he was wearing an immitation suede light beige jacket which she had reason to notice as she

had seen the appellant wearing it before and it seems that she was impressed with it and she talked to the appellant about it who told her that he had bought it in London.

The Manager of S.E.K.E.P. Andreas Charalambous (P.W. 54) arrived at about the same time and soon after Maria Vartholomeou, the cleaner, came. The only other employees of the firm were a typist and a messenger. The manager left the office at about 8.30, after talking to the appellant and the victim regarding the audit which would take place that day, and went for a trip to villages to purchase olives. The typist, Elli Andreou (P.W. 41) who on the previous day had been taken suddenly ill and left the office did not show up at her usual time on that day and at 9.00 hours her husband telephoned at the office, he spoke to the appellant and told him that she would not be going to work as she was still ill. The messenger, one Georghios Andreou, had during that period been posted at the S.E.K.E.P. factory at Latsia village and was not attending at the office. So on the day this murder was committed only the victim, the accused and the cleaner were in the premises. Soon after their arrival the appellant left the office and visited a grocery nearby where he bought milk and a packet of cigarettes for the victim. On his way out he called out to the victim to put the kettle on and that he would be back by the time the water boiled. On his return he prepared a cup of tea for himself and a nescafe for the victim.

At 10.45 hours Nicos Andreou (P.W. 4) a Cyprus Telecommunications employee went to the S.E.K.E.P. premises to deliver a letter. He rung the bell of the entrance door but it would appear that the bell was out of order and as the door was open he walked into the hall and started going up and down in order to attract attention to his presence. Whilst in the hall he heard a noise and saw the cleaner Vartholomeou; they exchanged some words and proceeded along the corridor of the building towards the doors of the offices. Andreou was about to knock the door of the office of the victim and the appellant when he heard a telephone ringing and waited for a minute. As the telephone stopped ringing without anybody answering it he made to go away but the cleaner told him something and thereupon he opened the door and saw the victim lying dead on the floor. He attempted to ring the police from the premises but as he could not operate the telephone switchboard he drove to the Central Bank nearby and there he met Police Sergeant

Myriantheas (P.W. 28) and talked to him. The time was then 10.55 hours. The Police Sergeant rung the C.I.D. and left for the S.E.K.E.P. premises and by the time he arrived there some C.I.D. officers were already there. Earlier on the cleaner saw the appellant leaving the premises with what looked to her some papers under his left arm, and in fact as he was leaving he called out to her not to forget to clean the basement. The trial Court came to the conclusion in the light of the evidence they considered most reliable and in the light of tests carried out by the Police that the time the appellant left the premises must have been 10.05 hours and that at that time the victim was already dead.

After the arrival of the police the premises were put under guard with orders not to allow anybody to enter. Among the police officers who arrived at the scene were Chief Supt. Panayiotis Aristocleous, the second in command of the C.I.D. at the Police Headquarters at Athalassa and Inspector Ioannis Adradjiotis, the officer in charge of the C.I.D. Divisional Police Headquarters, Nicosia, the investigating officer in this case. Both these officers arrived at 11.45 hours.

At 11.50 hours one of the policemen who was on duty guarding the back entrance, P.W. 6, Sgt. Paphitis, saw a person approaching the premises through the trees in the back yard. The Sergeant disclosed his identity and asked that person who he was and the latter said that he was Andreas Anastassiades, an employee of S.E.K.E.P., the appellant in this case. The Sergeant noticed that the appellant was nervous in his movements, he was restless, he was wiping his face with his hand and looked pale. He asked the police Sergeant what was going on but received no reply. He then asked whether his colleague had been assaulted but as by that time the Sergeant had noticed that on the forehead of the appellant there was a fresh scratch and on his left shoe a substance that resembled blood he again did not reply to the appellant and asked him to wait there. The Sergeant then went into the premises and spoke to Chief Supt. Aristocleous and Inspector Adradjiotis; he informed them who had arrived and what his observations were. Then the three police officers went out to where the appellant was, the other two also noticed the scratch on his forehead and the Chief Superintendent also noticed on the spectacles of the appellant what appeared to be blood stains and that his clothes were not creased and looked as though they had been put on that moment. The

Chief Supt. asked the appellant his name and after the latter gave his name he said: "Are you at last going to tell me what is going on". Chief Supt. Aristocleous then identified himself to the appellant and told him that he was investigating into the murder of Kimon Charal and that he intended to ask him certain questions and at the same time he instructed Inspector Adradjiotis to make a record of the questions and answers. He first asked the appellant from what time he was absent from his office and the latter replied "from 10.00 hours to 12.00 noon". The questions and answers according to the record run as follows:

"*Q.* I see a scratch on your face can you explain to me how it was caused?

A. It may be because of a tree or I have struck against the door.

Q. Your eye-glasses seem to be bloodstained as well as your left shoe; can you give me an explanation?

A. I do not know. Bring me water to drink."

The appellant sat on a step while Sergeant Paphitis brought a glass of water to him which he drank and then stood up again. The next question was "How did you leave your office" to which the appellant replied "with my Alfa Romeo car and I have it parked here nearby".

After the questioning during which, according to the evidence of these officers, the appellant looked pale, confused and he made nervous movements he and the three police officers got into a car and he led them to the parking place where his Alfa Romeo was parked. The car was of white colour under Registration GP626. The appellant unlocked the car which was searched by the police but nothing of any importance was found. Then, at about 12.20 hours, he was driven to Nicosia Divisional Police Headquarters at Strovolos. From the moment the appellant returned to the S.E.K.E.P. premises and was met by the police, policemen were sent to watch his house which was searched at 14.00 hours but nothing incriminating was found.

In the evening of the same day the appellant was arrested by virtue of a judicial warrant in connection with the murder and on the following day he was taken before the Court for a remand order. After he consulted counsel he volunteered a statement

which was taken at 13.40 hours of the same day i.e. the 21st November. This statement is *exhibit* 34. In his statement the appellant said that, as he was told by the victim, he had received a threatening telephone call on the morning of the 20th November and he requested him, the appellant, to go to the kindergarten which his son was attending and then to the Parissinos quarter area in order to look for anything suspicious. He complied with the request, he said, and on his return to the office at 10.00 o'clock he found the body of his colleague. When he saw him on the floor he was shocked and with mechanical movements he approached the body and bent over it. At the same time he noticed blood on his right hand. He panicked from the blood and the condition of the body and he connected the crime with the threatening call of that morning. Then he run away and drove to his house under shock and panick changed his clothes with mechanical movements, took his Alfa Romeo car which was in the street outside the garage and again mechanically went to the bank, the post-office and then returned to his office where he met the police.

With regard to the movements of the appellant on that day the Court had also the evidence of Efthymia Pericleous (P.W. 51), Savvas Charalambides (P.W. 44) and Michalakis Eracleous (P.W. 57). Efthymia Pericleous, almost a next-door neighbour of the appellant, after finishing her housework went to the grocery and did her shopping and on her way back home she saw the wife of the appellant driving the white Alfa Romeo; the latter stopped and the two had a chat in the street. After taking her shopping home Efthymia visited the wife of the appellant at her house and they had coffee and breakfast on the back verandah of the house. Whilst there she heard the sounding of a horn upon which the wife of the appellant left her and went to the front of the house. On her return the witness left and on her way out she saw the appellant driving away in the small Honda car. About ten minutes later whilst at her house she saw the appellant return to his house where he remained for about ten minutes and then she saw the wife of the appellant drive the Alfa Romeo and parking it outside the gate of the house and then the appellant using the Alfa Romeo drove away. Shortly afterwards she heard footsteps and saw the wife of the appellant carrying a metal container from the direction of her house towards her hen-coop, some 250 feet away, where it was later found by the police. This is the container in which, according to scientific evidence accepted by the Court, some

burnt pieces of clothing including the immitation suede jacket that the appellant was wearing that morning when he went to his work were found. From his house the appellant went to the Central Co-operative Bank and met Savvas Charalambides, the 5 Secretary of the Co-operative Savings Bank and Loans to Students Fund where he made inquiries about some rules regarding a scheme for medical benefits for the staff of the Co-operative movement as a similar scheme was to be introduced for the staff of S.E.K.E.P. Prior to visiting this office 10 it would appear that he also visited the office of Michalakis Eracleous on the second floor of the offices of the Co-operative Central Bank to make a lodgment in the current account of the Provident Fund of the employees and another one in the deposit account. According to appellant's own testimony contained 15 in his voluntary statement to the police, *exhibit* 34, he also visited the post-office before he returned to the S.E.K.E.P. premises at 11.50 hours where he was first met by the police.

Very relevant to the movements of the appellant on the morning of the 20th November is also the evidence of the cleaner 20 Maria Vartholomeou. As stated earlier on she arrived at the premises of S.E.K.E.P. at about 8.00 a.m. and when she arrived there the appellant, the victim, and the manager Charalambous were already there. In fact she met them in the corridor of the building she said. The victim and the appellant were 25 heading towards their office and the manager went into the hall. The witnesses went into the kitchen, placed her handbag there, changed her clothes and shoes and after doing this the appellant came into the kitchen and told her to clean the kitchen first and that she had to clean the basement too on that day. After the 30 accused gave her the instructions to clean the basement she cleaned the kitchen then the office of the manager, the auditors' office and the back verandah. Then she cleaned the typist's room, the hall, the front verandah and the cemented part of the front yard. It was whilst she was sweeping the cemented part 35 of the yard that the accused passed her and she heard him calling to the victim to put the kettle on and that he would be back by the time the water boiled. After she finished she went to the verandah of the manager's office and whilst there she picked and ate two or three tangerines. While she was eating the tangerines 40 she saw the accused returning to S.E.K.E.P. carrying with him in a bag the milk. She remained at the verandah swept it and washed its floor and after that she went to the kitchen to make some coffee but as there was no sugar she started to go to the

manager's verandah in order to get the broom which she had left there to sweep the victim's and the appellant's office which was the only one left undone by then. Whilst she was in the messengers' room on her way to the verandah, she said, she heard the footsteps of the appellant in the corridor and it was 5 then that he told her that he was going away and that he would be back in half an hour and reminded her not to forget to do the basement. The appellant, she said, was at the time entering the hall and carrying under his left arm some papers. The witness then went to the verandah got the broom and went to the base- 10 ment. After she finished the basement she came up washed the buckets, picked some lemons from the trees in the yard and then returned to the building in order to finish her work. It was then that she saw P.W. 4, Nicos Andreou, the CYTA employee.

In an endeavour to check the various times the police on the 15 1st December, 1975, timed Vartholomeou while she was doing the same work that she did on the 20th November. But the Court after considering the evidence could not rely either on the evidence of Vartholomeou with regard to time or on the timing of her work by the police especially in view of the fact that there 20 was a gap of 35 minutes between the time, that according to the test carried out, she should have finished her work and the arrival of P.W. 4, Nicos Andreou. The Court were satisfied that the correctness of the time given by Nicos Andreou as to the time he arrived at the premises i.e. 10.45 hours could not be questioned 25 especially in view of the supporting evidence of P.W. 28, Police Sgt. Myriantheas, according to whose evidence when the witness Andreou met him outside the Central Bank, which is quite near the S.E.K.E.P. premises, when he went to phone to the police the time was 10.55 hours. 30

According to the evidence of Professor Simpson, which the Court accepted, the instrument used for the murder was one of the chopping variety with a cutting edge and some weight, an instrument such as an axe or a chopper with a cutting edge of, at least, five inches; and the wounds were caused by forcible 35 blows by such an instrument.

The Court were satisfied from the evidence that the appellant possessed a chopper at his house. Inspite of extensive searches however, carried out by the police both at the scene of the crime, the vicinity of the house of the appellant and in other areas the 40 weapon used has not been found.

Now a few words regarding the actual scene of the crime and the way the deceased was killed.

According to the evidence of Professor Simpson the deceased must have been first assaulted whilst standing and the two shallow wounds found on the head of the victim and the injuries to his hands indicated that the victim was alert and able to see that he was about to be attacked and that he raised his hands in a protective manner. The victim then partly disabled, perhaps by the first injuries he received, either staggered or turned round to fall on his head at the spot and then he fell and rolled on his back to lie in the position he was found. He further said that the more major injuries to the brow and face were virtually certain to have been inflicted whilst the victim was lying on the ground after he was perhaps unable to raise his hands because of the injuries he had already received and that the splashing of blood around his head on the floor, the wastebin and the wall were caused by repeated blows whilst the victim was unconscious or partly unconscious. These splashes, he said, were undoubtedly the result of wounds being repeated into a bleeding head with the blood welling up into the injured tissues whilst the victim was lying in the position he was found. There were also some drops of blood at the scene other than the pear or tail shaped splashes which indicated that the splashes struck the floor at an angle. These other drops were round and vertical which is an indication that they had fallen from a small height. They were fewer and three of them were found on a piece of paper which was found on the desk of the appellant. Two of these drops after having fallen on the sheet of paper must have been disturbed by somebody. Whilst dealing with these facts it is perhaps pertinent to mention that there was nothing at the scene of the crime to warrant a finding or inference that any struggle of any kind had preceded the actual killing. On the contrary everything in the office pointed to an opposite conclusion. In addition there was evidence that there was no chopper or any similar instrument available in the premises of S.E.K.E.P. and that it must have been taken there by the appellant the latest on the morning the murder was committed.

To complete the picture reference may be made to the statement made by the appellant from the dock when called upon, at the close of the case for the prosecution, to make his defence. In this statement the appellant said that the victim was his best friend and he denied that he killed him. On the 20th November,

1975, he said, he went to his office in the morning as usual where he met the victim. Then after 9.00 a.m. he went to the supermarket nearby where he purchased two cartons of milk and a packet of cigarettes. When he returned to the office he went into the kitchen and made drinks, nescafe and tea. He gave the nescafe and the cigarettes to the victim and he then noticed that the victim was disturbed. He asked him what was wrong and the victim told him that he received a threatening phone-call a few minutes earlier and that he was asked to go to Parissinos area. While they were having their drinks the victim requested him to pay a visit to the area of the kindergarten which his son attended and also to Parissinos area to see if there was anything suspicious or of a suspicious nature. He left the office at about 9.30 a.m. but before leaving he mentioned to the cleaner that he would be out of the office for about half-an-hour and then left. He returned to the offices of S.E.K.E.P. around 10.00 o'clock and on entering the office saw the victim on the floor in a pool of blood. He was shocked and went near the body and tried to lift the head up. The wounds were so horrible that he dropped the head on the floor. His hand was full of blood and he shook it in order to get rid of it as he was feeling sick; he then panicked and run out of the office at the same time wiping his hand on his jacket. He went to his car and drove off. He was confused; he did not know what to think but he thought that *having seen the body and having touched it with blood on his* hand the police would suspect him. He was also, he said, the only one in the room with the victim. He went home, changed his jacket and trousers and returned back to the office. There he realised that his fears that the police would suspect him were real because their manner when they approached him was far from friendly. Later they walked to the car park and then they went to the Strovolos Police Station where he repeatedly asked for a lawyer to consult with and give him some advice as to what to do. On the following day he did see a lawyer and then he made a statement (*exhibit* 34) which is the truth.

The Court did not accept the allegation of the accused about his errand to the kindergarten and Parissinos quarter and in this respect there was the evidence of the staff of the kindergarten that nobody visited the nursery to inquire about the son of the victim. Nor did the Court accept his allegation that after the discovery of the body by him he was acting mechanically under shock and panick but, on the contrary, especially having regard to his movements, the changing of his clothes and his obvious

efforts to avoid being implicated and to lead the police on a wrong track, the Court came to the conclusion that he was acting in furtherance of a preconceived plan. Having regard to the vertical drops of blood at the scene of the crime and especially the ones found on the piece of paper on his desk the Court came to the conclusion that after the appellant killed the victim he went to his office desk wrapped the weapon in some papers and took it away under his left arm and that this was when the witness Vartholomeou saw him leaving the premises with some papers under his left arm. Further, the Court *inferred that the appellant disposed of the murder weapon during* the ten minutes that had elapsed between the time that he drove away after he went to his house whilst the witness Efthymia Pericleous was there and his return after the visitor had left and that this weapon was the chopper that was seen in the house or the garage of the appellant by the witnesses Stavros Philippou, Maroulla Philippou and Takis Kokkinos.

In considering the question of premeditation the trial Court summarised the case for the prosecution on the issue under five items as follows:

" 1. The killing was a very brutal one;

2. it was committed by a heavy chopping instrument that was brought to the S.E.K.E.P. premises and was not one that was available there. This weapon must have been taken by the accused to the office the latest on the morning the murder was committed;

3. the assailant, who is the accused, had a motive to get rid of the victim;

4. the conduct of the accused early in the morning of the 20.11.75 when he met the wife of the victim outside the S.E.K.E.P. offices with whom he had a conversation during which he avoided looking at her face; and,

5. the conduct of the accused immediately after the killing to which conduct we have already referred i.e. his attempt to built up an alibi, to conceal facts and tell lies".

And the Court concluded as follows:

" Having in mind the above points which are proved beyond doubt by the evidence before us we have no hesitation in arriving at the conclusion beyond reasonable doubt that

the accused killed the deceased in the execution of a preconceived plan—a plan which he formed in his mind the latest when he went to his work that morning. We further find that the accused proceeded to execute his plan although he had time to reflect on his decision and desist from carrying out his intentions." 5

It may well be that not everyone of these items taken by itself would be sufficient to establish premeditation but when taken together they do, in my view, warrant the conclusion reached by the Court that the murder was premeditated. 10

The evidence as accepted, and the facts as found by the trial Court, to my mind, disclose careful preparation and unwavering determination on the part of the appellant to kill the victim and his whole behaviour on that day indicates coolness of mind all through, elements which can hardly be consistent with absence of premeditation. 15

On the facts of the case I am satisfied that the trial Court correctly found the appellant guilty of premeditated murder and that, therefore, this appeal should be dismissed.

STAVRINIDES, J.: In my view the judgment of the trial Court must be upheld both as to the issue of the murderer's identity and as to premeditation. Therefore I would wholly dismiss the appeal. 20

TRIANTAFYLLIDES, P.: The appellant has been found guilty on July 8, 1976, by an Assize Court in Nicosia, of the premeditated murder of Kimon Charal, contrary to section 203 of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1962 (Law 3/62); the victim was killed in Nicosia on November 20, 1975. The scene of the crime was a room at the premises of the Cyprus Olive Produce Marketing Board (S.E.K.E.P.) at Acheon street, Nicosia. 25 30

Both the appellant and the victim were, at the material time, employees of S.E.K.E.P.; the appellant was performing the duties of Secretary, Cashier and Accountant and the victim was the Commercial Officer and Supervisor of the Accounting Department; both of them were working in one and the same room at the S.E.K.E.P. premises, and it was in that room that the crime took place. 35

On the day of the crime only the victim, the appellant and a

charwoman, Maria Vartholomeou (Prosecution Witness 42) were at the premises; the Manager of S.E.K.E.P., Andreas Charalambous (P.W. 54), had left the office at about 8.30 a.m. for a trip, as usual, to villages in order to purchase olives; a typist, 5 Elli Andreou (P.W. 41), was away on sick-leave—(at about 9 a.m. her husband had telephoned and informed the appellant that she would not be coming to work)—and a messenger, Georghios Andreou (P.W. 40), was at that time posted at the S.E.K.E.P. factory at Latchia, a village near Nicosia.

10 The appellant and the victim were not only working as employees of the same Board, and in the same room, but they were, also, close friends; their houses were in the same neighbourhood, near the premises of the Cyprus Broadcasting Corporation (C.B.C.), and at a distance of about 150 meters 15 from each other; they used to spend, also, quite a lot of their leisure time together.

On November 20, 1975, at 10.45 a.m., Nicos Andreou (P.W. 4), an employee of the Cyprus Telecommunications Authority, visited the premises of S.E.K.E.P. in the course of his 20 work. He entered the hall of the building through the entrance door, which was open, and he saw there Vartholomeou; eventually, he knocked on the closed door of the room, which was being used as an office by the appellant and the victim; at that time, he heard a telephone ringing, which stopped ringing without 25 anybody answering it; he opened the door and saw the victim lying dead on the floor, in a pool of blood; immediately he tried to telephone the police, but, as he could not operate the telephone switchboard at the S.E.K.E.P. premises, he drove to the Central Bank of Cyprus, which is further down along the same 30 street, and there he met Police Constable Menelaos Myriantheas (P.W. 8) and informed him of what he had seen; it was then 10.55 a.m.

P.C. Myriantheas rung up the Criminal Investigation Department of the Police (C.I.D.) and, then, went to the premises of 35 S.E.K.E.P. Up to about 11.35 a.m. there arrived on the spot the following police officers: P.C. Pericles Efstathiou (P.W. 5), P.S. Soteris Paphitis (P.W. 6), P.C. Stylianos Konizos (P.W. 11), Sub-Inspector Michael Komodikis (P.W. 7), Chief Superintendent Panayiotis Aristocleous (P.W. 26) and Inspector 40 Ioannis Adradjiotis (P.W. 36). Komodikis was in charge of the C.I.D. at Ayios Dhometios Police Station, Adradjiotis was the officer in charge of the C.I.D. of the Nicosia Police Division,

and Aristocleous was the second in command of the C.I.D. at the Police Force Headquarters. Just after 11.35 a.m. P.S. Paphitis was sent to join P.C. Efstathiou, who was guarding the back of the building of the S.E.K.E.P. premises.

Whilst P.S. Paphitis was there he noticed the appellant, who was holding a briefcase, approaching the building through the trees in the backyard. According to P.S. Paphitis the appellant appeared to be a little nervous in his movements and restless, and he was wiping his face, which seemed to be a little pale, with his hands. The appellant asked this witness what was going on, but he received no reply. Then the appellant asked the witness whether his colleague had been assaulted. But as, by that time, the witness had noticed on the forehead of the appellant a fresh scratch, and on his left shoe a substance which resembled blood, he did not reply and, after telling the appellant to wait there and that he would hear about it, he went into the building and informed police officers Aristocleous and Adradjiotis of what had happened and what he had noticed.

They came out together with Paphitis and after Aristocleous had identified himself to the appellant and had told him that he was investigating into the murder of Kimon Charal—the victim—he cautioned the appellant and informed him that he intended to put to him a number of questions.

The record of these questions and the answers thereto was kept by Adradjiotis; according to the evidence of the latter, the conversation between the appellant and Aristocleous was as follows:–

"Mr. Aristocleous asked the name of the accused and the accused replied 'Andreas Anastassiades, are you going to tell me at last what is going on?',

('Εν νὰ μοῦ πῆτε ἐπιτέλους ῆντα ποὺ συμβαίνει;)

Mr. Aristocleous said to him: 'I am Inspector Panayiotis Aristocleous and I investigate into the case of Mr. Kimon Charal and I intend to put certain questions to you.

(Εἶμαι ὁ 'Αστυνόμος Παναγιώτης 'Αριστοκλέους καὶ διερευνῶ τὴν ὑπόθεσιν τοῦ φόνου τοῦ Κίμωνος Χαρὰλ καὶ σκοπεύω νὰ σοῦ ὑποβάλω ὡρισμένες ἐρωτήσεις).

'Since what time are you absent from your office?'.

('Από ποιὰ ὥρα ἀπουσιάζεις ἀπὸ τὸ γραφεῖον σου;)

At this point Chief Supt. Aristocleous cautioned him and the accused replied: 'From 10 to 12.00 hrs.'.

('Από ἡ ὥρα 10 ἕως ἡ ὥρα 12).

Mr. Aristocleous said: 'I see on your face a scratch, can
5 you explain to me how this was caused?'.

(Βλέπω εἰς τὸ πρόσωπό σου ἕνα γδάρσιμο, μπορεῖς νὰ μοῦ ἐξηγήσεις πῶς αὐτὸ προῆλθε;)

The accused replied: 'May be it is from a tree or I struck against a door'.

10 ('Εν ποὺ κανένα δέντρο μπορεῖ ἢ ἐκτύπησα πάνω σὲ καμμιὰ πόρτα).

Then Mr. Aristocleous asked him: 'Your eyeglasses look like blood-stained and your left shoe as well; can you give me an explanation?'.

15 (Τὰ γυαλιά σου φαίνονται σὰ γαιματωμένα καὶ τὸ παπούτσι σου τὸ ἀριστερὸ, μπορεῖς νὰ μοῦ δώσης καμμιὰ ἐξήγηση;)

The accused replied: 'I do not know. Bring me water to drink'.

(Δὲν ξέρω, φέρτε μου νερὸ νὰ πιῶ)".

20 At that point the appellant sat on a step and P.S. Paphitis brought him a glass of water, which he drank. After he had got up Aristocleous asked him:-

"'How did you leave from your office?'

(Πῶς ἔφυγες ἀπὸ τὸ γραφεῖο σου;).

25 And the accused replied: 'With my car Alfa Romeo, and I have it parked here nearby'.

(Μὲ τὸ αὐτοκίνητό μου Ἄλφα Ρομέο, καὶ τὸ ἔχω παρκαρισμένο δαμαὶ δίπλα)".

According to witness Adradjiotis, the appellant seemed very
30 pale, confused and he was making nervous movements; when asked to explain what he meant by "confused" he said that he had noticed that when Aristocleous questioned the appellant he had to think for a while before replying.

Then the appellant led the three policemen to a parking place
35 nearby, where he had left his car, and after the car had been searched, he was driven to the C.I.D. of the Nicosia Police Division at Strovolos, where he was interrogated by Adradjiotis

in the presence of Aristocleous and Paphitis. The trial Court sustained an objection, taken by defending counsel, to the effect that the record of this interrogation was not admissible as evidence.

The appellant was arrested on the strength of a judicial warrant in connection with the present case on the evening of November 20, 1975, and on the following day he was remanded in custody by means of a Court order, pending the investigations into the murder of the victim. 5

On the same day, that is November 21, 1975, he volunteered a statement to the police (which is *exhibit* 34 in the proceedings). This statement commenced at 1.40 p.m. and was concluded at 2.15 p.m. He started the statement by telling the policemen that he wished to clarify certain points, and that he ought to have done this from the previous day, but that he could not do so due to his psychological condition at the time; he added that, having seen his lawyer, he wanted to make a voluntary statement. 10 15

He was cautioned that he was not bound to say anything unless he wished to do so, but whatever he would say would be taken down in writing, and could be given in evidence. He then proceeded to say the following:- 20

"Μετὰ τὸ ἀπειλητικὸν τηλεφώνημα εἰς τὸν συνάδελφον μου Κίμωνα, χθὲς 20 Νοεμβρίου, 1975 ὑπὸ ἀγνώστου ἢ ἀγνώστων καὶ κατόπιν μικρᾶς συνομιλίας μου μὲ τὸν Κίμωνα Χαρὰλ, καὶ κατόπιν παρακλήσεως δικῆς του ὅπως μεταβῶ εἰς νηπιαγωγεῖον τοῦ υἱοῦ του καὶ εἰς συνοικίαν Παρισινοῦ πρὸς ἀνεύρεσιν τυχὸν ὑπόπτων στοιχείων, γιὰ τὴν ἀσφάλειαν τοῦ γιοῦ του, ἔπραξα τοῦτο. Εἰς τὴν ἐπιστροφήν μου ἀπὸ τὴν συνοικίαν Παρισινοῦ ἐκυκλοφόρησα μὲ τὸ αὐτοκίνητόν μου στὴν περιοχὴν γύρω ἀπὸ τὰ γραφεῖα μας καὶ ἀφοῦ ἐσταύθμευσα τὸ αὐτοκίνητόν μου ἐπανῆλθα στὸ γραφεῖο μου. Ἀφοῦ εἰσῆλθα τοῦ γραφείου μου βρῆκα τὸ πτῶμα τοῦ συναδέλφου Κίμωνα Χαρὰλ, μὲ τὰ τραύματα. Βλέποντάς τον χαμαὶ μέσα στὸ γαῖμαν, ἐσιοκκαρίστηκα καὶ μὲ μηχανικὲς κινήσεις ἐπλησίασα τὸ πτῶμα καὶ ἔσκυψα ἀπὸ πάνω του. Τὴν ἰδίαν στιγμὴν ἀντελήφθην αἷμα ἐπὶ τοῦ δεξιοῦ χεριοῦ μου καὶ κατόπιν πανικοῦ ἐκ τοῦ αἵματος καὶ ἐκ τῆς καταστάσεως τοῦ πτώματος ποὺ ἦτο κτυπημένον, καὶ συνδέοντας τὸ ἔγκλημα μετὰ τοῦ σχετικοῦ τηλεφωνήματος ποὺ εἶχεν λάβει τὴν πρωΐαν, τράπηκα εἰς φυγήν. Φεύγοντας πῆγα 25 30 35 40

στό σπίτι μου κάτω ἀπό σιόκ πανικοῦ, μέ μηχανικές κινήσεις ἄλλαξα ροῦχα, πῆρα τό αὐτοκίνητον τό "Αλφα Ρομέο καθ' ὅτι ἦτο εἰς τόν δρόμον ἔξω ἀπό τό γκαράζ καί μηχανικά πῆγα στήν Τράπεζαν, ταχυδρομεῖον καί ἐπέστρεψα στό 5 γραφεῖον ὅπου βρῆκα τήν 'Αστυνομίαν, ἐννοῶ ἐσένα τόν κύριον 'Αριστοκλέους καί ἄλλους. Κατόπιν ρητῆς ἐντολῆς τῶν δικηγόρων μου δέν θά ἀπαντήσω εἰς ἐρωτήσεις σας ἤ νά σᾶς κάμω ἄλλην κατάθεσιν".

("After the threatening telephone call to my colleague 10 Kimon, yesterday, November 20, 1975, by an unknown person or persons, and after a short discussion with Kimon Charal, and a request by him to go to the kindergarten which his son was attending, in the Parissinos area in order to find out if there was anything suspicious concerning the 15 safety of his son, I did so. On my return from the Parissinos area I drove around the area of our office and after I parked my car I returned to my office. When I entered my office I found the body of my colleague, with the wounds. When I saw him on the floor in a pool of blood 20 I was shocked, and with mechanical movements I approached the body and bent over it. At the same time I noticed blood on my right hand and being panicky because of the blood and of the condition of the body, which was injured, and having connected the crime with the telephone 25 call which he had received in the morning, I ran away. After I left I went home, shocked with panic, I changed clothes with mechanical movements, took the car, the Alfa Romeo, as it happened to be in the street outside the garage and acting mechanically I proceeded to the Bank, to the 30 post office and returned to the office where I found the Police, I mean you and Mr. Aristocleous and others. Because of express instructions of my lawyers I will not answer your questions or make any other statement").

After the appellant had said the above he was asked by 35 Inspector Adradjiotis, who recorded his statement, whether he was prepared to answer certain questions in order to clarify some of the matters mentioned in his statement, but the appellant replied that he had to refuse to do so, because of advice to that effect given to him by his lawyer.

40 The appellant signed his statement, as well as a rider at the end of it to the effect that he had read it, that he had been told that he could make any corrections if he wished to do so

and that it was a true voluntary statement. As it appears from the statement, it was taken in the presence of Chief Superintendent Panayiotis Aristocleous.

Earlier on on that day, at 10.30 a.m., he had been questioned by Inspector Adradjiotis; he was asked two questions and he answered them as follows:– 5

" 'Ερώτησις–'Ως λογιστής τοῦ Συμβουλίου 'Ελαιοκομικῶν προϊόντων ποιά ἦταν ἡ δουλειά σου;

'Απάντησις:–'Εκαταχωροῦσα μέσα στὰ βιβλία ὅλες τὲς πράξεις τοῦ Συμβουλίου. Εἴσπραττα καὶ χρήματα ἀπὸ πελάτες τοῦ Συμβουλίου καὶ ἔκαμνα καὶ πληρωμές, εἰς τὴν ἀπουσίαν μου ὅμως μὲ ἀντικαθιστοῦσεν ὁ κ. Κίμωνας Χαράλ. 10

'Ερώτησις:– Τὰ χρήματα τὰ ὁποῖα εἰσέπραττες τὰ κατέθετες στὸ ταμεῖον τοῦ Συμβουλίου ἅμα τῇ εἰσπράξει των; 15

'Απάντησις:–Θὰ ἀπαντήσω σὲ ὅλες σας τὲς ἐρωτήσεις ἀφοῦ ἔλθω σὲ ἐπαφὴν μὲ δικηγόρον καὶ προτιμῶ τὸν δικηγόρον κ. Εὐστάθιον Εὐσταθίου ".

(" *Question*:– As the accountant of the Olive Produce Marketing Board what were your duties? 20

Answer:– I was entering in the books all transactions of the Board. I was, also, collecting money from customers of the Board and making payments, too, but in my absence Mr. Kimon Charal was replacing me. 25

Question:– The money which you collected were you depositing it in the account of the Board upon receiving it?

Answer:– I will answer all your questions after I get in touch with a lawyer and I prefer the advocate Mr. Efstathios Efstathiou"). 30

Before being questioned he was duly cautioned, and, the questions and answers having been recorded, he signed at the bottom of the relevant document that they were true and that his statements were voluntary (see *exhibit* 33 in these proceedings). 35

On January 14, 1976, he was formally charged with the premeditated murder of the victim, and having been cautioned, he replied as follows:–

" 'Απάντησις:–' Σᾶς ἔχω ἤδη δώση καταθέσεις σχετικὰ μὲ τὸ θέμα 40

αὐτὸ καὶ ὅτι δήποτε ἔχω νὰ πῶ θὰ ἀναφέρω τοῦτο εἰς τὸ Δικαστήριον. Εἶμαι ἀθῶος ' ".

(" *Answer*:- 'I have already made statements in relation with this matter and everything I have to say I will state it in Court. I am innocent' ").

In order to complete the picture concerning what the appellant has said, at all stages for the purposes of this case, about the death of the victim, it is necessary to quote in full what the appellant stated at his trial: When he was called upon to defend himself he elected to make an unsworn statement from the dock; and he made a statement in English, which reads as follows:-

" Your Honours, Kimon Haral was my best friend. I did not kill him. This I have continuously mentioned to the Police eversince and during interrogation. On the 20th November, I went to the offices of S.E.K.E.P. in the morning as usual, where I met Kim. Just after nine I went to the Supermarket Store nearby where I purchased two cartons of milk and a packet of cigarettes. I returned to the offices of S.E.K.E.P., went into the kitchen and made drinks; nescafe and tea. Then I returned to the office, our office, where I gave the nescafe and the cigarettes to Kim. Seeing that he was disturbed, I asked him what was wrong and he mentioned that he received a threatening phone-call a while ago and that they asked him to go to the Parissinos area. While drinking our drinks, he requested that I pay a visit to the area of the kindergarten of his son and also to the Parissinos area, to see or observe anything suspicious or of a suspicious nature. I did so, leaving the office about 9.30. Before leaving, I mentioned to the cleaner that I would be out of the office about half an hour and left. I returned back to the offices of S.E.K.E.P. around 10 o'clock and upon entering the office I saw Kim on the floor in a pool of blood. I was shocked and I went near the body and tried to lift the head up. The wounds were so horrible and I dropped the head on the floor. My hand, which was full of blood, I shook trying to get rid of it, feeling sick. Then being panicked I ran out of the office, at the same time wiping my hand on my jacket. I went into the car and drove off. I was mixed up, I did not know what to think, but I thought that now that I saw the body, touched it with blood on my hand, the Police will suspect me. Also

I was the only one in the room with Kim. I went home, I changed my jacket and trousers and returned back to the offices of S.E.K.E.P. There I realized that my fears that the Police would suspect me were real, because their manner when they approached towards me was far from 5 friendly. We walked later to the car-park and then we went to the Strovolos Police Station where I repeatedly asked for a lawyer to consult with, to give me some advice as to what to do. The following day I did see a lawyer and then I made a statement which is the truth. Your 10 *Honours, I did not kill Kimon Haral*".

Let us return, next, to the scene of the crime, as it was first seen by P.C. Efstathiou, just after 11.10 a.m. on November 20, 1975; according to his evidence, when he went into the room, where the victim was lying dead on the floor, he noticed that 15 there were wounds on his head and face and that around the head there was a pool of blood; there were, also, blood stains on the floor. This witness has testified that he was careful not to disturb anything in the room; and it is not in dispute that thereafter the room, as well as the premises of S.E.K.E.P. as a 20 whole, were placed under continuous police guard, excluding thus any unauthorised outside interference.

By noon on the same day P.S. Aristophanis Charalambous (P.W. 2), who was attached to the Forensic Department at Police Headquarters, arrived at the scene of the crime and took thirteen 25 photographs; another photograph was taken by him later, on December 10, 1975.

The body of the victim was removed from the scene at 1.20 p.m. on November 20, and it was taken to the Nicosia General Hospital. 30

On the following day, November 21, 1975, Dr. Andreas Kyamides (P.W. 67), a Government Pathologist, carried out a post-mortem examination on the body of the victim, and on his instructions P.C. Philippos Akamas (P.W. 3), took photographs, at the mortuary, of the injuries found on the body of the 35 victim.

The trial Court held that neither the evidence of Dr. Kyamides, nor these photographs, gave a complete and accurate picture of the injuries which the victim had received. The

photographs show only some of those injuries, and, moreover, they lead to the conclusion that the evidence of Dr. Kyamides is not entirely accurate because, in particular, such photographs reveal that an injury, which he said that he found on the left side of the forehead of the victim, was not in fact there.

Irrespective, however, of the unreliability, to a certain extent, of the evidence of Dr. Kyamides, the fact remains that there were found on the head and face of the victim several severe wounds, plus a wound on each of his hands. The wounds were caused by blows with a cutting instrument; the bone of the skull was fractured and the brain substance was lacerated with the result that the death of the victim ensued.

On December 2 and 3, 1975, Inspector Andreas Seimenis (P.W. 1) prepared a plan of the S.E.K.E.P. premises, and, especially, of the room where the victim was found. He prepared first a rough plan and then a plan to scale which he based, to a certain extent, on measurements and information given to him by Sub-Inspector Komodikis. It was found by the trial Court that this plan, when compared with the photographs which have been taken by P.S. Charalambous, is shown to be inaccurate, and this is due to the fact that Sub-Inspector Komodikis gave to Inspector Seimenis wrong measurements and information in certain respects.

On November 20, 1975, the shoes of the appellant were taken from him, while he was under arrest, and together with the clothes which he was wearing when he was first seen by the police in the morning of that day, they were delivered for examination, on November 21, 1975, to Mr. Theodoros Ashiotis (P.W. 60), who is an Advisor at the Government Pathological Laboratory; he found that there was blood on the left shoe and left sock of the appellant, but all his other clothes were found to be free from blood. Mr. Ashiotis identified the blood on the shoe and the sock to be human blood of " O " group, the same as that of the victim's.

On the following day, at about 4 p.m., the police found in the presence of the wife of the appellant, in a building site, about 250 feet away from the house of the appellant, and near a hen-coop, a metal container full of fresh soil and fresh chicken manure; the hencoop belongs to a couple who live in the house next to that of the appellant. The police, also, noticed (again while the appellant's wife was present) a mark on the ground,

outside the fence of the yard of the house of the appellant, which appeared to had been made by a container which had been placed there.

On November 22, 1975, Mr. Ashiotis found, while examining the contents of the container, remains of burnt clothing material, 5 four or five half-burnt buttons, and two pieces of half-burnt white material, which looked like being part of a towel or of a handkerchief. Mr. Ashiotis did not trace any evidence of blood on what he found, because the clothing material had been destroyed by burning and had, also, been soaked in water, and 10 blood is a soluble substance in water.

On November 24, 1975, the articles, which were found in the container by Mr. Ashiotis, were delivered to Mr. Ioannis Lovarides (P.W. 13), the Government Analyst, who compared the burnt pieces of clothing with a piece from a belt, which was 15 found in the house of the appellant, and he formed the opinion, after conducting certain tests, that they were all the same in weave, material of which they were made, colour, and other characteristics.

The said belt was identified by the wife of the victim, Thelma 20 Charal (P.W. 32), as being that of an imitation suede jacket, of light beige colour, which she knew that it belonged to the appellant. She testified that she saw the appellant wearing this jacket in the morning of November 20, 1975, before the commission of the crime, but she was not sure whether the belt was in 25 place on the jacket on that occasion.

Charalambous, the General Manager of S.E.K.E.P., remembered, also, having seen the appellant wearing the said jacket on the same morning before the commission of the murder. It is a fact, moreover, that when, later on, the appellant was seen by 30 the police approaching the premises of S.E.K.E.P. through the backyard, after the commission of the murder, he was wearing a different jacket.

There was evidence before the trial Court that approximately two days before the murder the aforementioned metal container 35 was lying outside the yard of the house of the appellant; and on the day of the murder the wife of the appellant was seen carrying the container from the direction of her house towards where it was found, near the hen-coop.

Mr. Lovarides found the internal walls of the container, and its base, covered with soot.

The trial Court, on the totality of the evidence before it, held that the half-burnt pieces of clothing found in the container 5 belonged to the light beige jacket which the appellant was seen wearing in the morning of the day when the murder was committed, and that the burnt clothing, found in the container, was burnt in the container before it was filled in with fresh soil and chicken manure.

10 The appellant, both in his statement to the police on November 21, 1975 (*exhibit* 34, above), and when making an unsworn statement from the dock at the trial, admitted that after he had found the dead body of the victim he had gone home and changed his clothes; and this is the reason why he 15 was seen wearing a different jacket after the crime.

It is convenient to deal, next, with the matter of the movements of the appellant on the day of the murder, prior to, and after, its commission:

According to the evidence of the wife of the victim they drove 20 together to his office and he alighted at Aetolon street, which is at the back of the yard of the premises of S.E.K.E.P.; that was just before 8 a.m. At that time the appellant came driving his own car of Honda make, and after he had parked it at a place in Aetolon street, near the premises of S.E.K.E.P., he had a con- 25 versation with the wife of the victim; it was arranged that he would drive her husband home at lunch time, as she would be taking their car to drive to her own office at the Ministry of Foreign Affairs; actually, when this arrangement was made, the victim was already walking towards the back entrance of 30 the premises of S.E.K.E.P. and his wife called him and informed him accordingly.

According to the appellant's unsworn statement from the dock at the trial, just after 9 m. he went to a nearby Supermarket Store, where he purchased two cartons of milk and a 35 packet of cigarettes.

In this respect he is corroborated by Takis Charalambides (P.W. 49), who said that between 9.30 and 10.30 a.m. the appellant went to his shop at Acheon street in order to get fresh milk and cigarettes for the victim; and that he did buy two cartons 40 of milk and a packet of cigarettes and took them away in a nylon white bag. This witness said that about half an hour to forty–

five minutes later he went out of his shop and he noticed policemen outside the S.E.K.E.P. premises; this must have been after the body of the victim had been discovered and the police had been summoned to the premises.

According to the appellant, after his return to the office with the milk and cigarettes, he prepared a cup of tea for himself and a cup of coffee for the victim and, while they were drinking their drinks in the office, the victim requested him to pay a visit to the kindergarten where the young son of the victim was, at the time, because he was worried about the safety of his son, in view of a threatening telephone call which he had received. This kindergarten is in the area of the Parissinos quarter of Nicosia. The appellant's version is that he left the office in order to go there at about 9.30 a.m., that he drove about, near the kindergarten, in order to observe anything which might appear to be of a suspicious nature, and that he returned to the office at about 10 a.m., when he found the victim lying dead in a pool of blood.

The trial Court did not believe the allegation of the appellant that he was asked by the victim to drive to the area of the kindergarten, or that he did, in fact, do so. It, also, accepted evidence of the staff of the kindergarten that nobody called on that morning there in order to inquire about the son of the victim.

According to the evidence of the charwoman Vartholomeou (P.W. 42) she did see the appellant leaving the office in the morning and returning shortly afterwards carrying with him a bag containing cartons of milk; actually, as he was leaving the premises she heard him saying to the victim to put the water on and that he would be back by the time it boiled. She then saw the appellant leaving the premises again and on that occasion she told her that he would be away for about half an hour and reminded her to clean up the basement of the premises; at the time, and while the appellant was in the hall of the premises going towards the entrance door, she noticed that he was carrying some papers under his left arm.

She did not see the appellant returning and the next person whom she saw was the employee of the Cyprus Telecommunications Authority, Andreou (P.W. 4), together with whom she discovered the dead body of the victim.

It has been the version of the appellant that he panicked when he saw the victim lying dead in their office and that he had

tried to lift his head up with the result that blood got on to his hand, which he wiped on his jacket. As a result, he went home where he changed his clothes.

According to the evidence of prosecution witness Efthymia Pericleous (P.W. 51), she was having coffee with the wife of the appellant at his house, about the middle of the morning of the day of the murder, when she heard the horn of a car; at the time they were sitting at the back verandah of the house and the appellant's wife got up and went out through the front door of the house and she returned about two or three minutes later. Then this witness got up to go to her house, which is quite near the house of the appellant, and, as she was leaving, she noticed the appellant driving away in a small car of Honda make; she later saw him driving back after about ten minutes.

When she had finished washing up in the kitchen of the house, she heard the noice of a car and saw the wife of the appellant driving a white car which she parked outside the gate of the appellant's house; she had seen the wife of the appellant driving the same white car earlier on in the morning, before she had gone to the appellant's house to have coffee with her; then, she saw the appellant driving away in this white car.

The white car is of Alfa Romeo make and the appellant drove it back to his office; but, he did not go there directly:

According to the evidence of Michalakis Eracleous (P.W. 57), who is an employee of the Co-operative Central Bank of Nicosia, the appellant visited the premises of the Bank, between 11.30 and 11.45 a.m. on the date of the crime, in order to lodge two cheques, one in the current account of the provident fund of the employees of S.E.K.E.P. and another one in a deposit account of S.E.K.E.P. This witness testified that the appellant was in a hurry and contrary to his usual practice he did not fill himself the two lodgment slips; one was filled in by the witness and the other one by another employee of the bank.

The appellant did not leave the premises of the Bank immediately, after he had left the two cheques with the above witness. He visited another office in the premises of the Bank, where he met witness Savvas Charalambides (P.W. 44); the appellant asked this witness if the rules for a medical scheme for the staff of the Co-operative movement were ready, because, as he said, they had a similar scheme for the staff of S.E.K.E.P.

It should be recalled that the appellant in his statement to the police (*exhibit* 34) said that, after visiting the Bank, he went to the Post Office, and then returned to the premises of S.E.K.E.P., where he met the police, in circumstances which have already been described in this judgment. 5

To appreciate the significance of the conduct of the appellant, before and after the crime, it is necessary to refer to some expert evidence which is closely related to the issue of his veracity concerning such conduct:

The Cyprus Police has sought, in this case, the assistance, as 10 an expert, of Professor Keith Simpson (P.W. 68), who is the Senior Home Office Pathologist and a university professor on forensic medicine in England.

Professor Simpson gave evidence regarding a re-construction of the crime, which he made on the basis of relevant material 15 which was placed before him when Inspector Adradjiotis visited him in London on December 16, 1975.

Apparently, according to the Professor, the victim was able to see that he was about to be attacked and he raised his hands to his face in an attempt to protect himself, with the result that, 20 initially, he suffered injuries to his hands and two shallow wounds on his head. As a result, he was partly disabled and fell down at the spot where his body was, eventually, found.

According to Professor Simpson, the more major injuries were inflicted whilst the victim was lying on the ground, unable 25 to raise his hands because of the injuries he had, already, received; the splashing of blood in the vicinity of the body was caused by repeated blows whilst the victim was unconscious or partly unconscious; the Professor explained that when the blood was welling up into the injured tissues, and blows were 30 delivered, it splashed around.

The Professor said that, in his opinion, the assailant, at the time when he was delivering the blows against the helpless victim on the ground, must have been standing to the right of the body of the victim, in front of a chair which was to the 35 right of the head of the victim and very near to it; the left shoe of the appellant must have been near to the head of the victim, from where the blood was splashing out and it must have taken blood stains which might have, otherwise, marked the floor;

the right shoe of the assailant did not get stained because it was out of the way.

The Professor stated, further, that the blood stains found on the appellant's left shoe did not get on it due to the shoe having 5 been wiped against the bloody clothing of the body of the victim, nor were such stains consistent with stepping into the pool of blood near the victim; he has explained that had this been so, then, one should have been seeing blood coming up over the sole of the shoe, and he saw none; in the opinion of 10 the Professor the said stains, in view of their appearance and nature, were quite inconsistent with a person wearing that shoe having merely approached the body, because they had run down the shoe and, therefore, they must have got on to the shoe at the time when the head wounds were being inflicted. In 15 accordance with the Professor's evidence it would have been almost impossible to go near enough to the body, in order, only, to have a glance at it or touch it, without disturbing the blood stains on either side of the body, and the Professor saw no signs to that effect.

20 The Professor was cross-examined at length and it was suggested to him that the material which was made available to him, and on which he based his conclusions was, in certain respects, inadequate and, in certain respects, inaccurate; and it is true that, in this connection, the Professor conceded that such 25 material was not all what he would, himself, have, normally, considered as adequate and correct material, and that, on certain points, he qualified his views by appearing to be less certain and less dogmatic than he was at the beginning; and he accepted the existence of possible alternatives which were put to him. 30 But, when one looks at his evidence as a whole, the inescapable conclusion is that until the very end he felt quite certain that his opinion, as to what had happened, was correct and that there was no reason to alter it in any vital respect.

As a lot of argument has been advanced during the hearing 35 of this appeal concerning the manner in which the expert evidence given by Professor Simpson has affected the verdict of the trial Court, it is useful to examine, at this stage, the legal nature of evidence given by expert witnesses.

In Cross on Evidence, 4th ed., p. 385, the following are 40 stated:-

"The functions of expert witnesses were succinctly stated

by Lord President Cooper in *Davie* v. *Edinburgh Magistrates** when he said:

> 'Their duty is to furnish the Judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the Judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence'.

The Court of Session repudiated the suggestion that the Judge or jury is bound to adopt the views of an expert, even if they should be uncontradicted, because, 'The parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert* ' ".

In *R.* v. *Turner*, [1975] 1 All E.R. 70, Lawton L.J. explained as follows (at p. 74) the rules relating to the admissibility of the evidence of expert witnesses:–

> " The foundation of these rules was laid by Lord Mansfield C.J. in *Folkes* v. *Chadd*** and was well laid: 'The opinion of scientific men upon proven facts', he said, 'may be given by men of science within their own science'. An expert's opinion is admissible to furnish the Court with scientific information which is likely to be outside the experience and knowledge of a Judge or jury. If on the proven facts a Judge or jury can form their own conclusions without help then the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon it may make judgment more difficult. The fact that an expert witness has impressive scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves; but there is a danger that they may think it does".

Also, the following two passages may, usefully, be cited from Hampton on Criminal Procedure and Evidence (1973) (pp. 405–406):–

> " The admission of expert evidence has been allowed for

* (1953) S.C. 34, at p. 40.
** (1782) 3 Doug K. B. 157 at 159.

many centuries and has tended to be extended as new sciences have been recognised. The restrictions on its use begin when the witness ceases to make use of his special knowledge. In the Canadian case of *R.* v. *Kusmack* a doctor was called to give evidence of the cause of death of a woman whose throat had been cut; the accused contended that she had been holding a knife and in a struggle between them had accidentally cut herself; the doctor gave evidence that he thought cuts on her hands were caused by fighting off the accused's knife; he should not have been allowed to give this evidence as it was not based on his medical knowledge but on pure conjecture which the Court was equally qualified to use.

....

Generally speaking, the Court tries to avoid having an expert to give his opinion on the very inference which the Court has to make, i.e. on the basic issue in a case. Sometimes this cannot be avoided, e.g. where a doctor is asked whether he considers the victim of an alleged murder could have committed suicide".

In *R.* v. *Mason*, 7 Cr. App. R. 67, it was held, *inter alia*, that the evidence of an expert is admissible even when he has not seen the body of a victim but has only heard the evidence of those who have; and, also, that he may express an opinion based on an assumed state of facts.

In a case decided by our Supreme Court, *Mitas* v. *Rex*, 18 C.L.R. 63, the following were stated (at pp. 66, 67) in relation to an expert witness who had not himself seen the body of the victim:-

" Dr. Rose, a highly qualified surgeon, was asked to give his opinion on the conclusions that ought to be drawn from the facts observed by Dr. Economides, the Government Medical Officer, who carried out a post-mortem examination of the dead man's body some eight or ten hours after his death. Dr. Rose at no time saw the body and his opinions had therefore to be based solely on the evidence of Dr. Economides as given in the Assize Court and on what Dr. Rose could himself observe by an inspection of the place at which the shooting occurred. We think that the Assize Court went a little too far in saying that such evidence is generally unreliable. Evidence of that kind

must clearly be received with the greatest caution and it is usually given with no less".

In *R.* v. *Matheson*, [1958] 2 All E.R. 87, Lord Goddard C.J. adopted the following (at p. 89) approach to evidence given by medical experts in relation to the issue of the sanity of the appellant:– 5

"What then were the facts or circumstances which would justify a jury in coming to a conclusion contrary to the unchallenged evidence of these gentlemen? While it has often been emphasised, and we would repeat, that the decision in these cases, as in those in which insanity is pleaded, is for the jury and not for doctors, the verdict must be founded on evidence. If there are facts which would entitle a jury to reject or differ from the opinions of the medical men, this Court would not and indeed could not disturb their verdict but if the doctors' evidence is unchallenged and there is no other on this issue, a verdict contrary to their opinion would not be 'a true verdict in accordance with the evidence' ". 10 15

But it has to be noted, too, that in the subsequent case of *R.* v. *Lanfear*, [1968] 1 All E.R. 683, it was stressed by Diplock L.J. (at p. 685) that expert evidence should be treated like that of any other independent witness. 20

It has been complained of, *inter alia*, by learned counsel, who led the team of defence counsel in this appeal—(and who did not do so at the trial, as he was himself a member of a team of defence counsel led by senior counsel from England, who has not, however, appeared in this appeal)—that the trial Court having, in effect, been overwhelmed by the, indeed, very impressive qualifications and long experience of Professor Simpson, treated his evidence as gospel, and proceeded to examine if the version of the defence in this case was acceptable or not by testing whether it was compatible with the evidence of Professor Simpson, instead of treating the evidence of Professor Simpson only as the evidence of one of the witnesses called by the prosecution and considering all the evidence adduced, both by the prosecution and by the defence, as a whole, before deciding as to the guilt or innocence of the appellant. 25 30 35

It has been submitted in this respect that, as a result of the adoption by the trial Court of the above complained of course, the burden of proof was allowed to shift in such a way that 40

the appellant was expected to establish his innocence, in direct contravention of one of the most basic principles which govern criminal proceedings in our system of law.

It is, of course, a cardinal principle of the administration of justice (enshrined, also, in Article 12.4 of our Constitution) that every person charged with an offence shall be presumed innocent until he is proved guilty according to law; and whether he has been so proved is a conclusion to be reached on the whole of the evidence, the burden being on the prosecution to prove the guilt of an accused person, without such person having to prove his innocence.

In the landmark case of *Woolmington* v. *The Director of Public Prosecutions*, [1935] A.C. 462, Viscount Sankey L.C. said (at pp. 481, 482):-

> "... it is not till the end of the evidence that a verdict can properly be found and that at the end of the evidence it is not for the prisoner to establish his innocence, but for the prosecution to establish his guilt. Just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt. In either case, he is entitled to the benefit of the doubt. But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence.
>
> ....
>
> Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained".

In *R.* v. *Lobell*, [1957] 1 Q.B. 547, Lord Goddard C.J. said (at pp. 550, 551):-

> " But in the opinion of the Court the cases of *Woolmington* v. *Director of Public Prosecutions** and *Mancini* v. *Director of Public Prosecutions*** establish that in murder or manslaughter the rule that the onus is on the prosecution permits of no exception except as to proof of insanity.
>
> ....
>
> But there is a difference between leading evidence which would enable a jury to find an issue in favour of a defendant and in putting the onus upon him. The truth is that the jury must come to a verdict on the whole of the evidence that has been laid before them. If on a consideration of all the evidence the jury are left in doubt whether the killing or wounding may not have been in self-defence the proper verdict would be not guilty. A convenient way of directing the jury is to tell them that the burden of establishing guilt is on the prosecution, but that they must also consider the evidence for the defence which may have one of three results: it may convince them of the innocence of the accused, or it may cause them to doubt, in which case the defendant is entitled to an acquittal, or it may and sometimes does strengthen the case for the prosecution. It is perhaps a fine distinction to say that before a jury can find a particular issue in favour of an accused person he must give some evidence on which it can be found but none the less the onus remains on the prosecution; what it really amounts to is that if in the result the jury are left in doubt where the truth lies the verdict should be not guilty, and this is as true of an issue as to self-defence as it is to one of provocation, though of course the latter plea goes only to a mitigation of the offence".

A case decided by our own Supreme Court, which may be usefully referred to, in this respect, is *Kafalos* v. *The Queen*, 19 C.L.R. 121, where it was stressed (at p. 126) that "the failure of a defence is only fatal to an accused person if the case for the prosecution which remains unshaken by the defence is strong enough in itself to convict the accused".

* [1935] A.C. 462.
** [1942] A.C. 1.

Having carefully perused the whole judgment of the trial Court, I am unable to agree with the submission of counsel for the appellant that, at the trial, the question of the guilt or innocence of the appellant was approached in a manner casting improperly on the appellant, as an accused person, the burden to prove his innocence; I am quite satisfied that the trial Court considered the evidence as a whole and reached, eventually, its verdict on the footing that the prosecution had discharged the onus of proving the appellant guilty as charged.

In the present case, as well as in other cases where an attempt is made to dissect the judgment of a trial Court in order to discern, in the process of doing so, the thinking of such Court in reaching its conclusion concerning the guilt or innocence of an accused person, a careful distinction must always be made between what, on the one hand, can, properly, be taken as amounting to an error concerning the burden of proof and, on the other hand, merely the method of drafting the judgment which, by itself, cannot be safely relied on as being indicative of the reasoning process of the trial Court in reaching its verdict. It must not be lost sight of that a trial Court normally considers the case as a whole before reaching its decision as regards its outcome, and then, having done so, it proceeds to write its judgment, giving its reasons for such decision.

That is why its judgment has to be read as a whole and actual errors must be distinguished from mere defects of style.

In *Charitonos and Others* v. *The Republic*, (1971) 2 C.L.R. 40, I had occasion to say the following, in this respect (at p. 97):-

> " In my view the judgment of the trial Judges cannot be regarded as demonstrating in a sequence after sequence manner their process of thinking. It is reasonable to conclude that they wrote their meticulously prepared judgment after they had deliberated and decided on the case as a whole, having reserved their judgment at the conclusion of the trial and delivered it about a week later".

Also, in the same case, Josephides J. said (at p. 107):-

> " Looking not minutely, but broadly, at the whole judgment, I am of the view that there was no wrong approach by the trial Court as regards the test applied in considering

the explanations of the prisoners and the whole evidence at the end of the case,...".

This Court has, very recently, reaffirmed the above approach, of considering a judgment as a whole, in *Kyprianou* v. *The Police* (1976) 2 C.L.R. 75. 5

Regarding the other complaint of counsel for the appellant, that the trial Court was overwhelmed by the qualifications and experience of Professor Simpson and treated his evidence as "gospel", I do agree that this is a conclusion that might, at first sight, be drawn on reading the judgment of the trial Court; 10 but, such conclusion is more apparent than real; and when one examines carefully such judgment as a whole, he is bound to form the view that, though the trial Court did treat the evidence of Professor Simpson as the centre of gravity of the case for the prosecution, and devoted a lot of its judgment to it, it did not 15 rely on it to the exclusion of any other evidence, either for the prosecution or for the defence, in reaching its verdict, but it decided the case on the basis of the evidence before it as a whole.

In my view, for the purpose of determining this appeal, one must not lose sight of the fact that, though the evidence of 20 Professor Simpson was, indeed, relevant to various aspects of the case, the part of it which was of, really, decisive significance was that which concerned the splashing with blood of the left shoe of the appellant; it was established by that part of Professor Simpson's evidence that some of the spots of blood had been 25 formed by blood which dropped on it from above and had run down its side; this sort of splashing of the appellant's shoe could not have happened, according to Professor Simpson, if the appellant, wearing such shoe, had merely stepped in the pool of blood around the body of the victim; and, in this connection, counsel 30 for the appellant did not challenge the opinion of the Professor, either at the trial or before us.

Professor Simpson said that one way in which the left shoe of the appellant could have been splashed as aforesaid was if the appellant was the assailant who delivered the blows on the head 35 and face of the victim while it was lying helpless on the floor.

The defence suggested to Professor Simpson two alternative ways in which blood could have dropped, as it did, on the shoe of the appellant:

The first alternative was that this could have happened on 40

lifting the head of the victim and letting it drop back in the pool of blood around it. Professor Simpson rejected this possibility and explained, in this connection, that if the head was dropped in a pool of blood which was still liquid there might be some displacement of blood but not the spraying into the air, which is evident from the spots found on the left shoe of the appellant. He said that in such a case he would have expected to find blood on the part of the shoe which was closest to the floor and not the kind of splashing of the shoe which he found, and which indicated that there was splashing of blood in such a manner that blood had risen into the air above the shoe before dropping on to it.

The second alternative was that the splashing of the shoe was caused through the appellant having shaken his hand which got soiled with blood of the victim. Professor Simpson agreed that this could be so, but he pointed out that this view presupposed the shaking of the hand of the appellant with the fingers spread out, with the hand being over the left side of the left shoe and being, also, quite heavily stained with blood, which was running blood and not merely blood smeared on the hand or blood in a jelly form.

Professor Simpson said, also, that the spots which he found on the left shoe of the appellant could have got on to it if the head of the victim was lifted up from the floor and shaken before being dropped back on to the floor.

The trial Court observed, however, that no such allegation had been put forward by the appellant during the trial and it was not necessary, therefore, to examine this possibility.

I have quoted, earlier on in this judgment, in full the statement which the appellant made to the police on November 21, 1975, as well as his unsworn statement, from the dock, at the trial.

In his statement to the police he has mentioned that it was his *right* hand that got smeared with the blood of the victim, when he found the body of the victim on his return to the premises of S.E.K.E.P.; this fact alone suffices, in my opinion, to rule out the alternative possibility of the left shoe of the appellant having been stained with blood because of his having shaken his hand when smeared with the blood of the victim, because Professor Simpson has said that this possibility presupposes that it was the *left* hand of the appellant which had been smeared

with blood and shaken over the left shoe; and the trial Court accepted the Professor's view as correct and no evidence to counter it was given.

In his unsworn statement from the dock, at the trial, the appellant mentioned that he had tried to lift up, from the floor, the head of the victim and then, on seeing the horrible wounds on it, he dropped it back on to the floor. He never mentioned anything about this lifting up of the head of the victim when he gave his statement to the police; but, counsel for the appellant has argued that when the appellant gave his statement to the police, a day after the murder, he was still confused and he, therefore, did not give a full account of what had happened when he was faced with the terrible sight of the battered body of his colleague lying on the floor of their office; counsel for the appellant has argued, further, that though the appellant did not say, in so many words in his statement from the dock, that he had shaken the head of the victim when he lifted it up from the floor, it was reasonable to infer that he could have done so because he was very upset and his hands must have been shaking at the time.

In *R.* v. *Turkington*, 22 Cr. App. R. 91, it was pointed out that an alternative theory put forward by the defence which is consistent with the evidence ought not to be ignored. Avory J. said, in this respect, the following (at p. 92):-

> " The theory of the prosecution in this case, which must be taken as having been accepted by the jury, was that the woman was evicted from the flat after a quarrel, and that, as she was attempting to get back into the flat through the window, she was violently struck by the appellant, and that the blow caused her to fall into the area.
>
> This Court never interferes with the verdict of a jury on a question of fact, if the jury has been properly directed and if there was evidence on which they could reasonably arrive at their verdict. The defendant was not bound to put forward any theory of death, but we are bound to consider, not only the theory of the Crown, but also the alternative theory that was strongly urged on behalf of the defendant, that the woman slipped on the window sill and so met her death. If that alternative theory was possible and consistent with the evidence, the appellant was entitled to be acquitted. The medical evidence was that the woman's fall might have been brought about by a blow on

her chin; but it was qualified by the evidence of another doctor, who admitted that all the symptoms displayed were consistent with a mere fall from the window. There was evidence by the appellant, and nothing to contradict it, that the blow on the woman's chin was given when she was endeavouring to force an entry through the door of the flat and before she climbed on to the window."

In *Mancini* v. *Director of Public Prosecutions*, [1942] A.C. 1, Viscount Simon L.C. said (at pp. 7, 8):-

"Although the appellant's case at the trial was in substance that he had been compelled to use his weapon in necessary self-defence—a defence which, if it had been accepted by the jury, would have resulted in his complete acquittal—it was undoubtedly the duty of the Judge, in summing up to the jury, to deal adequately with any other view of the facts which might reasonably arise out of the evidence given, and which would reduce the crime from murder to manslaughter. The fact that a defending counsel does not stress an alternative case before the jury (which he may well feel it difficult to do without prejudicing the main defence) does not relieve the Judge from the duty of directing the jury to consider the alternative, if there is material before the jury which would justify a direction that they should consider it. Thus, in *Rex* v. *Hopper*,[1] at a trial for murder the prisoner's counsel relied substantially on the defence that the killing was accidental, but Lord Reading C.J., in delivering the judgment of the Court of Criminal Appeal, said:[2] 'We do not assent to the suggestion that as the defence throughout the trial was accident, the Judge was justified in not putting the question as to manslaughter. Whatever the line of defence adopted by counsel at the trial of a prisoner, we are of opinion that it is for the Judge to put such questions as appear to him properly to arise upon the evidence, even although counsel may not have raised some question himself. In this case it may be that the difficulty of presenting the alternative defences of accident and manslaughter may have actuated counsel in saying very little about manslaughter, but if we come to the conclusion, as we do, that there was some evidence—we say no more than that—upon which a question ought to have been

1. [1915] 2 K.B. 431
2. Ibid. 435

left to the jury as to the crime being maslaughter only, we think that this verdict of murder cannot stand.' ".

Later on, however, in the same case, Viscount Simon said (at p. 12):-

" Taking, for example, a case in which no evidence has been given which would raise the issue of provocation, it is not the duty of the Judge to invite the jury to speculate as to provocative incidents, of which there is no evidence and which cannot be reasonably inferred from the evidence. The duty of the jury to give the accused the benefit of the doubt is a duty which they should discharge having regard to the material before them, for it is on the evidence, and the evidence alone, that the prisoner is being tried, and it would only lead to confusion and possible injustice if either Judge or jury went outside it."

The above passage was cited, with approval, by our own Supreme Court, in *Halil* v. *The Republic*, 1961 C.L.R. 432, 438, 439.

The *Turkington and Mancini* cases, *supra*, were relied on by this Court in *Ayres* v. *The Republic* (1971) 2 C.L.R. 16 (see the judgment of Hadjianastassiou, J. at p. 35).

I shall now deal, in the light of the above referred to principles, with the possibility that the head of the victim may have been shaken by the appellant when he lifted it up from the floor, with the result that the appellant's left shoe got splashed in the manner in which Professor Simpson has described: I cannot agree with counsel for the appellant that this was a consistent with the evidence alternative which ought not to have been ignored by the trial Court; there was no cogent evidence before the trial Court giving reasonably rise to the inference that anything of this sort had happened and, therefore, this was an alternative involving pure speculation, which, consequently, did not *have to be considered* by the trial Court (as pointed out in the passage quoted from the *Mancini* case, *supra*, at p. 12, and cited, with approval, in the *Halil* case, *supra*, at pp. 432, 433).

Of course, the splashing of the left shoe of the appellant is only one link—though, admittedly, an important one—in the chain of circumstantial evidence in the present case and the guilt or innocence of the appellant had to be decided on the totality of such circumstantial evidence.

It is, therefore, necessary to refer, further, to some other evidence in this case which, in addition to the evidence already referred to in this judgment, is, also, part of the material on the basis of which is has to be decided, in determining the present appeal, whether the conviction of the appellant should be upheld or be set aside.

It has been found by the trial Court that the appellant had a possible motive to kill the victim because there was a deficiency in the cash in hand of approximately £47,000, in relation to accounts kept by the appellant; and that the victim, who was well acquainted with the accounts in question, could have, by the information which he would have given to the accountants, prevented the appellant from getting away with the said deficiency by resorting to false explanations, such as his contention that a number of most relevant invoices had been lost because they were left behind in Kyrenia after the Turkish invasion of Cyprus.

It was, furthermore, found by the trial Court that on the day of the murder an auditing of the accounts, by the accountants of S.E.K.E.P., was imminent and could not be avoided any further, since it had been postponed, in one way or another, under various pretexts, on more than one occasion; so, it had been finally arranged that before midday on that date the accountant, Mr. Ninos Yiamakis (P.W.55), would have gone to the premises of S.E.K.E.P. for the purposes of such auditing.

In Cross on Evidence, 4th ed., pp. 34–35, it is stated that facts which supply a motive for a particular act are among the items of circumstantial evidence which are most often admitted; and that examples, in this respect, are afforded by any murder trial at which proof is given of facts supplying a motive for, *inter alia*, financial gain or the removal of someone who was in a position to disclose unpleasant information concerning the accused.

Likewise, in Halsbury's Laws of England, 4th ed., vol. 11, p. 201, para. 365, facts which tend to show motive for committing an offence are treated as facts which are relevant, in the sense of connecting the accused with the commission of the offence.

In *Vrakas and another* v. *The Republic*, (1973) 2 C.L.R. 139, 176, 177, this Court cited with approval *R.* v. *Treacy*, [1944] 2 All ER 229, 232, where it was held that it is not necessary

for the prosecution to adduce any evidence as to why a murder was committed, and proceeded to state the following:-

> "It was not, therefore, necessary that the Assize Court should have reached absolutely definite conclusions regarding the motive of each of the Appellants; and it was open to the Assize Court to make findings about possible or alternative motives, constituting circumstantial evidence which tended, together with the rest of the evidence, to establish the guilt of each one of the appellants."

So, once a possible motive has been established it becomes a relevant element of circumstantial evidence.

I shall deal, next, with the question of the weapon with which the murder was committed:

As already stated, such weapon was never discovered, notwithstanding the exhaustive police searches for the purpose, but the trial Court accepted the evidence of Professor Simpson that there was no doubt that it was an instrument of the chopping variety, and that it was likely, in view of the length of the longest wound, to have had a cutting edge of at least five inches.

In this connection the prosecution adduced evidence at the trial that Stavros Philippou (P.W.47) and his wife Maroulla Philippou (P.W.48) saw, in April 1975, in a flat, which they had rented from the appellant, a chopper which they handed over to him in May 1975, that is about six months before the murder of the victim.

Another prosecution witness, Takis Kokkinos, (P.W. 53), stated that, in September 1975, he had seen a chopper lying about in the garage of the appellant.

It has been strenuously argued, both before the trial Court and before us, that the evidence of the aforementioned three prosecution witnesses, concerning possession by the appellant of a chopper, ought to be disregarded because they were not independent unbiased witnesses, in that they had been on bad terms with the appellant; the appellant had sued the Philippou couple for not paying the rent of the flat and Kokkinos had been reported to the police by the appellant and his wife for making annoying telephone calls to her.

I do not, myself, attach much importance to this evidence

concerning the possession by the appellant of a chopper which, after all, is a household instrument in common use; so, I do regard such evidence as being, by itself, of rather small value, even if it is treated as credible.

5 Even if I were to accept that, in view of inherent weaknesses in the evidence of the aforesaid three prosecution witnesses, their evidence ought not to have been relied on by the trial Court, I would have to hold, in view of the, in my opinion, little significance of their evidence, that no substantial miscar-
10 riage of justice has occurred, through the trial Court having treated their evidence as credible; and, consequently, I would be prepared to uphold the conviction of the appellant by applying the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155, in the light of the principles, governing the
15 application of such proviso, which have been expounded in, *inter alia*, *Vouniotis* v. *The Republic*, (1975) 2 C.L.R. 34, 54–61.

A witness, whose evidence is, also, related to the matter of the murder weapon, is the charwoman, Vartholomeou (P.W. 42), who saw the appellant leaving the premises of S.E.K.E.P. carrying
20 some papers under his left arm; and it has been the contention of the prosecution that in those papers there was wrapped up a chopper, or some other similar instrument, which had been used to commit the murder.

Counsel for the appellant has strived to persuade us that the
25 evidence of Vartholomeou ought not to have been relied on by the trial Court. I need not go, at length, into this aspect of the case, because it suffices to say that, notwithstanding the fact that in certain other respects—(which are not, in my opinion, decisively connected with the outcome of this appeal)—her
30 evidence does not appear to be cogent, nevertheless I see no adequate reason for interfering with the finding of the trial Court that she was a credible witness, and that she did see the appellant leaving with some papers under his arm; but, of course, this piece of evidence, by itself, proves nothing, and it is only a
35 factor to be weighed together with all the rest of the circumstantial evidence in this case.

The evidence of Vartholomeou is relevant, too, to another aspect of the case, namely that of the approximate times, during the morning of November 20, 1975, when she saw the appellant
40 either leaving, or returning to, the premises of S.E.K.E.P., prior to the time when, eventually, the body of the victim was

discovered, later on, that morning. The police, in the course of their investigations, tried to verify the said times by reconstructing, and timing, what Vartholomeou told them that she had been doing during the relevant part of the morning; but, the trial Court, rightly in my view, found this process unreliable in 5 the circumstances of the present case.

On the other hand, counsel for the appellant has tried to use certain discrepancies between the evidence of Vartholomeou and of other prosecution witnesses, concerning certain times at which the appellant was seen by them at various places during 10 that morning, in order to persuade us that the appellant could not have been the person who committed the murder.

Since, however, all the witnesses concerned spoke about such times more or less approximately, and, also, due allowance must be made for humanly unavoidable inaccuracies, I am of 15 the opinion that the said discrepancies are not of a decisive nature as regards the outcome of this appeal.

Two other matters which should now be dealt with are the relevance to the issue of guilt or innocence of the appellant of, *first*, his refusal (after he had been cautioned by the police that 20 he was not bound to say anything) to answer further questions, when being interrogated by the police on November 21, 1975, because he wanted to seek advice from his advocate before doing so, and, then, his refusal, on the advice of his advocate, to answer questions, when he had finished making a statement to 25 the police, later on, on the same day; and, *secondly*, his failure to give evidence on oath, at the trial, having elected to make only an unsworn statement from the dock:

Regarding the first of the above matters, the relevant legal principles have been expounded in a number of cases: 30

In *R* v. *Naylor*, 23 Cr. App. R. 177, it was held, on appeal, that it was improper to make adverse comments in the summing-up, at the trial, on the fact that after the accused was cautioned he had told the police "I do not wish to say anything except that I am innocent"; Lord Hewart C.J. said (at pp. 180, 181):- 35

"We are of opinion that that was a misdirection. The case is really a fortiori upon the case of *Whitehead*, 21 Cr. App. R. 23; [1929] 1 K.B. 99, where it was held that it is

not corroboration of incriminating evidence that the accused did not deny the charge or was silent about it. But it is well to add something further. When one looks at the words of the formula which must be deliberately framed, it is quite obvious that they were intended to convey and do convey to the prisoner the belief that he is not obliged to say anything unless he desires to do so. Now if those words are really to be construed in this sense, that, having heard them, an accused person remains silent at his peril and may find it a strong point against him at his trial that he did not say anything after being told he was not obliged to say anything, one can only think that this form of words is most unfortunate and misleading. We think that these words mean what they say and that an accused person is quite entitled to say: 'I do not wish to say anything except that I am innocent'. The matter becomes even stronger when one reflects that what was done here was done on the advice of an able and experienced solicitor. It would be strange if a point could properly be made against an accused person if, acting on the advice of his solicitor and following the very words of that which is said to him, he remains silent, that he did not then and there disclose his defence."

In *R.* v. *Leckey*, 29 Cr. App. R. 128, the headnote reads as follows:-

" The appellant, on being arrested on a charge of murder, was cautioned in the usual terms. He replied to a police officer: ' I have nothing to say until I have seen someone, a solicitor.' Before that he had said (after caution) to another police officer on being questioned on his movements at the material time: 'Before I make a statement I should like to get advice.' The Judge, in his summing-up, referred to the appellant's silence after caution on those two occasions in terms according to which (in the opinion of the Court of Criminal Appeal) it seemed that the jury were told that they might infer or find the appellant's guilt by considering the fact of his silence after caution.

Held, that that amounted to a misdirection, and the conviction must be quashed."

In that case the *Naylor* case, *supra*, was followed and Lord Caldecote C.J. said (at p. 135):-

" Therefore, three times over, once at the beginning, once

a little later on, and a third time just before the end of his summing-up, the Judge seems to put to the jury the consideration that they might infer or find the appellant's guilt by considering the fact of his silence after caution. We think that that amounted to a misdirection, and it is proper ground on which this verdict, subject to one other question, should be quashed. If it were not so, it must be obvious that a caution may be indeed a trap instead of being a means for finding out the truth in the interests as much of innocent persons, as it is in the interests of justice against guilty persons. An innocent person might well, either from excessive caution or for some other reason, decline to say anything when charged and cautioned, and if it were possible to hold that out to a jury as ground on which they might find a man guilty, it is obvious that innocent persons might be in great peril."

The *Naylor* and *Leckey* cases, *supra*, were considered in *R.* v. *Gerard*, 32 Cr. App. R. 132, where the headnote reads as follows:-

"The applicant was found, together with another man, in possession of a lorry laden with bottles of spirits. A police officer asked both men what they were doing with the lorry and thereupon both ran away in different directions. The applicant was caught and taken to the police station. There he was cautioned and asked by a police officer if he wished to say how he came into possession of the lorry and its contents. At the time the police officer had no knowledge that the contents were stolen, and no reference had been made to the question of the applicant being charged. The applicant replied: 'What I have to say I will say to the Court.' At the trial the Judge in his summing-up commented to the effect that, if the applicant were innocent, it was somewhat curious that he had made that statement when he had not yet been charged.

Held, that the comment was perfectly proper and did not amount to a misdirection."

Humphreys J. stated (at pp. 134, 135):-

"All we say about *Leckeys'* Case (*supra*), which was a decision of this Court, is that it may be described as forming the high water mark of those cases in which convictions have been quashed because of a statement made by the

presiding Judge about an observation made by the accused man when he was arrested, and we are not disposed to extend the decision in that case beyond the facts of that case or some similar case, if it should come before us. The present is a totally different case, and is, we think, very much like *Tune* [1944], 29 Cr. App. R. 162, which came before this Court after *Leckey's Case* (*supra*). In that case, a man charged with fraudulent conversion, on being interviewed by the police after caution with regard to the charges, made a statement in which he admitted that he had been shown various documents by the police, but gave no explanation and at the end said: 'I can fully explain the whole question, but would prefer to have advice before doing so in writing'. It was submitted that the Chairman in that case was wrong in commenting to the jury: 'Could not that have been said without legal advice?' This Court held that there was nothing whatever improper in such an observation being made and declined to quash the conviction. Similarly, in the present case, in our view, what was said by the Deputy Chairman was a perfectly harmless and proper observation. It cannot have misled the jury into thinking that they ought to convict the applicant because he did not make some answer to the charge, when, in truth, no charge had been made against him at all. Therefore, this application for leave to appeal is refused."

In *R.* v. *Davis*, 43 Cr. App. R. 215, it was held that "where a comment in a summing-up on the prisoner's silence when arrested and cautioned by the police amounts to an invitation to the jury to form an adverse view of the prisoner from the fact of his silence, such comment amounts to a misdirection." In that case the *Naylor* case, *supra*, was followed and the *Gerard* case, *supra*, was distinguished.

The *Davis* case, *supra*, was followed in *R.* v. *Hoare*, 50 Cr. App. R. 166. Lord Parker C.J. said (at p. 170):-

"*In the judgment of this Court, the present case really* falls fairly and squarely within what was said in the case of *Davis* (*Norman*) (*supra*). Indeed, it is a stronger case in that in the case of *Davis* (*Norman*) (*supra*) the Deputy Chairman had reminded the jury of the caution, and had

gone on to explain that in the light of that caution the prisoner was not obliged to say anything. In the present case, though no doubt the jury had the words of the caution in their mind, they were never expressly told that a man was entitled to stand on his rights and say nothing, that he was entitled to keep back for reasons which he might think good the nature and details of his defence. Nothing of that was explained to the jury, and on top of that come the passages to which I have referred, the last two of which would clearly convey to the jury the inconceivability of an innocent man not giving the details of his alibi at once to the police if it were a true one."

In *Hall* v. *Reginam*, [1971] 1 All E.R. 322, which was decided by the Privy Council in England, Lord Diplock said (at p. 324):-

"It is a clear and widely-known principle of the common law in Jamaica, as in England, that a person is entitled to refrain from answering a question put to him for the purpose of discovering whether he has committed a criminal offence. A fortiori he is under no obligation to comment when he is informed that someone else has accused him of an offence. It may be that in very exceptional circumstances an inference may be drawn from a failure to give an explanation or a disclaimer, but in their Lordships' view silence alone on on being informed by a police officer that someone else has made an accusation against him cannot give rise to an inference that the person to whom this information is communicated accepts the truth of the accusation. This is well established by many authorities such as *R.* v. *Whitehead** and *R.* v. *Keeling***. Counsel has sought to distinguish these cases on the ground that in them the accused had already been cautioned and told in terms that he was not obliged to reply. Reliance was placed on the earlier case of *R.* v. *Feigenbaum**** where the accused's silence when told of the accusation made against him by some children was held to be capable of amounting to corroboration of their evidence. It was submitted that the distinction between *R.* v. *Feigenbaum**** and the later cases was that no caution had been administered at the time at which the accused was informed of the accusation. The correctness

* [1929] 1 K.B. 99
** [1942] 1 All E.R. 507
*** [1919] 1 K.B. 431

of the decision in *R.* v. *Feigenbaum** was doubted in *R.* v. *Keeling***. In their Lordships' view the distinction sought to be made is not a valid one and *R.* v. *Feigenbaum** ought not to be followed. The caution merely serves to remind the accused of a right which he already possesses at common law. The fact that in a particular case he has not been reminded of it is no ground for inferring that his silence was not in exercise of that right, but was an acknowledgment of the truth of the accusation."

The Privy Council affirmed its above view in the *Hall* case, *supra*, in *Parkes* v. *The Queen*, [1976] 3 All E.R. 380, 382, but distinguished the two cases on the basis of their particular facts.

In *R.* v. *Chandler*, [1976] 3 All E.R. 105, the Court of Appeal, Criminal Division, in England, not considering themselves bound by the *Hall* case, *supra*, as it was a case decided by the Privy Council, expressed reservations (see p. 109) about the already quoted above view of Lord Diplock in the *Hall* case (see p. 324 of the report in that case). Lawton L.J. stated, in this respect, the following in delivering the judgment in the *Chandler* case:–

"The law has long accepted that an accused person is not bound to incriminate himself; but it does not follow that a failure to answer an accusation or question when an answer could reasonably be expected may not provide some evidence in support of an accusation. Whether it does will depend on the circumstances."

Having in mind the principles expounded in the just cited case-law, I have reached the conclusion that the refusal of the appellant to answer further questions put to him by the police, on November 21, 1975, or to answer any questions after he had made a statement to the police later on on the same day, is not a factor which can properly or safely, in the circumstances of the present case, be taken into account against the appellant, in determining the outcome of the present appeal; to do otherwise would be to render nugatory both the right of the appellant to refuse to answer questions after he had been cautioned that he was not bound to say anything, as well as his right to seek legal advice and to act in accordance with it.

* [1919] 1 K.B. 431
** [1942] 1 All E.R. 507

The next issue is to what extent I am entitled, sitting on appeal, to attribute any weight to the fact that the appellant, on being informed of his rights at the trial, elected to make an unsworn statement from the dock and not to give evidence on oath in his own defence. 5

The said unsworn statement is described by the trial Court in its judgment, on more than one occasion, as "evidence"; but, in my view, it was not entirely accurate to describe it as evidence in the strict sense.

In Cross on Evidence, 4th ed., p. 165, the following passage is 10 to be found:-

> " It is sometimes said that the accused's unsworn statement is not evidence in the case but something more like the arguments of counsel, the closest analogy being a speech in which it is suggested to the jury that certain things 15 compatible with the accused's innocence might have happened. It has, however, been held by the Court of Criminal Appeal that it is a misdirection to instruct the jury in these terms for, although the statement is clearly not evidence in the sense of sworn evidence that can be 20 cross-examined, 'it is evidence in the sense that the jury can give to it such weight as they think fit'."

The decision referred to by Professor Cross in the above passage is *R.* v. *Frost and Another*, 48 Cr. App. R. 284, where Lord Parker C.J. stated, in this respect, the following (at pp. 25 290-291):-

> " In connection with this point Mr. Nicholls says in the first instance that the learned Commissioner was wrong in telling the jury that the statement was not evidence. In the opinion of this Court, it is quite unnecessary to consider 30 what is really an academic question, whether it is called evidence or not. It is clearly not evidence in the sense of sworn evidence that can be cross-examined to; on the other hand, it is evidence in the sense that the jury can give to it such weight as they think fit. Having regard to the fact that it is sufficient for this case to quash the conviction on 35 the first ground, namely, in regard to the direction on possession, the Court has not thought it necessary to go into the full history of this matter; but, in their opinion, it is quite clear to-day that it has become the practice and the proper practice for a Judge not necessarily to read out to the jury 40

the statement made by the prisoner from the dock, but to remind them of it, to tell them that it is not sworn evidence which can be cross-examined to, but that nevertheless they can attach to it such weight as they think fit, and should take it into consideration in deciding whether the prosecution have made out their case so that they feel sure that the prisoner is guilty.

The Commissioner went a long way in complying with what this Court thinks is the proper practice, but he did go on to say that the statement was mere comment and may be analogous to counsel's speeches. In the opinion of the Court, whatever the statement is called, it is certainly more than mere comment, and in so far as it is stating facts, it is clearly something more and different from the comments in counsel's speeches."

In the more recent case, however, of *R.* v. *Coughlan*, [1976] Crim. L.R. 629, the Court of Appeal took the view that "In preserving the right to make an unsworn statement the Criminal Evidence Act tacitly indicated that something of possible value to the defendant was being retained. What was said in a statement was not to be altogether brushed aside, but its potential effect was persuasive rather than evidential. It could not prove facts not otherwise proved by the evidence but it might show the evidence in a different light. The jury should be invited to consider the statement in relation to the evidence as a whole. It was perhaps unnecessary to tell them whether or not it was evidence in the strict sense but it was right to tell them that a statement not sworn to, and not tested by cross-examination, had less cogency than sworn evidence."; and the House of Lords refused leave to appeal on the question whether an unsworn statement from the dock by an accused is part of the evidence upon which the jury has to found its verdict in the case.

The trial Court, in the present case, has not commented, in any way, on the fact that the appellant has failed to give evidence on oath, and it limited itself to referring to his unsworn statement from the dock as "evidence" given by him (though it was made clear in the judgment that it was not given on oath).

Before considering to what extent the fact that the appellant has not given evidence on oath at the trial may be taken into account for the purpose of determining the present appeal, it is *useful to refer, by way of analogy, to the principles governing*

the propriety of commenting at the trial in relation to such a matter:

The relevant case-law is referred to in Archbold's Pleading, Evidence and Practice in Criminal Cases, 39th ed., pp. 353, 354, para. 600; and I shall cite only some of those cases. 5

In *R.* v. *Pratt*, [1971] Crim. L.R. 234, the conviction was quashed on the ground that the relevant comment of the Judge at the trial went too far; the report of that case reads as follows:

> "P was convicted of riot. He did not give evidence and the Judge commented to the jury: 'you might have thought 10 that P would have gone into the witness box and told you what he had been doing and explained (his actions)....... and seen fit to give his version on oath and to allow you to have the opportunity of seeing him cross-examined so that you could assess his evidence .... He has not chosen to 15 do so. So you have not heard from P and he has not seen fit to answer the evidence in this case. It is a matter for you as to what inference you draw.
>
> Held, there was a strongish case against P but on balance the Court thought it right to quash his conviction on the 20 ground that the Judge went too far by way of comment on his failure to give evidence. The effect of it was plainly to suggest to the jury that they could draw the inference of guilt because he had not given evidence."

In *R.* v. *Mutch*, [1973] 1 All E.R. 178 Lawton L.J. stated 25 (at pp. 181, 182):-

> " Judges who are minded to comment on an accused's absence from the witness box should remember, first, Lord Oaksey's comment in *Waugh* v. *R.**:
>
> > ' It is true that it is a matter for the Judge's discretion 30 whether he shall comment on the fact that a prisoner has not given evidence; but the very fact that the prosecution are not permitted to comment on that fact shows how careful a Judge should be in making such comment'; 35
>
> and, secondly, that in nearly all cases in which a comment

* [1950] A.C. 203 at 211

is thought necessary (the *R.* v. *Corrie** and *R.* v. *Bernard*** type of cases being rare exceptions) the form of comment should be that which Lord Parker C.J. described in *R.* v. *Bathurst****, as the accepted form, namely, that—

> 'the accused is not bound to give evidence, that he can sit back and see if the prosecution have proved their case, and that, while the jury have been deprived of the opportunity of hearing his story tested in cross-examination, the one thing that they must not do is to assume that he is guilty because he has not gone into the witness box.'

The trial Judge in this case went very near to encouraging this assumption."

In *R.* v. *Sparrow*, [1973] 2 All E.R. 129, the cases of *Pratt and Mutch*, *supra*, were referred to with approval (at p. 136) and in the same case Lawton L.J. said (at p. 135):–

> "In the present case, the charge was murder, and the evidence went to establish that when the detective sergeant was shot by Skingle, the appellant was standing close by and after the shooting, the pair of them drove off together and one of them within a short time in the presence of the other reloaded the pistol; and there has to be added to this submission of the appellant's counsel that the prosecution's evidence was consistent with the possibility that the joint enterprise between Skingle and the appellant was merely to frighten the police officer with a pistol (which the appellant knew was loaded) and that Skingle departed from it by pressing the trigger a number of times.
>
> In the judgment of this Court, if the trial Judge had not commented in strong terms on the appellant's absence from the witness box, he would have been failing in his duty. The object of a summing-up is to help the jury and in our experience a jury is not helped by a colourless reading out of the evidence as recorded by the Judge in his notebook. The Judge is more than a mere referee who takes no part in the trial save to intervene when a rule of procedure

* [1904] 68 JP 294

** [1908] 1 Cr. App. R. 218

*** [1968] 1 All E.R. 1175 at 1178, 1179

or evidence is broken. He and the jury try the case together and it is his duty to give them the benefit of his knowledge of the law and to advise them in the light of his experience as to the significance of the evidence; and when an accused person elects not to give evidence, in most cases but not all, the Judge should explain to the jury what the consequences of his absence from the witness box are and if, in his discretion, he thinks that he should do so more than once, he may; but he must keep in mind always his duty to be fair."

In *R.* v. *Brigden*, [1973] Crim. L.R. 579, the allegation of the defence was that the police had planted certain incriminating articles (a piece of glass and a piece of paper) on the appellant, who, eventually, chose not to give evidence at the trial; the Judge commented that, due to his failure to give evidence, the jury had not heard from him and that this might have helped them in deciding whether there was any truth in the allegation of planting; the Court of Appeal, Criminal Division, in England, refused leave to appeal on the ground that the comment made by the Judge was justified in the circumstances.

In *Vrakas and Another* v. *The Republic* (1973) 2 C.L.R. 139 we have held, on appeal (at p. 191), that the failure of one of the appellants, as an accused, to give evidence in his own defence at the trial was a factor related, in the light of the circumstances of that case, to the issue of his guilt.

Before taking this view we referred to relevant English case-law, including the *Sparrow* case, *supra*.

In the later case of *R.* v. *Gallagher*, [1974] 3 All E.R. 118, Megaw L.J. said (at p. 124, 125):-

> " This Court takes the view that the same general approach is right in respect a comment on the failure to call a witness as is right in respect of a comment by a judge on the failure of an accused person to give evidence. We would, with respect, repeat and adopt the words used in the judgment of this Court delivered by Lawton L.J. in *R.* v. *Sparrow*.[1] Lawton L.J. having referred to the formula suggested by Lord Parker C.J. in *R.* v. *Bathurst*[2] in respect of the failure of an accused person to give evidence, went on:[3]

1. [1973] 2 All E.R. 129.
2. [1968] 1 All E.R. 1175
3. [1973] 2 All E.R. at 136.

'In many cases, a direction in some such terms as these will be all that is required; but we are sure that Lord Parker C.J. never intended his words of guidance to be regarded as a judicial directive to be recited to juries in every case in which an accused elects not to give evidence. What is said must depend on the facts of each case and in some cases the interests of justice call for a stronger comment. The trial Judge, who has the feel of the case, is the person who must exercise his discretion in this matter to ensure that a trial is fair. A discretion is not to be fettered by laying down rules and regulations for its exercise'."

In the light of the above case-law and because, in my view, in the *Vrakas* case, *supra*, the failure of one of the appellants to give evidence, in his own defence, was treated as a factor related to the issue of his guilt in the light only of the particular circumstances of that case, without this Court intending to lay down then an inflexible rule of general application, I have reached the conclusion that the safest course, in the present case, is to disregard the fact that the appellant has elected to make an unsworn statement from the dock, instead of giving evidence on oath, and, thus, not to treat it as a factor influencing the outcome of this appeal, especially as the trial Court itself made no adverse comment in this respect.

I have, now, in the light of all that has been set out till now in this judgment, to decide whether or not the appeal of the appellant against his conviction should be allowed:

It is a conviction based on circumstantial evidence and, so, in deciding whether or not to uphold it, I have not lost sight of the "rule" expounded in *R.* v. *Hodge*, 168 E.R. 1136—which has been referred to by counsel for the appellant—as such "rule" has been commented on, and explained, in *McGreevy* v. *Director of Public Prosecutions*, [1973] 1 All E.R. 503, 508 (see, also in this respect the *Vrakas* case, *supra*, at pp. 169, 170).

In the *McGreevy* case, *supra*, Lord Morris of Borth-Y-Gest said (at pp. 510, 511):-

" In my view, the basic necessity before guilt of a criminal charge can be pronounced is that the jury are satisfied of guilt beyond all reasonable doubt. This is a conception that a jury can readily understand and by clear exposition

can readily be made to understand. So also can a jury readily understand that from one piece of evidence which they accept various inferences might be drawn. It requires no more than ordinary common sense for a jury to understand that if one suggested inference from an accepted piece of evidence leads to a conclusion of guilt and another suggested inference to a conclusion of innocence a jury could not on that piece of evidence alone be satisfied of guilt beyond all reasonable doubt unless they wholly rejected and excluded the latter suggestion. Furthermore a jury can fully understand that if the facts which they accept are consistent with guilt but also consistent with innocence they could not say that they were satisfied of guilt beyond all reasonable doubt. Equally a jury can fully understand that if a fact which they accept is inconsistent with guilt or may be so they could not say that they were satisfied of guilt beyond all reasonable doubt.

In my view, it would be undesirable to lay it down as a rule which would bind Judges that a direction to a jury in cases where circumstantial evidence is the basis of the prosecution case must be given in some special form provided always that in suitable terms it is made plain to a jury that they must not convict unless they are satisfied of guilt beyond all reasonable doubt."

Furthermore, I have borne in mind the approach rightly adopted quite recently by our Supreme Court in *HjiSavva* v. *The Republic*, (1976) 2 C.L.R. 13, namely, that, in deciding whether or not to uphold, on appeal, a conviction for a criminal offence a "lurking doubt" should operate in favour of the appellant.

With all the foregoing in mind, I have anxiously considered the correctness of the conviction of the appellant and, in the end, I have reached the conclusion that such conviction should be upheld; I really feel no doubt, reasonable, lurking or other, that the appellant is the person who killed the victim in the present case. In forming this view, I have been, particularly, influenced by the manner in which the appellant's shoe was stained with blood and by his conduct after the death of the victim (excluding, of course, his refusal to answer questions put to him by the police and his failure to give evidence on oath at

the trial, which are matters which I have decided, as indicated earlier in this judgment, not to allow them to weigh against him).

There remains to examine, next, the question of whether the appellant was rightly convicted of premeditated murder or whether he has only committed homicide without premeditation.

It is useful, to examine, first, the state of the law in Cyprus regarding premeditated murder. Sections 203, 204 and 205 of the Criminal Code, Cap. 154, as reenacted by section 5 of the Criminal Code (Amendment) Law, 1962 (Law 3/62), read as follows:-

> "203. (1) Any person who with premeditation by an unlawful act or omission causes the death of another person is guilty of the felony of premeditated murder.
>
> (2) Any person convicted of premeditated murder shall be sentenced to death.
>
> 204. Premeditation is established by evidence proving whether expressly or by implication an intention to cause the death of any person, whether such person is the person actually killed or not, formed before the act or omission causing the death is committed and existing at the time of its commission.
>
> 205. (1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony of homicide.
>
> (2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty though such omission may not be accompanied by an intention to cause death.
>
> (3) Any person who commits the felony of homicide is liable to imprisonment for life."

Law 3/62, above, had to be enacted as a result of the inclusion in our Constitution of Article 7.2 which reads as follows:-

> "2. No person shall be deprived of his life except in the execution of a sentence of competent Court following his conviction of an offence for which this penalty is provided by law. A law may provide for such penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law."

At the time of the coming into operation of the Constitution sections 203 to 207 of Cap. 154 (which were repealed by Law 3/62), read as follows:-

"203. Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter. An unlawful omission is an omission amounting to culpable negligence to discharge a duty whether such omission is or is not accompanied by an intention to cause death or bodily harm.

204. Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.

205. Any person convicted of murder shall be sentenced to death.

206. Any person who commits the felony of manslaughter is liable to imprisonment for life.

207. Malice aforethought shall be deemed to be established by evidence proving whether expressly or by implication any one or more of the following circumstances:-

(a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) an intent to commit a felony when in the circumstances the commission of such felony is dangerous to life and likely in itself to cause death;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony."

The constitutionality of the above provisions was examined in the light of Article 7.2 of the Constitution in *The Republic* v. *Loftis*, 1 R.S.C.C. 30; the following were stated in the judgment

delivered in that case, after the Court had quoted paragraph 2 of Article 7 of the Constitution (at p. 33):-

" The Court has examined the Greek and Turkish texts of this paragraph and finds that there is no conflict between 5 the two. The Court has further ex abundante cautela also considered the English version. The Court is of the opinion that all expressions used therein respectively, i.e. 'ἐκ προμελέτης' 'teammüden' and 'premeditated' mean one and the same thing. Such words in their said context 10 limit the imposition of the death penalty to 'premeditated' murder as distinct from murder in general. The use of such words conveys the notion of 'premeditated murder', as understood by Continental legal systems and in particular by the 'French Code Penal' from which the above notion 15 was adopted by the Ottoman Penal Code which applied in Cyprus until the enactment of the Criminal Code Order-in—Council in 1928.

The Court adopts in this connection the exposition of premeditation as laid down in 1908 by a Cyprus Court in 20 the case of *Rex* v. *Shaban* reported in volume VIII of the Cyprus Law Reports at page 82. The judgment is set out at page 84 and is worth quoting in full:

'The question of premeditation is a question of fact. A test often applicable in such cases is whether in all the 25 circumstances a man has had sufficient opportunity after forming his intention to reflect upon it and relinquish it.

Much must depend on the condition of the person at the time—his calmness of mind, or the reverse. There might be a case in which a man has an appreciable time 30 between the formation of his intention and the carrying of it into execution, but he might not be in such a condition of mind as to be able to consider it.

On the other hand, a man might be in such a calm and deliberate condition of mind that a very slight interval 35 between the formation of the intention and its execution might be sufficient for premeditation.'

There can be no doubt that the substantive offence of murder as created by sections 204 and 207 of CAP. 154 is so widely defined as to include categories of murder other 40 than premeditated murder in the above sense. Therefore,

section 205, to the extent to which it provides for the death penalty for murder other than premeditated murder, is inconsistent with paragraph 2 of Article 7 of the Constitution."

The case of *Loftis, supra,* was decided, at the time, by the Supreme Constitutional Court which under Article 149(b) of the Constitution had (as the present Supreme Court now has) exclusive jurisdiction to interpret the Constitution in case of ambiguity; therefore, the notion of premeditated murder as set out now in sections 203 and 204 of Cap. 154 has to be understood in a manner compatible with the interpretation of the notion of premeditated murder as found in Article 7.2 of the Constitution and as interpreted by the judgment in the *Loftis* case, *supra*; any other approach to this issue would obviously be contrary to the Constitution; in this respect, the following passage is to be found in the judgment of Josephides J. in *Aristidou* v. *The Republic,* (1967) 2 C.L.R. 43 (at p. 95):-

> " The Constitution of the Republic by Article 7.2 limited the imposition of the death penalty to 'premeditated murder' (see *Loftis* case, 1 R.S.C.C. 30), so that sections 203 to 207 of our Criminal Code were repealed and substituted by Law 3 of 1962 in order that the law should be in conformity with the Constitution."

Also, in the same case Stavrinides J said the following (at pp. 103, 104) after quoting section 204 of Cap. 154, which defines premeditation:-

> " It is remarkable that this section makes no reference to state of mind other than intent to kill and does not stipulate any interval of time, however, short, between the formation of the intent and its execution. Considering that every intentional act or omission is preceded, by however short a time, by the formation of the intent to do the act or make the omission, that section, if taken literally, would bring every unlawful and intentional killing within the ambit of premeditated murder, for which by the last preceding section of the Code the death penalty is provided. However, the power of the legislature to provide the death penalty is limited by Article 7, paragraph 2, of the Constitution to cases of 'premeditated murder, high treason, piracy jure gentium and capital offences under military law'. Accordingly, if and so far as section 204 of the Code, read

without reference to the Constitution, could have the effect of attaching to the expression 'ἐκ προμελέτης' in section 203 a meaning wider than that possessed by that expression in Article 7, paragraph 2, of the Constitution, the result would be to make the latter section unconstitutional."

In that case, too, I had occasion to say the following (at p. 81):-

" Law 3/62 in amending the Criminal Code has introduced section 204 defining premeditation as consisting of an intention to cause the death of any person, whether such person is the person actually killed or not, which is formed before the act or omission causing the death is committed and which exists at the time of its commission.

In my view the notion of premeditation, as introduced into our Criminal Code by section 204 of Law 3/62, must be understood and applied so as to coincide with the notion of premeditation as provided for in Article 7 of the Constitution. The Constitution being the Supreme Law section 204 cannot be validly applied in a manner inconsistent with it. It is a principle of Constitutional Law, governing the interpretation of statutes, that where the Constitution and a statute involve a constitutional right they must be construed together as one Law; and the statute must be interpreted, if possible, so as to make it consistent with the Constitution (see *Cincinnati, New Orleans and Texas Pacific Railroad Company* v. *Commonwealth of Kentucky*, 115, U.S. 321).

So, once the Supreme Constitutional Court has adopted the exposition of premeditation, set out in *R.* v. *Shaban* (*supra*) as conveying the notion of premeditation embodied in Article 7 of the Constitution, the definition of premeditation in section 204 of the Criminal Code must be read in that light and as intended to convey the same notion; it cannot be construed or applied as conveying a different notion of premeditation; and it is quite possible to construe and apply constitutionally section 204, as it stands today."

In the said case of *Aristidou, supra*, the Supreme Court adopted unanimously (as it was done earlier in the *Loftis* case, *supra*) the notion of premeditation as expounded in *R.* v. *Shaban*,

8 C.L.R. 82—(the judgment in that case has been reproduced in full in the above quoted passage from the judgment of *Loftis* case, *supra*).

The *Shaban* case was followed by *R.* v. *Chakoli*, 8 C.L.R. 93, where Tyser C.J. linked, in his judgment (at p. 94), the "premeditation" to the "formation of a previous design" and pointed out that "it is not necessary that the premeditation should be directed to a particular person"; consequently, in that case, the conviction of the appellant of premeditated murder was upheld, because it was found that he had killed the victim after he had formed the design to kill anyone, whoever he might be, who might obstruct him whilst running away after he had committed another crime.

The formation of a previous design to take life was again linked to the notion of premeditation in the later case of *R.* v. *Agathocles*, 8 C.L.R. 97, 99.

After the *Loftis* case, *supra*, was decided by the Supreme Constitutional Court, and before the enactment of Law 3/62, Zekia J., as he then was, said in *Halil* v. *The Republic*, 1961 C.L.R. 432 (at pp. 434, 437):-

> " The trial Court found that the prisoner was guilty of premeditated murder and sentenced him to death. The phrase premeditated homicide or murder, unlike the phrase 'malice aforethought' is not a term of art and it has to be taken in its ordinary meaning. When a person makes up his mind either by an act or omission to cause the death of another person and notwithstanding that he has time to reflect on such decision and desist from it, if he so desires, goes on and puts into effect his intent and deprives another of his life that person commits a premeditated homicide or murder which entails capital punishment.
>
> There is no presumption of law in the case of premeditation but this has to be inferred in each particular case from the surrounding circumstances.
>
> ....
>
> Now the trial Court having taken into account all the accompanying circumstances they were satisfied beyond reasonable doubt that the prisoner in this case caused the death of the victim after having designed to do so and convicted him accordingly.

Facts which led the trial Court to the conclusion that the offence committed was a premeditated murder were expressly stated in their judgment. Indeed each fact, if taken in isolation, might not suffice to carry a conviction on a charge of premeditated murder but when put together, in other words, the cumulative effect of these facts, in my opinion, warrant, a conviction on such an offence."

In *Halil* v. *The Republic*, 1962 C.L.R. 18, the appellant was convicted of the premeditated murder of the victim, an unmarried girl of twenty-two years old, whom he stabbed to death; the victim was eight months pregnant, at the time, and rumours had floated in the village that the appellant was the father of the child; the appellant, in view of these rumours, went, shortly before sunrise on the day of the offence, to the house of the victim where he killed her. Zekia J., as he then was, said the following (at pp. 21-23):-

" There is no doubt and it was not disputed that the prisoner intended to kill the woman in question. The only point for consideration was when it was that he made up his mind to kill her. If a person on the spur of the moment without adequate provocation kills another with a lethal weapon no doubt this would amount to unpremeditated murder but not necessarily to a premeditated murder.

In the circumstances of the case, the material time for deciding for the presence or absence of the premeditation as a required element in a capital murder—I mean premeditated murder—is the time when the prisoner stepped into the bedroom of the victim. If the prisoner had made up his mind to kill Nehibe at the time he entered the victim's bedroom the killing which followed amounted to premeditated murder.

It is essential, therefore, to ascertain the intention of the prisoner at this material moment. It is important in this respect to find out whether there was an intervening cause between his entering the room and delivering the stab wounds which prompted the prisoner to commit the crime.

The inmates of the house have given their evidence which evidence was accepted by the trial Court. That evidence leaves no room for a finding that some incident for a fresh cause might have taken place after his entering into the

bedroom, which incident led him there and then to form the intention to kill. It is in evidence that almost immediately after the man entered the house in question the cries of the inmates were heard. In other words, the time which elapsed between the entry and the stabbing incident was very short. The sequence of events was very quick. 5

The evidence having positively established that there was no intervening cause inside the house the only reasonable inference to be drawn is that the prisoner at the time he entered the bedroom had made up his mind to kill the victim who was expected to be in the said bedroom early in the morning and this clearly amounts to premeditation. Whether his intention to kill depended on the nature of the answer to be given makes, in our view, no difference. 10

The case does not rest only on this evidence. We have the evidence going to the motive and the statements made by the prisoner before and after the crime. The prisoner after the commission of the crime in the morning of the same day spoke to witness Salih and told him that he was tired of the continued rumours spread about him and that he had enough and that he had to do what he had done. Even in his statement to the police on the day of his arrest he said: 'In my pocket I had a knife; I drew it and said: 'What is this which I have to put up with in your hands? Have I not got my honour and every day you blacken my character?' I then thrusted the knife into Nehibe. I do not know into what part of her body or how many times. I then left.' 15 50 25

Acts or statements at the time, prior and subsequent to the offence, all indicate to one conclusion that the prisoner had made up his intention to kill the unfortunate woman before he entered into her bedroom. The able counsel for the appellant went minutely through the evidence relating to what happened in the bedroom on that morning where the stabbing took place. After careful consideration, we are satisfied, however, that on the evidence before them the trial Court had come to the right conclusion." 30 35

After the enactment of Law 3/62 the, at the time, High Court of Justice dealt with the issue of premeditation in the case of *Pieris* v. *The Republic*, (1963) 1 C.L.R. 87. That was a case where it was found that in the morning of the day when the 40

offence was committed the appellant had formed the intention to kill the victim, a girl, if she refused to become his wife. One or two hours later the appellant approached the girl and requested her to be allowed to speak to her, when, upon receiving 5 no reply, he stabbed her to death; the trial Court found that the appellant would not have killed the girl had she spoken to him. Wilson P. said (at pp. 91–92):-

" With respect to the alleged failure of the prosecution to prove that this was a murder by premeditation, it is 10 abundantly clear from what has already been said that the appellant did plan to kill his intended victim if she refused to become his wife. It was argued that the appellant's conduct did not prove premeditation but rather conditional premeditation. If this were accepted, 15 then premeditation as contemplated by the Criminal Code had not been established and the accused would be guilty of unpremeditated murder. It was never contended that the appellant should escape conviction but that, if convicted, should be found 'guilty but insane 20 at the time he committed the offence' or 'guilty of unpremeditated murder'. Upon the facts of this case, it is quite clear that the appellant, by early morning of March 6th had formed the intention to kill if his approaches to the girl were refused. Under section 204 of the Criminal Code, 25 Law 3 of 1962 'premeditation is established by evidence proving whether expressly or by implication an intention to cause death of *any* person .... *formed before the act* .... causing death is committed and existing at the time of its commission.' In my opinion the 30 fact accepted by the trial Court that the appellant would not have killed the girl had she spoken to him can make no difference because his intention to kill her, if she refused him, was the result of deliberate decision on his part which continued down to the time of the killing. Therefore the 35 requirements of the statute have been met as to premeditation. This construction of section 204 accords with the decision in *Mustafa Halil* v. *The Republic*, 1962 C.L.R. 18, and which we affirm.

It was argued that the decision in *Rex* v. *Halil Shaban*, 40 (1908) 8 C.L.R. 82, applied in this case. There it was decided 'the question of premeditation is a question of fact. A test often applicable in such cases is whether in all the

circumstances a man has had sufficient opportunity after forming his intention to reflect upon it and relinquish it'. It was contended in the present case that the appellant did not form the intention to kill until after the girl had refused to speak to him on the morning in question: her refusal so provoked him that he had no time to reflect after being provoked before he commenced to strike her with the knife. Therefore, there is not premeditation within the decision just quoted. The facts in it, however, were quite different. There the accused who was on foot was being chased by a man mounted on a horse which was galloping. The circumstances in which the shot was fired were left in obscurity but it is fair conclusion from the report of the case that there was at least a reasonable doubt as to when the intention to kill was actually formed. In any event, the intention to kill must have been formed a very short time before the killing if it was formed at all. As I have already said it is abundantly clear in the present case that the appellant formed the intention to kill well before the killing itself and not, in point of time, at the moment the girl refused to speak to him on the street in Nicosia."

In *Pavlou* v. *The Republic*, 1964 C.L.R. 97, Zekia P. stated the following (at pp. 100-101):-

"The evidence for a deliberate and premeditated killing is overwhelming. We feel that there is no need for us to refer to any definition or authority on the point of premeditation. This is such a clear case. Out of deference to the able counsel of the appellant we deal shortly with the point raised, namely, that the prisoner being afflicted with a disease of mind which deprived him of the power of self-control and also being a person of a very low intellect, his reasoning power almost lacking, was disabled from committing an offence with premeditation.

Once the mental condition of the prisoner falls short than that of an insane person, who is not criminally responsible, as defined in section 12 of the Criminal Code, it is difficult even to argue, in the light of the facts of this case, a homicital offence without premeditation. Appellant conceived the idea of killing his mother long before the time of killing, and he planned to kill and made use of a lethal weapon and delivered several blows on the head of the victim when she was asleep and could not defend herself or escape the blows.

Although there was a long interval between the time the prisoner conceived the killing of his mother and the time he executed his intention, it was submitted that owing to the disease of mind affecting him, he could not avail himself or he could do very little by reflecting on the terrible consequences of his act and could not desist from his original plan. In our view this does not alter the nature of the offence once the intention to kill was a calculated one from the very start, or became so before the intention was put into execution and continued as such up to the time of the commission of the offence."

In *Koliandris* v. *The Republic*, (1965) 2 C.L.R. 72, it was found, on appeal, contrary to the result reached in the *Pavlou* case, *supra*, that in the particular circumstances of the case the affliction of the appellant with mental disease was an element which raised a doubt as to the existence of premeditation; Zekia P. stated (at p. 82):-

" It was open, no doubt, to the trial Court to weigh the evidence of the expert witnesses with other evidence available before them and, no doubt, it was open to them to infer, as they did, premeditation from the fact that the prisoner was in possession of a big knife which was incommodious even to carry on his person. But one cannot lose sight of the facts that the prisoner was afflicted with a mental disease, that he had no motive or reason to attack and kill the unfortunate victim and that it was sufficient for the defence to raise reasonable doubt in the minds of the Court that there might not have been premeditation in this case. In other words, the prisoner might all of a sudden have conceived the idea of attacking and killing the girl after he was admitted into the house and received the negative reply that Mr. Pedrondas was not in the house."

In the *Aristidou* case, *supra*, the notion of premeditation was examined thoroughly in the judgments delivered on appeal, and our law, in this respect, was compared with the corresponding notions in, *inter alia*, Greek, French, Italian and Swiss law, as well as in the old Ottoman Penal Code, which was in force at the time when the *Shaban* case, *supra*, was decided. In the end—as already stated—it appears from all the separate judgments in the *Aristidou* case, that the conception of premeditation, as explained in the *Shaban* case, was adopted as correct. Though I have cited already certain passages from judgments in

the *Aristidou* case it is useful to make some further citations therefrom; Vassiliades P. stated (at p. 74):-

"And premeditation, in the ordinary meaning of the word, has to be established as a fact in each case. It is one of the fundamental ingredients of the crime under section 203 of the code, which must be proved by the prosecution to the satisfaction of the Court, beyond reasonable doubt. And it may, of course, be proved by direct or circumstantial evidence; it may be inferred from established surrounding facts, leading safely to that one conclusion; or, it may be a matter so apparent that the defence will not even dispute it. In a very recent case before this Court, the element of premeditation in the murder was so obvious, that it was never questioned. (*Koumbaris* v. *The Republic*; reported in this Part at p. 1 *ante*).

Intent in the act which caused the death of the victim, and premeditation in the conception and preparation of the crime, are two different matters; and the distinction between them must be kept clear in the Court's mind. Frequently they overlap, in as much as to constitute the crime of premeditated homicide, they must both exist at the time of the commission of the crime. But confusion between intent in the act causing death, and premeditation in the commission of the crime, may lead to the error of confusing premeditated murder under section 203 with murder of malice aforethought, under the repealed section 204, no longer part of our Criminal Code."

Josephides J. stated (at p. 99):-

"As stated in Bucknill's book entitled 'Ottoman Penal Code' (1913), in the commentary to Article 170 of that Code (at page 125), it is a question of fact in every case whether or not a homicide is premeditated; 'sometimes, as in a case in which a man lies in wait for and shoots another, and in many cases of poisoning, the circumstances surrounding the homicide justify the conclusion of premeditation without difficulty; sometimes as in cases in which in a fit of hasty temper or a tavern brawl a man has killed, a conclusion of premeditation is similarly without difficulty not justifiable; the difficulties lie in the cases falling between the well defined extremes. But much French commentary exists in the mode of ascertainment as to whether preme-

ditation is present or not, and it is generally agreed that it must be clear, in order to find premeditation, that the offender must have had time within which to resolve upon, to reflect upon and finally to execute the intention; this 5 period is not accurately measurable in time but must be considered and determined from all the circumstances attendant upon the facts of the case'."

L. Loizou J. said the following (at pp. 105, 106, 107):-

"In my view it was open to the Court, on the evidence 10 before it, to come to the conclusion that the appellant formed the intent to kill the deceased when he left the scene in order to go and fetch the gun from the house of P.W. 23, Troodia Menelaou.

The interval between the time he formed this intent and 15 the time he put it into execution is the time that it took him to drive the two miles to the house of Troodia, get the gun, and then drive back to the flat, which may well have been in the region of 15 to 20 minutes.

....

An interval of 15 to 20 minutes, or indeed a shorter 20 interval, could no doubt be a sufficient period of time for a person to reflect; but the question of premeditation cannot be decided on the length of time alone for quite obviously what may be sufficient time in one instance may not be sufficient in another, depending on the mental condition 25 of the person involved and therefore his capacity to meditate.

....

It follows from the above that in considering the question of premeditation the state of a person's mind is no less material than the length of time."

30 Also, I said (at pp. 82, 83, 84):-

"Very little time may be sufficient for premeditation for a man who is in a calm and deliberate condition; but an appreciable length of time may not be sifficient for premeditation by one who is not in such a condition of mind as 35 to be able to consider his intention after its formation and before the carrying of it into execution. Sufficient opportunity to reflect upon an intention and relinquish it is not only a matter of pure space of time but a composite notion

of the relevant space of time coupled with the actual condition of the person concerned.

In the present case the decision regarding the existence or not of sufficient opportunity for the appellant to reflect on, and desist from, his intention to kill is largely a matter of inference, to be drawn from the primary facts as established at the trial. 5

....

......and it being largely a matter of inference this Court is in as good a position to draw such an inference from the established facts of the case as was the trial Court. 10

I am well aware that it does not necessarily follow that an abnormal state of mind affords no opportunity for premeditation; even a state of mental disease may not be inconsistent with it (see *Pavlou v. The Republic, supra*). Nor am I prepared to hold that influence of drink or strong 15 passion would in every case be inconsistent with premeditation. But the existence of premeditation is a matter to be examined in the light of the particular circumstances of each case, and in the present case I cannot, with respect, agree with the trial Court that it could be safely inferred 20 that the appellant has had sufficient opportunity, in the short time that elapsed and in the condition in which he was, to reflect and desist. As correctly put by the trial Court, premeditation is an element the existence of which has to be established by the prosecution; and any doubt in 25 that respect has to be resolved in favour of the appellant (see *Koliandris* v. *The Republic, supra*)."

Ioannides v. *The Republic*, (1968) 2 C.L.R. 169 is a case which illustrates very aptly how much the question of the existence of premeditation is inextricably connected with the parti- 30 cular circumstances of each individual case; in that case Josephides J. stated (at pp. 195–196) in relation to upholding or not a conviction for the offence of premeditated murder:–

"The question of premeditation in this case turns on the point of time at which the appellant took the knife know- 35 ingly in his possession, that is,

(a) whether he took it from the police station, or

(b) whether he found it in another policeman's overall on his way home.

In the former case there would no doubt be ample evidence on which to find premeditation; in the latter, the appellant would be entitled to the benefit of doubt."

Hadjianastassiou J. said the following (at p. 205):-

5 "Having excluded both confessions (*exhibits* 9 & 11) made by the appellant, I now propose, to deal with the question of premeditation. Without dealing at length with the evidence of the accused on this issue, I would like to add, that I have some doubts in my mind, whether the 10 appellant took the knife from the *exhibits* room in the Police Station at the time of this terrible killing before leaving for his house or whether he found it in the pocket of the overall used by Police Constable Papamiltiades as he was on his way to his house; and used it to kill his wife when he 15 saw her opening the back door with her knickers down."

Also, I said (at pp. 190-191):-

"It appears that the Judges of the trial Court were influenced, in reaching the conclusion that the killing was cold-blooded and premeditated, by the fact that they found 20 that, after the appellant had stabbed his wife to death, he proceeded to lower her knickers and pull up her clothes and administer into her naked belly a number of knife wounds; they based this finding of theirs on what they considered to be significant fingermarks on the victim's 25 body. Having tested this finding of the trial Court as against the totality of the material before the Court, I cannot agree that it could be safely assumed that this is what did actually happen, and that the possibility can be excluded—with sufficient certainty—that, somehow, the 30 victim's knickers did roll down her body during the time while she must have been, obviously, struggling for her life, and while she was falling on the ground, stabbed to death; the knickers, themselves, have not been produced as an *exhibit*, and it is impossible to say how firm or loose their 35 hold on the victim's body might have been."

In *Vrakas and another* v. *The Republic*, (1973) 2 C.L.R. 139, this Court referred to (at pp. 175–176) the cases of *Shaban*, *Halil* (1961), Koliandris, *Aristidou* and *Ioannides*, *supra*, and after stressing that the issue of premeditation is a question of 40 fact depending on the particular circumstances of each case, stated (at p. 176):-

"In the present case it was natural, as the case for the prosecution was that the killing of the deceased took place on the basis of a pre-arranged plan between the appellants, that the trial Court, in dealing with the issue of premeditation as a question of fact, would have to deal with such issue as regards both appellants together in so far as there was concerned evidence tending to establish the said pre-arranged plan, from the existence of which premeditation could be inferred in relation to each one of the appellants; we do not, therefore, think that the trial Judges erred in this respect in any way." 5 10

In *Vouniotis* v. *The Republic*, (1975) 2 C.L.R. 34, Malachtos J. said in his judgment the following (at pp. 103–104):–

"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." 15 20

In the course of the argument we have been referred, regarding the concept of premeditation, to the Penal Law of India by Gour, 9th ed., Vol. III, p. 2187 et seq., Βαβαρέτου Ποινικὸς Κῶδιξ 4th ed., p. 903 et seq., Γάφου Ποινικὸν Δίκαιον (Εἰδικὸν Μέρος) Part D (1963) p. 8 et seq., Χωραφᾶ Ποινικὸν Δίκαιον (Γενικαὶ 'Αρχαὶ) 7th ed., vol. 1, p. 239 et seq.; but I do not think that any really useful purpose will be served by quoting from the above textbooks, because, in my view, our law regarding the notion of premeditated murder is well settled on the basis of our Constitution, of our Criminal Code, and of the cases decided by our Supreme Court in relation to the application of the relevant provisions. 25 30

I shall next examine, in the light of the principles expounded in the case-law referred to above, whether the finding of the trial Court that the killing of the victim, Kimon Charal, by the appellant, was a premeditated murder should be sustained: 35

The trial Court referred in its judgment to the cases of *Shaban, Halil* (1961) and *Aristidou, supra*, and then stated the following:– 40

"The case for the prosecution on the issue of premeditation can be summarised in the following points:-

1. The killing was a very brutal one;

2. It was committed by a heavy chopping instrument that was brought to the S.E.K.E.P. premises and was not one that was available there. This weapon must have been taken by the accused to the office, the latest, on the morning the murder was committed;

3. The assailant, who is the accused, had a motive to get rid of the victim;

4. The conduct of the accused early in the morning of the 20.11.75 when he met the wife of the victim outside the S.E.K.E.P. offices with whom he had a conversation during which he avoided looking at her face; and,

5. The conduct of the accused immediately after the killing to which conduct, we have already referred, i.e. his attempt to build up an alibi, to conceal facts and tell lies.

Having in mind the above points which are proved beyond doubt by the evidence before us, we have no hesitation in arriving at the conclusion beyond reasonable doubt that the accused killed the deceased in the execution of a preconceived plan—a plan which he formed in his mind the latest when he went to his work on that morning. We further find that the accused proceeded to execute his plan although he had time to reflect on his decision and desist from carrying out his intentions.

Having considered the whole evidence before us, we find that the prosecution have proved their case beyond any reasonable doubt and that the accused is guilty of premeditated murder as charged."

In my view the fact that the killing was a very brutal one is an equivocal factor which is equally consistent with a premeditated murder and with an unpremeditated homicide which has been committed in the course of a sudden eruption of violent passion.

The existence of a motive is a factor which tends to show that the killing of the victim was premeditated, but it is not by itself of decisive significance, because one may have a motive to get rid of somebody and yet he may happen to kill him, eventually,

not as a result of a preconceived plan but in the course of a sudden quarrel which he had not anticipated as likely to take place on a particular date or at a particular time.

The fact that the appellant, earlier on in the morning of November 20, 1975, had avoided, according to the evidence of the wife of the victim to look at her face, when he was having a conversation with her, is, in my view, a factor of no real significance whatsoever.

The conduct of the appellant immediately after the crime, namely his attempt to build up an alibi, to conceal facts, and the telling of lies by him, is conduct which amounts to strong evidence that the appellant is the culprit, but, it is, also, reasonably consistent with efforts by the appellant to cover up a homicide which he had committed without premeditation and in the heat of passion, due to a sudden quarrel with the victim.

Regarding the aspect of the weapon used for the commission of the murder I am not at all satisfied, on the basis of the evidence adduced regarding the implements which were available at the premises of S.E.K.E.P. that there has been excluded, beyond reasonable doubt, the possibility of a chopper, or some other similar instrument, lying around at such premises, which the appellant found handy there and used it in order to kill the victim, at a moment of an outburst of passion.

The prosecution has suggested that the appellant took, himself, the instrument, with which the murder was committed, to the S.E.K.E.P. premises; and the trial Court, as it is stated in the above quoted passage from its judgment, has accepted that this was so, and it went further to hold that the appellant conceived in his mind the plan to kill the victim at the latest when he went to his work on the morning of November 20, 1975, soon after 8 a.m.; that is about two hours before the murder was committed.

I have referred earlier on in this judgment to the doubts whether it was safe to find—as the trial Court has done—that the appellant did possess, at all, a chopper, as testified by the three prosecution witnesses concerned, namely the Philippou couple and Kokkinos; but, even assuming that he did possess a chopper some months before the commission of the crime, there is not the slightest evidence to show, or to warrant safely the inference, that he took such chopper with him to his office

at the premises of S.E.K.E.P. either on the date of the murder or on any previous occasion.

Nor is there anything to show from his conduct during all that morning that he had conceived already, at the time when he went to his work, just after 8 a.m., the plan to kill the victim later that morning. On the contrary, his conduct was entirely normal and he appeared to be on friendly, as usual, terms with the victim; for example, he went and fetched for him milk and cigarettes and he made coffee and tea which he and the victim must have drunk very shortly before the murder was committed.

It is, also, not to be forgotten that it was not until some time later on, during the course of the morning, that it became known to the appellant that there would be nobody else at the premises except the charwoman Vartholomeou, whose movements the appellant did not try to control or restrict in any way, except when he remarked to her casually not to forget to clean the basement; I do think that it is not safe at all to infer from such remark of his that it was part of a preconceived plan to get her out of the way at the time of the killing.

Looking at the evidence at a whole, and bearing in mind, too, that the appellant had other opportunities to kill the victim without being detected, for example when going for walks with him in the rather lonely area near their homes, I am left with a lurking doubt regarding what has actually happened in that room on that fateful morning, which made the appellant kill the victim, in such a brutal manner that one is led to think that it was a killing committed more in the heat of violent passion, due to a sudden quarrel, rather than pursuant to a coolly preconceived plan to do away with the victim; I really think that the way in which the appellant kept on chopping at the head and face of the victim, who was lying dead on the floor, indicates a situation in which the appellant was in the grasp of uncontrollable emotion and amounts to conduct which is not reasonably compatible with a premeditated cold-blooded murder.

On the whole, the evidence is in my opinion equally consistent with both the presence and the absence of premeditation; and in such a situation, notwithstanding the existence of grave suspicion that it was a premeditated murder, the appellant is entitled to the benefit of a reasonable doubt in this respect. I, therefore, find that his conviction of premeditated murder

ought to be set aside and that he ought to be convicted only of homicide under section 205 of the Criminal Code, Cap. 154. In such a case the death sentence passed upon him ought to be set aside too and, in my view, the proper sentence, in the circumstances, would be that of life imprisonment. 5

Before concluding this judgment I should repeat an observation from the judgment in the *Vouniotis* case, *supra* (at pp. 60-61) 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 10 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 repeat this observation so that the appropriate authorities of the Republic may, if they deem it fit, enact legisla- 15 tion in respect of this matter, because, irrespective of other aspects of it, the execution now, all of a sudden, of a death sentence might give rise to constitutional problems such as those faced by the Supreme Court of the United States of America in the series of cases commencing with *Furman* v. *State of* 20 *Georgia*, 33 L. Ed. 2d 346.

HADJIANASTASSIOU, J.: The appellant Andreas Charalambous Anastassiades, was convicted on July 8, 1976 of murdering Kimon Haral. He was tried by the Assize Court of Nicosia on a single count on an indictment charging him with premedi- 25 tated murder contrary to s. 203 of the Criminal Code, Cap. 154 (as amended by s. 5 of Law 3/62) and he was sentenced to death. He has appealed against his conviction and counsel on his behalf raised a number of points of substance in the notice of appeal.

The evidence against the appellant was of a circumstantial 30 nature. 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, as in this trial is of the kind which is 35 called circumstantial or presumptive. Circumstantial evidence, going to prove the guilt of a person is this: one witness proves one thing and another proves another thing, and all these things prove the conviction beyond reasonable doubt, but neither of these separately proves the guilt of the person accused of the 40 crime. But taken together, it has been said to lead to the one inevitable conclusion, and if that is the result of circumstantial

evidence, it is a very much safer conclusion to come to than if one witness gets into the box and gives direct evidence and says "I saw this crime committed". (*Charitonos and Others* v. *The Republic*, (1971) 2 C.L.R. 40 at pp. 113–114. See also *Vouniotis* v. *The Republic*, (1975) 2 C.L.R. 34 at pp. 65–66).

The facts of this complicated case, so far as necessary for me to state them, can be summarized as follows. The appellant joined the service of the marketing board of olive produce known as S.E.K.E.P. in the year 1969 and was earning a salary of £145 per month. His duties were those of a secretary, cashier and accountant. He was also responsible for keeping accountancy books including petty cash, the cash books receipt register, and the receipt books for collection of money and invoices. The victim joined the service of S.E.K.E.P. in 1968 and was a superior officer and supervisor of the accounting department. They both worked in the same office of the premises of S.E.K.E.P. which were situated at 29 Achaeon Street, Nicosia. These two employees by coincidence were also neighbours living in their own houses in the vicinity of C.B.C. and in fact had friendly family relations and shared common interests.

On November 20, 1975, the fatal day for the victim, according to the evidence of his wife, Thelma Haral, at about 7.40 a.m. she and her husband drove their child to the nursery which is situated at Michael Karaolis street. After leaving the child at the nursery, Haral drove through Grivas Digenis Avenue, Ayios Prokopios and Delphon Street, and on his way to Aetolon Street, he waited for the oncoming traffic to clear in order to turn into that street. Whilst they were waiting for the lights to change, they saw the accused coming out from his car, a yellow Honda. The latter parked at the back side of the house of Mr. Ghalanos, which is next to the offices of S.E.K.E.P. When the accused came out of his car they greeted each other. They continued driving and parked their car at point E on *exhibit* 4. The time was 7.57 or 7.58 a.m. When her husband got out of the car and was on his way towards the yard of the S.E.K.E.P. offices, she noticed the accused coming towards her, when she was trying to get out of the car and into the driver's seat. When the accused approached, she put this question to him: "Andrea, is it convenient for you to bring Kim to the house"? Then she added "Are you not going to the factory?" The accused in reply said "Yes, I can bring him". In view of this, she called out to her husband "Kim, Andreas will be bringing you home at noon and I will take the child home earlier."

Whilst she was talking to the accused, she noticed that he was wearing a jacket, light beige colour, suede imitation. That jacket she said made a great impression on her. She further added that this jacket had pockets which had a flap and that the accused had his hands in the pockets of his trousers. She could see from his side that the jacket was being pushed backwards by his hands. Questioned further she said that she noticed that the accused looked worried, pale, gloomy, and as they were talking, he avoided looking her in the eyes. Pressed further, she said that he was not standing face to face with her and that his position was sideways. Then she got into the car and drove away and returned to her home at 11.20 a.m. She parked her car in front of the gate of the yard of her house facing the house of the accused. Whilst there she noticed that the yellow Honda, the car which the accused used in the morning to go to the office, was parked in front of his garage in the yard of his house. Then she added that she was wondering how Kim would have come home if Andreas (the accused) had already returned to his house, but nevertheless, she did not bother to inquire to find out the reason for leaving the office.

The next person who saw and spoke with the accused on that date was Andreas Charalambous, the General Manager of S.E.K.E.P., since 1968, who arrived at his office at 7.45—7.50 a.m. because he was expecting a call from Paphos connected with the business of buying olives for S.E.K.E.P. He saw both the victim and the accused arriving at their office. He left his office at about 8.15—8.20 a.m. in order to go to Lythrodontas to find and buy olives. He added that anytime he was going out of the office he always informed the staff about it in order to know his whereabouts in case anything urgent cropped up. On that particular date, before leaving the office of Haral and Andreas, he told them that he was going to Lythrodontas and that he was expecting mainly two things from them: firstly the reply in connection with the telephone call from Paphos and secondly he wanted the report of the auditors. Questioned further, he said that he stressed to both of them that if he did not have the report or a reasonable excuse for not having same he would take up the matter personally in order to find out what was the impediment. Apparently Mr. Charalambous was referring to the accounts for the report expected to be prepared by the accountant Yiamakis. On some occasions, Mr. Charalambous added that he had made remarks to the accused about his untidiness, and warned him that if he continued such a state of affairs

he would have to report him to the Board and that might result in his dismissal. He also said that he told the victim to pay attention and follow closely the work of the accused and check him.

5 In June or July, 1975, this witness checked the books kept by the accused and noticed that no entries had been made for the last 3 months. He called the accused and asked him the reasons, and the explanation offered by the accused was that as they were expecting the auditors to visit them, it was a matter of days for 10 him to prepare the accounts and bring the books up to date. It appears that during the same period Yiamakis communicated at first with the accused and later on with the victim and asked the accused whether the books and accounts were ready for audit. The accused told the accountant Yiamakis that due to 15 the situation and the losses suffered by S.E.K.E.P. in Kyrenia (because of the invasion) he should communicate with him a month later. In fact Yiamakis had communicated with the accused, and later on he spoke also to the victim and pointed out to him that he must tell the accused to complete the accounts. 20 There was further evidence that Yiamakis was insisting, and he warned both the accused and the victim to see that the accounts were completed for audit. There were several appointments fixed for the auditors to carry out the audit, but again they were cancelled. In the meantime, it appears that both the victim and 25 the accused continued to be on good and friendly terms. The last appointment for the auditing of the books was fixed at 8.30 a.m. of November 20, 1975 (fatal date) but again the accused at 8.20 a.m. rang up Mr. Yiamakis and cancelled the appointment, and told him to call at 11.00 a.m., as he had to go out of the 30 office to make some payments. The latter agreed.

The other person who saw the accused on that morning was Mrs. Vartholomeou, the cleaner. According to her she arrived at her work at 8.00 a.m. in order to clean the offices as usual. She saw both the victim and the accused going to their office. 35 She went into the kitchen and changed her clothes, and the accused came there and asked her to clean the kitchen first and also the basement, because he said it needed cleaning again. Whilst she was sweeping the cemented part of the yard in front of the building, she saw the accused passing and she heard him 40 say "Put the water on, I shall be back by the time it boils". Questioned further as to whom the accused was talking, she said "naturally to Haral, there was nobody else in the office".

When she finished cleaning that part, she went to the back verandah where the director's office is situated. Whilst she was there, she saw the accused returning to the premises carrying a bag with two cartons of fresh milk, and when he entered the building she stayed on the verandah. When she finished 5 cleaning the verandah she went into the building in order to make coffee. As there was no sugar she decided to go and clean the office of the victim. She left the kitchen and whilst in the messenger's room, she heard the accused walking in the corridor. Then she heard him saying "Mrs. Maria, I am going away and 10 I shall return in half an hour. Don't forget the basement". She then looked towards the corridor and saw the accused leaving, entering the hall and under his left arm he had some papers. Then she got the broom and went to clean the basement. 15

In the meantime, at approximately 10.45 a.m. a certain Nicos Andreou, an employee of CYTA, visited the offices of S.E.K.E.P. to deliver a letter. He rang the bell of the entrance door, but as this was out of order and as the door was open, he went into the hall. He heard a noice and saw an elderly woman, the cleaner. 20 After enquiring from her if there was anyone in the premises, they went into the corridor. He was told to knock on the door that was to his left, but before doing so he heard the telephone ringing. He waited outside the closed door for a moment, and when the telephone stopped ringing without anybody answering 25 it, he decided to go away; but because Mrs. Vartholomeou asked him to open the door he did so, and saw a man lying dead in a pool of blood.

He attempted to telephone the police, but as he could not operate the telephone switchboard he drove to the Central Bank 30 where he met P.C. M. Myriantheas and informed him about it. The time was 10.55 a.m. and Myriantheas rang up the CID and left immediately for the S.E.K.E.P. premises. On arriving there he met the CID officers who had already reached the scene of the crime. 35

In the meantime, P.C. Efstathiou arrived at the scene at 11.10 a.m. where he met Mrs. Vartholomeou and as a result of what she told him he went into the room where he saw a man lying dead on the floor with his head facing north. The dead man had wounds on his head and around the head there was blood. 40 There were also blood stains on the floor of the room.

Questioned further he said that there were three windows, and only one of them had the outside shutters open.

Later, Ag. P.S. Charalambous also visited the scene, and according to this policemen, when he saw Mrs. Vartholomeou he started putting questions to her, when Koumides a chemist at S.E.K.E.P. factory at Latsia arrived at the scene at 11.20 a.m. to meet the accused. Koumides entered the room where the victim was lying and he identified the body as being that of Kimon Haral. He added that earlier at 8.30 a.m. he contacted the accused by telephone and informed him that he would be passing from his office and told him to have available an invoice of a certain timber merchant. He asked him whether he had issued a cheque, in order to take it and pay the timber merchant. The accused told him to have in mind that the General Manager would pass from the factory and delay his departure from there.

Within a short period other policemen arrived at the scene and were instructed by a superior officer to guard both the front and the back of the building and not to allow anybody to enter. Within a short time, Sub-Inspector Komodikis in charge of the CID of Ayios Dhometios Police, arrived also at the scene. And at 11.35 a.m. Chief Superintendent Aristocleous accompanied by Inspector Adrajiotis arrived there to take charge of the investigation.

Whilst P.S. Paphitis was on the verandah at the back of the building, he noticed a person holding a brief case approaching the building through the trees. He asked that person his name, and the latter replied that his name was Andreas Anastassiades (the accused) and that he was working in the S.E.K.E.P. premises. According to this witness, the accused seemed a little nervous in his movements, he was restless and he was wiping his face with his hand and looked a little pale. The accused inquired what was going on, but because there was no reply he asked whether his colleague had been assaulted. Then P.S. Paphitis noticed that on the forehead of the accused there was a fresh scratch and on his left shoe a substance which looked like blood. The Sergeant, feeling that it was his duty to inform his superiors, simply told the accused to wait and that he would be hearing from him. He entered the building and informed Chief Superintendent Aristocleous and Inspector Adrajiotis that the accused was outside the premises. He also told them of the observations he had made. Then the three police officers went out of the building and approached the accused. Chief Superintendent

Aristocleous disclosed his identity to him, and informed him that he was investigating the murder of Kimon Haral. He cautioned the accused and warned him that he intended to put to him a number of questions. These questions and the answers given by the accused were recorded by Inspector Adrajiotis on police statement sheets (*exh.* 37). 5

Then the car of the accused was searched in his presence and later on he was driven to Nicosia Divisional Police at Strovolos where he was interrogated by Inspector Adrajiotis in the presence of the team of Chief Superintendent Aristocleous and Sgt. Paphitis. The interrogation was made in the form of questions 10 and answers which the said Inspector recorded, but during the side trial of the accused, the trial Court rejected it as being inadmissible evidence against him, because it was taken contrary to the Judges' Rules.

In the meantime, at noon, Ag. P.S. Aristofanis Charalambous 15 attached to the forensic department, arrived at the scene and on the instructions of Inspector Komodikis took 13 photographs (*exh.* 6). On December 10, 1975, the same witness took photograph 14 which is part of *exhibit* 6.

At 12.12 p.m. Mr. Theodoros Ashiotis arrived at the scene 20 for the purpose of collecting material for forensic purposes. According to him the shoes of the accused and the clothes he was wearing on November 20, 1975, were delivered to him for examination. He examined both and found that there was blood on the left shoe and the left sock but all the other clothes 25 of the accused were free from blood. He also collected part of the blood from the left shoe and after examination he found that the blood was human and of group 'O'. In fact human blood of the same group was also found in the form of two small blood stains on the left sock that the accused was wearing. 30

On the evening of November 20, 1975, the Court issued a warrant of arrest and the accused was arrested in connection with the present case, and on the following day he appeared before the Court for a remand order. Having consulted a lawyer, the accused volunteered to give to the police a statement 35 (*exh.* 34) which is recorded as follows:-

The accused said that after the victim received a threatening telephone call on that morning and having had a short talk with him, the latter requested him to go to the kindergarten where his son was and to Parissinos area in order to look for anything 40

suspicious. The accused further said that he made the trip to that place and returned to his office at around 10 o' clock, but he made no statement as to how long he had remained in the office before he left for his house. In his statement, the accused said that when he entered the office and found the body of his colleague lying on the floor in a pool of blood he was shocked, and acting mechanically he approached the body and bent over it. Because he noticed blood on his right hand he panicked from the blood and the condition of the body, and having connected the crime with the threatening telephone call of that morning, he ran away. He went home still under shock and panic; he changed his clothes, acting mechanically; he took his Alfa Romeo which was parked in the street outside the garage, and again mechanically he went to the bank, the post office and then returned to the premises of S.E.K.E.P. where he met the police. (According to Inspector Seimenis, that trip takes 19 minutes.)

The body of the victim was removed from the scene at 1.20 p.m. and was taken to the Nicosia General Hospital where Dr. Charitini Komodiki certified the death of the victim.

On November 21, 1975, Dr. A. Kyamides, a Government pathologist, carried out a post mortem examination on the body of the victim and his findings regarding the injuries are these:-

"(a) On the left aspect of the forehead and on the scalp there was a vertical cut wound, 4" long, 1/2" wide, deep into the brain substance;

(b) On the middle region of the forehead involving the right eyebrow towards the scalp there was a cut wound 5" long 1/2" wide, deep into the brain substance;

(c) On the vertex of the skull, between the aforementioned wounds (a) and (b), there were two smaller cut wounds near each other, the one 2" long and the other 1-½" long, deep into the skull bone, which was fractured;

(d) On the left aspect of the forehead there was a cutting wound starting from the left eyebrow, going horizontally through the forehead and reaching the far end, 4" long, 1/2" wide, and deep into the brain substance;

(e) On the left aspect of the skull, posterior region, there was a cut wound, about 2" long 1/2" wide, deep to the bone, which was a superficial cut;

(f) On the right corner of the mouth, involving the right cheek, was a cut wound, 2" long, 1/2" wide, deep into the mouth cavity and fracturing the lower jaw;

(g) On the left corner of the mouth, involving the left cheek, there was a cut wound, 2" long, 1/2" wide, deep into the mouth cavity, fracturing the lower jaw; 5

(h) On the chin there was a cut wound, 2½" long, 1" wide, deep into the mouth cavity;

(i) On the anterior aspect of the throat, at the region of the larynx, there was a linear bruise, 1" long, 1/4" wide; 10

(j) On the lower region, anterior aspect of the chest, there was a linear bruise, 2" long, 1/4" wide;

(k) On the dorsolateral aspect of the left hand, near the small finger, there was a cut wound, 1" long, 1/4" and 1/2" deep into the underlying fractured bone; 15

(l) On the dorsolateral aspect of the right hand there was a cut wound, 1" long, 1/2" wide and 1/2" deep;

(m) Internally the brain substance was damaged multiply and free blood was in the cranial cavity; 20

(n) the stomach contained little quantity of digested food.',

In the opinion of Dr. Kyamides, the wounds of the victim were caused by forcible blows with a heavy cutting instrument which was 1/2" broad. He arrived at that conclusion having in mind the width of the wounds. 25

The injuries of the victim were photographed by P.C. Akamas at the mortuary after Dr. Kyamides indicated to the police photographer the injuries he had to photograph. These photographs were numbered 1—4 and were made *exhibit* 9. Speaking of these photographs, the trial Court made these observations, 30 that: neither the evidence of Dr. Kyamides nor the photographs taken give a complete and accurate picture of the injuries the victim had received. As a matter of fact, the Court added, the evidence of Dr. Kyamides, in particular to injury (d) above is most inaccurate and incorrect because the photographs 35 revealed no such injury to the left side of the forehead and the photographs, *exhibit* 9, show only some of the injuries the victim received. By noon of November 20, Ag P.S. Charalambous, on the instructions of Inspector Komodikis, took 13 photo-

graphs of the scene, *exh.* 6: and on December 10, 1975, took photograph 14 of *exhibit* 6.

There was further investigation in this case and on December 2 and 3, 1975, Inspector Seimenis, a CID man, was called to
5 prepare a plan to scale of the S.E.K.E.P. premises and especially of the room where the victim was found dead. A rough plan was prepared (*exh.* 1) on which a plan to scale was based (*exh.* 2) on measurements and information given to him by Inspector Komodikis. This plan, the Court commented, had no more
10 value than *exhibit* 1, because when the plan is compared with the photographs of *exhibit* 6, it is clear that it gives wrong measurements and information. Then the Court added: "But in fairness to Inspector Seimenis, we must say that if *exhibit* No. 2 is not of any value as regards the condition in the room
15 where the victim was found, this is partly due to the wrong measurements and information supplied to him by Inspector Komodikis."

The police carried out extensive searches at the scene of the crime and the area round there and at the house of the accused.
20 They also extended their search along the routes the accused alleged that he had followed on that date, but they were unable to trace the weapon used for killing the victim.

The police, having completed their enquiries and before detecting that both the photographs taken at the mortuary were
25 not giving a complete and accurate picture of the injuries of the victim, and that the measurements on the plan and the information given by Inspector Komodikis could not be relied upon for the reasons given earlier, Inspector Adrajiotis proceeded to London on December 16, 1975, to place the material he had in his posses-
30 sion before Prof. Keith Simpson, the Senior Home Office Pathologist for his opinion in connection with this case. The Inspector supplied the Professor with the post-mortem report, copies of photographs 1—14 of *exhibit* No. 6 and showed to him *exhibit* No. 2. He also discussed with him the evidence which
35 the Inspector as a police officer knew of the case. He placed before the Professor the background of the case to enable him to express an opinion how the murder was committed. Inspector Adrajiotis handed also to the Professor the shoes which the accused was wearing when he was first seen outside
40 the backyard of the S.E.K.E.P. premises on November 20, 1975. Those shoes were on the following morning examined at the New Scotland Yard Laboratory in filtered light and they were

photographed. This examination revealed that there was nothing noteworthy on the right shoe, but after careful examination of the left shoe it showed many blood spots, some of which had run down the shoe and one of which in particular had run down its left side in a liquid state and had tailed off underneath the sole of the shoe. Regarding this left shoe, three coloured photographs were taken by a technician at Scotland Yard in the presence of Professor Simpson. The Professor looked also at the plan to get an idea where the body was found, and returned it without using it as material for his opinion.

In the absence of the lethal weapon, the Court attached importance as to the approximate time the accused had left the premises. The version of the accused was, as I said earlier, that he returned to his office from the Parissinos trip at around 10.00 a.m. but he did not state how long he had remained in the office when he saw the victim lying in the position he had described. An attempt was made to find out how long Mrs. Vartholomeou needed in performing the same work she did on the day of the murder. In carrying out this test, the police timed the cleaner whilst she was performing it. According to Sergeant Paphitis, it took her two hours to complete the whole work on that date, one hour and 28 minutes from the time she started work till she saw the accused leave for the grocer; 1 hour and 30 minutes till he returned from the grocer to the office; and 1 hour and 40 minutes till the accused left carrying papers under his arm.

The trial Court, having observed that the cleaner admitted that she did not use the same speed in carrying out her work earlier as when she was timed by the police, used its own method and reached this conclusion:

> "If we allow 10 minutes for her to change her clothes and start work in the kitchen, that means that she must have completed the whole work described by her by 10.10 hours. On the basis of this timing, Nicos Andreou (P.W. 4) must have arrived at the S.E.K.E.P. premises just after 10.10 hours and not at 10.45 hours as he has told us. But Andreou's evidence as to the time of his arrival at S.E.K.E.P. cannot be questioned because there is P.W. 28, P.S. Myriantheas who told us that he met the witness outside the Central Bank at 10.55 hours. It is clear from the evidence of Andreou that he did not stay at the S.E.K.E.P. premises for a long time and we have it in evidence that the S.E.K.E.P. premises are not very far away from the Central Bank."

Having made these observations, the Court felt that in the circumstances it could not rely either on the evidence of Mrs. Vartholomeou as regards the time (having no watch) or on the timing of her work by Sgt. Paphitis, because the gap of 35 5 minutes, i.e. the period between 10.10 hours when Mrs. Vartholomeou must have finished her work (according to Paphitis' timing), and 10.45 hrs when witness Andreou arrived at S.E.K.E.P. cannot be explained by the evidence of the cleaner. Furthermore, the Court added that the evidence of the grocer 10 was of no help, and said:-

"We must, we feel, start from the time the accused was seen by P.W. 31 Charalambos Sofocleous, a butcher, who has his shop on the main Limassol—Nicosia road, opposite the police headquarters, and then go backwards. This 15 witness, whilst driving his car along Athalassa Avenue towards Strovolos, noticed the accused, who was a customer of his in his Alfa Romeo. When the witness noticed the accused following him, they were by the grocery shop of a certain Glykeriou. According to Inspector Seimenis, 20 this shop is at a distance of one mile from the shop of that witness and 1.9 miles from the house of the accused. The witness said that he left his shop at 10.40 hrs. in order to go to the Strovolos slaughter house. He told us that when he saw the accused it was 10.50 hrs., but we know from 25 Inspector Seimenis that it takes 4 minutes 15 seconds to drive from the house of the accused to the shop of Glykeriou."

Having this in mind, the Court felt that it could safely arrive at the conclusion that the time when the accused was seen by 30 the witness (the butcher) could not have been later than 10.45 hrs.

It should be added that before the accused was seen by the butcher, according to Efthymia Perikleous, the accused was seen by her on that particular morning arriving at and leaving his 35 house twice. On the first occasion he left his house and he was away for about 10 minutes. He then returned and left again about 10 minutes later. That was before witness Sofocleous saw the accused, but this witness did not time the period the accused was away or the time he remained at his 40 home with a watch. Although the Court accepted her evidence, *it observed that the duration of those periods might have been*

less or longer. With that evidence before the trial Court and having regard to the timing of Inspector Seimenis that the accused needed 14 minutes to drive from S.E.K.E.P. offices to his house, the Court felt that it could safely arrive at the conclusion that the accused left the premises of S.E.K.E.P. at 10.05 hrs. or thereabouts and that at that time the victim was already dead. This is, indeed, to say the least, apart from the speculation as to the time, inconsistent with the observations made by the Court earlier that:

> " There is no medical evidence before us as to the approximate time of the death of the victim and there is no other evidence from which we can reach a definite conclusion on this matter. The only thing that we know, and this comes from an opinion expressed by Professor Simpson, is that the death must have occurred within two or three minutes after the injuries were caused to the mouth of the deceased because, as Professor Simpson said, the head wounds were very grave and as the victim was lying on his back with the chopped wounds on his face, some blood must have gone into the windpipe and that would have accelerated the death."

It was the case of the prosecution all along that the weapon used by the assailant was a chopper and that witnesses Stavros Philippou and Maroulla Philippou (husband and wife) saw the said weapon in the flat which they rented from the accused in the block of flats of Kalisperas at Dassoupolis. According to Stavros Philippou who sketched the shape of the iron chopper on a piece of paper, it was 12 inches long with a 5 inch handle, a blade of 3–3½ inches, and quite a heavy instrument which could have been used for cutting bones. When the accused went to collect his personal belongings from the flat, he handed to him that chopper. Then the trial Court, in spite of an objection by the defence, allowed the witness to inspect another chopper brought in Court, and to a question by counsel for the prosecution, the witness said: "The chopper that was found in the flat was heavier than this, the blade was approximately the same and it was straight and the handle was thicker. That was of stainless steel".

In view of this reply, the Court ruled that that instrument could not be produced and could not be of any help to the Court once it had no similarity with the one the witness alleged that he found and saw in the flat.

In cross-examination, counsel on behalf of the appellant questioned the witness in order to show that he was lying, and the witness conceded that he paid the rent to the accused for one month only, and in spite of the fact that this matter was reported to the Chief of Police and he had agreed to pay for the arrears of rent at £25 per month, he paid nothing.

Mrs. Philippou, giving evidence also regarding the chopper, said that she found it in a drawer of the kitchen and that it was handed to the accused by her husband. Then she was asked by counsel for the respondent whether she could give a description of that chopper by making a drawing on a piece of paper or otherwise, and she replied in these terms:-

> " The chopper was about one foot long with a handle; it was heavy and the blade was about 3" wide. (Witness shows to the Court with her hand the width of the blade). The blade was about 6"-7" long (Witness demonstrates with her fingers the length of the blade. The figures in inches is the estimation of the Court)."

The next witness was Takis Kokkinos, a plumber and an auxiliary policeman, who said that he installed the plumbing installation, the railings and the conduit in the house of the accused. In September, 1975, again he visited the house in order to install a sink and saw in the garage a chopper. At the request of counsel for the prosecution he sketched it on a piece of paper. Questioned further as to whether he was making threatening calls to the accused, he said:-

> "Yes, Mr. Seimenis called me on one occasion and told me that there was a complaint against me that I was annoying through the phone.
>
> *Q.* You were annoying whom?
>
> *A.* He told me that I was making threatening calls to the house of Mr. Anastassiades and that I was annoying his wife. According to Insp. Seimenis (P.W.1), the complaint was lodged by the wife of the accused.
>
> *Q.* And did you ever make such calls?
>
> *A.* No.
>
> *Q.* Did you ever have any relations with the wife of the accused?

A. What kind of relations?

Q. Intimate relations.

A. Yes.

Q. Was that against her will?

A. No. 5

Q. When this complaint was made, you said you were told about that by Insp. Seimenis.

A. Yes.

Q. Was the wife of the accused present?

A. Yes." 10

It was further put to him that Fridas suggested to him that he was making threatening and annoying telephone calls to Anastassiades' wife, and the witness said:-

" Fridas asked me: 'Is there anything wrong between you?' and I said that 'This concerns me'. I did not want 15 to say anything to him."

Then he was cross-examined in these terms:-

"*Q.* Did he suggest that there was something to do with his wife, Mr. Anastassiades' wife?

A. He did not suggest anything. He just told me what 20 I have just related.

Q. You were very angry, weren't you?

A. Why should I?

Q. You threatened to do harm to the accused.

A. Whom did I threaten? 25

Q. You said: 'Tha ton kanonisso', to Fridas.

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

Q. Is it quite untrue that you said such a thing to Mr. Fridas?

A. I did not say to Fridas that I was going to fix him up. 30 I did not say anything. I did not say these words.

Q. You made threatening calls to him, haven't you?

A. I deny this.

Q. You had complaints made to you by Mr. Seimenis that you had made threatening calls to him, haven't you.

5 *A*. No.

Q. You were very angry at being rejected by his wife.

A. No, this is not true. She did not reject me and I am not angry.

Q. Your evidence about this chopper is untrue, isn't it?

10 *A*. There is nothing I can tell you..............

Q. And how did you come to make a statement at all on the Saturday?

A. The police came to the place where I was working and asked me to go and give a statement.

15 *Q*. Why did you not mention the chopper that day then?

A. I did not know that the murder had been committed with a chopper".

As I have said earlier in this judgment, when Chief Superintendent Aristocleous informed the accused outside the premises 20 of S.E.K.E.P. that he was investigating the murder of Kimon Haral, Inspector Adrajiotis recorded the interrogation which was in these terms:-

" *Q*. What is your name?

A. Andreas Anastassiades. Are you going to tell me at 25 last what is happening?

Q. I am Superintendent Aristocleous and I am investigating the murder of Kimon Haral and I want to put certain questions to you. From what time are you absent from your office? You are not obliged to 30 reply unless you want, but whatever you say will be recorded and may be given in evidence.

A. From 10.00–12.00

Q. I see on your forehead a scratch. Can you explain to me how it was caused?

35 *A*. Perhaps it is from a tree or I hit on a door.

Q. The spectacles that you wear appear as if they have blood on them as well as your left shoe. Can you give me an explanation?

A. I do not know. Bring me water to drink. (The accused then sat on a step). 5

Q. How did you leave the office?

A. With my car Alfa Romeo and I have it parked nearby."

In the present case, attention was focussed on the evidence of one witness, Dr. Simpson, out of the very many who were called and in the course of the lengthy trial. Professor Simpson 10 said that he was reconstructing for the Court from what in his experience would be a proper and practical reconstruction from the photographs he was looking at. He admitted that he gave his opinion to Inspector Adrajiotis in London verbally on the 16th or 17th December, 1975, whilst the details were given to 15 him at intervals during the conversation, and he set out a statement on the 16th December. Then in reply to certain questions which were set out for him in a letter from Mr. Loucaides dated 13th December and which was handed to him on the 16th, he set out answers to certain specific questions in that letter, regar- 20 ding the nature of the weapon used and as to the position of the assailant and the wounds of the victim.

Regarding the weapon, he said that the instrument used was one of the variety with a cutting edge and of some weight, an instrument such as an axe or a chopper. The trial Court, 25 dealing with the opinion of Professor Simpson, made this observation:–

"He (the Professor) disagreed, however, with Dr. Kyamides that one could come to the conclusion, on the basis of the width of the wounds, that the instrument used was half 30 an inch broad because, he said, the skin after being cut gapes and one cannot say from any of the wounds found on the victim how broad the weapon was. In cross-examination Dr. Simpson said that there was no doubt that the instrument used was one of the chopping variety. As to 35 the length of the blade of the instrument, Dr. Simpson said that he had only an indication of its width and this he based on the length of the longest wound which was 5". Because of the length of this wound, he said, the weapon was likely to have a cutting edge of at least 5"." 40

I think I cannot do better than quote that part of the judgment of the trial Court which contained a convenient summary of the opinion of Professor Simpson regarding the course of events relating to the murder of the victim. That part of the judgment 5 is in the following terms:-

" The deceased must have at first been assaulted whilst standing in the region shown in photograph 12 where the locks of hair and a few drops of blood are seen. These locks of hair are an indication that these were from the 10 first wounds the victim received. It was highly unlikely that the locks of hair found could fall from the weapon used because the weapon would by that time be heavily stained with blood and the Professor went on to say that if the victim was alert and able to see that he was about to be 15 attacked, that is to say, if he was facing and able to see his assailant, he would raise his hands to his head in a protective way in an attempt to protect himself from the assault. This, the Professor said, explains the two shallow wounds found on the head of the victim and the injuries 20 to his hands. The victim then partly disabled, perhaps by the first injuries he received, had either staggered or turned round to fall on his head on the spot where there is an area of blood and which appears in photograph 7 of *exhibit* No. 6 on his right-hand hip region and then he fell and 22 rolled on to his back to lie in the position he was found.

Professor Simpson said that the more major injuries to the brow and face were virtually certain to have been inflicted whilst the victim was lying on the ground, after he was perhaps unable to raise his hands because of the 30 injuries he had already received.

The splashing of blood, which is seen in the photographs of *exhibit* No. 6 around the head, on the floor, the waste-bin, the wall and further back on the chair, were caused by repeated blows whilst the victim was unconscious or partly 35 unconscious.

Two types of drops of blood are seen at the scene, Professor Simpson said, and these he would expect to be there. They are drops falling perhaps nearly vertically and drops, further away, perhaps running or half-running 40 splashes showing the pear shape or tailed shape which comes when the splashes strike the floor at an angle. These

splashes were undoubtedly the result of wounds being repeated into a bleeding head whilst the victim was lying in the position he was found. He further said that when blood is welling up into the injured tissues and you strike that, the blood splashes. 5

The Professor went on to say that the assailant must have been in that area in front of the chair which is virtually free of blood and which is shown in photographs 7 and 14 of *exhibit* No. 6. This area is on the right-hand side of the victim and except for a mark that looked like a footprint, 10 which appears above the figure '14' of the photograph and which Professor Simpson said must have been that of the victim the rest of the area is virtually free from the splashing which is around the head, on the chair and the waste-bin. This fact, the evidence of Dr. Ashiotis to the effect that the 15 stains on the chair were not so much on the edge but on the back of the seat, the fact that the chopping wounds on the face were set almost straight across the mouth and were deeper on the right-hand side than on the left, are evidence that the blows were inflicted from the right-hand side of 20 the victim and that the assailant was almost certainly in the free of blood area immediately in front of the chair and that the assailant was either standing, stooping or kneeling protecting that piece of floor from blood stains.

Professor Simpson said that it is clearly certain, if not 25 absolutely certain, that if he was right in that the assailant stood in the area he described, that the left shoe of the assailant was nearest to the head from where the blood was coming; that the stains appearing on the left shoe came on that shoe whilst repeated blows were splashing blood from 30 the head and face and that this shoe had taken the blood stains which might otherwise have marked the floor. The other shoe, he said did not get stained because it was out of the way. It was at the time of chopping that the splashing occurred and Professor Simpson was almost certain that 35 the assailant would have blood going onto his clothes. Professor Simpson said that the blood on the shoe did not get on it because it wiped against the bloody clothing of the body nor have the stains on it come from stepping into the blood because if the shoe had stepped into the pool 40 of blood, he should see blood coming over the walls of the shoe and over the sole. The splashes on the shoe were

quite inconsistent, Professor Simpson said, with the accused approaching the body as they are not smeared in any way as they would be by going close to the body and touching it. If that were the case, there would be markings down the sole. The splashes on the shoe are of the same type that are to be found on the floor and they must have gone on the shoe at the same time when those splashes were caused, that is to say, when the head wounds were inflicted. Dr. Simpson expressed the view that it might have been almost impossible to go near enough to the body to see it properly or feel it without marking the shoe on the floor or without smashing or spoiling any of the blood stains and he did not see any of them that have been squeezed out or pushed into a new shape on either side of the body.

Professor Simpson excluded the possibility that the victim had been killed in any other place and moved to the place where he was found because if this happened, he would expect to see signs of the body being dragged or brought there or moved.

The explanation he gave about the splashing getting on the shoe is really, he said, the only likely explanation and he could not accept any other acceptable explanation.

As regards the blood found on the left sock, Professor Simpson said that he would be surprised if there was no blood on that sock.

Professor Simpson was cross-examined for long on the opinions he expressed; he was also cross-examined rigorously on each and every particular or material which he had at his disposal and on which he said that he based his opinions.................... He conceded that both the post-mortem report of Kr. Kyamides as well as the photographs of the victim, *exhibit* No. 9, which show only a few of the wounds, were inadequate and not perfect in every respect but in re-examination he said that his conclusions were based on the evidence he had and though it may have been inadequate in some respects, in general it set out the facts that he needed clearly enough for him to form his opinion.

Then the defence suggested to the Professor two alternative ways by which blood could drop on the left shoe of

the accused. The first alternative is that drops could land on the shoe by lifting the head of the victim and dropping it in the pool of blood. This alternative Professor Simpson rejected after he explained that if the head was dropped even in blood, that was still liquid, then there might be some displacement of blood but not spraying into the air which is evident from spots found on the shoe. If this took place, he said, then he would expect to find a lot of blood in the area of the sole of the shoe. Fresh blood, he said, in the circumstances suggested by the defence, would go sideways at about that same level and he would expect to find blood on the part of the shoe that was closest to the floor. Blood could not be lifted into the air as high as the shoe and then drop on it. Blood in order to drop on the shoe had to rise above it and drop on it.

The second alternative suggested by the defence was that the blood that was found on the shoe could be the result of the accused shaking his hand. With this alternative the Professor agreed but added that the shaking of the hand in order to produce the fine spots that were found on the shoe had to be with the fingers spread, the hand had to be over the left side of the left shoe, it had to be quite heavily stained with blood and the blood had to be running blood and not blood smeared on the hand or in jelly form. Professor Simpson also said that spots could also get on the shoe if the head of the victim was shaken but no such allegation was put forward by the accused, and we need not, therefore, examine in our judgment this possibility."

I think it is convenient to state that it was the case for the prosecution that the accused was responsible for the deficiency of an amount of £47,249.—, when the accounts were audited after the murder, and pinned on him that the accused was the only person responsible for such deficiency, in spite of the fact that the victim was warned by his superior Charalambous to follow the work of the accused and to prepare with the help of the auditors a statement showing the true picture of the accounts of S.E.K.E.P. Furthermore, the prosecution, having in mind this deficiency, called upon the Court to accept the view that this was the motive of the accused for killing the victim. It is useful to add that the deficiency in the accounts has not been disputed by the accused, and I do not think it is necessary to refer to the evidence of 17 witnesses who were called by the prosecution on this particular issue.

There is no doubt that the accused became in the eyes of the police, the only suspect for the killing of the victim, and because of the further interrogation which as I said earlier was rejected by the trial Court, a lot of publicity was given in the press regarding the accused before his trial.

The accused did not go into the witness box, but elected to make an unsworn statement from the dock, and in the course of the statement, he said that Kimon Haral was his best friend and he denied that he killed him. On the 20th November, 1975, he said, he went to his office in the morning as usual where he met the victim. Then, after 9.00 a.m., he went to the supermarket nearby where he purchased two cartons of milk and a packet of cigarettes. When he returned to the office, he went into the kitchen and made drinks, nescafe and tea. He gave the nescafe and the cigarettes to the victim and then he noticed that the victim was disturbed. He asked him what was wrong and the victim told him that he had received a threatening phone call a few minutes before and that he was asked to go to Parissinos area. While they were drinking their drinks, the victim requested him to pay a visit to the area of the kindergarten which his son attended and also to Parissinos area to see or observe anything suspicious or of a suspicious nature. He left the office at about 9.30 a.m. but before leaving, he mentioned to the cleaner that he would be out of the office for about half an hour and then left.. He returned to the offices of S.E.K.E.P. around 10.00 o'clock and on entering the office he saw the victim on the floor in a pool of blood. He was shocked and went near the body and tried to lift the head up. The wounds were so horrible that he dropped the head on the floor. His hand which was full of blood, he shook trying to get rid of it, feeling sick; he then got panicked and ran out of the office at the same time wiping his hand on his jacket. He went to his car and drove off. He was mixed up; he did not know what to think but he thought that, having seen the body and having touched it with blood on his hand, the police would suspect him. He was also, he said, the only one in the room with the victim. He went home, changed his jacket and trousers and returned back to the office. There he realized that his fears that the police would suspect him were real because their manner when they approached him was far from friendly. They walked later to the car park and then they went to the Strovolos Police Station where he was repeatedly asking for a lawyer to consult with and to give him

some advice as to what to do. On the following day he did see a lawyer and then he made a statement.

The defence called Andreas Fridas, who supported the evidence of the accused on the question of the complaint made about the threatening telephone calls by Takis Kokkinos, and also a certain photographer who said that on June 8 he visited the offices of S.E.K.E.P. and in the presence of the police he took certain photographs of the steel cupboards in the office of the victim and discovered finger prints on one of them. This, in relation to what I have said earlier about the photographs in in the mortuary, and the plan which was handed over to Professor Simpson in England, shows that there was no proper enquiry at the time by the police. It is in evidence that Ag.P.S. Charalambous said that he did not see at the scene of the crime any finger prints, though he conceded that they were on the cupboard when he dusted it for purposes of obtaining finger prints.

The trial Court dealt also with the question of deficiency to which I have referred earlier, and in its judgment, having in mind that the accused was postponing the appointments with the auditors, accepted the submission of counsel for the prosecution, and reached the conclusion that: "the accused had a possible motive, in fact a strong motive, to kill the victim".

Then the trial Court, in criticizing the submission of the defence said:-

> " One may wonder, and the defence has made a point of this, that if this was the motive for the accused to kill the victim, why he left the books that the victim kept behind him. The defence has suggested that these books in themselves might afford evidence implicating the accused with the deficiency and one would have expected the accused guarding against such probability to take away the books and destroy them. We feel that if the accused had at that moment taken the books away, it would be as if he was pointing his finger to himself as the killer and would have given the police good cause to treat him as the No. 1 suspect.
>
> Considering all the above, we find that the prosecution proved that the accused had a strong enough motive for wanting to get the victim out of his way."

The trial Court, dealing with the conduct of the accused on

the day of the murder, and having observed that in an effort to avoid being implicated in the crime and in order to lead the police to a wrong track, he attempted to build up an alibi to conceal facts and tell lies, the Court proceeded to refer to the statement made on November 20, 1975 to the police outside the S.E.K.E.P. premises and criticized the accused that he pretended complete ignorance of what had happened there. That ignorance, the trial Court added, was repeated to Police, Koumides and also to Chief Supt. Aristocleous. Dealing also with the statement of the accused given from the dock, the Court made these comments:-

"The accused in his statement from the dock told us that whilst leaving the offices to go to the kindergarten and Parissinos area, he mentioned to the cleaner that he would be out of the office for about half an hour and then left. The time was then he said, about 9.30 a.m. Assuming that the purpose of the accused at that time was to drive to Parissinos area on that day, an allegation of the accused that we have already found to be false, then what was the purpose of carrying any papers with him? We believe that the accused, after he killed the victim, went to his office-desk holding the chopper and that is why the police found on a piece of paper, which was on the desk, one round vertical and two smeared drops of blood. He then wrapped the weapon in some papers and left carrying it under his arm."

Finally, the Court, having found that the accused was the person who killed the victim, considered the question of premeditation and reached this conclusion:-

"Having in mind the above points which are proved beyond doubt by the evidence before us, we have no hesitation in arriving at the conclusion beyond reasonable doubt that the accused killed the deceased in the execution of a preconceived plan—a plan which he formed in his mind the latest when he went to his work on that morning. We further find that the accused proceeded to execute his plan although he had time to reflect on his decision and desist from carrying out his intentions.

Having considered the whole evidence before us, we find that the prosecution have proved their case beyond any reasonable doubt and that the accused is guilty of premeditated murder as charged."

The accused, feeling aggrieved, appealed against the decision of the Court and in support of his appeal counsel on behalf of the appellant relied on a number of grounds of law, the particulars of which covered eight pages. There was also a general submission that taken as a whole, the evidence against the appellant was insufficient to justify a conviction. The said grounds, so far as relevant, can be summarized as follows:-

1. The findings and/or conclusions of the trial Court that it was the appellant who inflicted the fatal blows on the victim and/or that his left shoe was stained with blood whilst he was inflicting the fatal blows are erroneous in that, *inter alia*, the Court arrived at its said conclusions, having adopted in this respect the opinion of Professor Simpson, without examining beforehand the correctness of his evidence, having thus considered this evidence as correct and authentic by itself. Furthermore, the Court proceeded to examine whether the version of the defence could be acceptable or not by testing whether it was consistent with the opinion of Professor Simpson. By doing so, the Court acted in contravention of the basic principles which govern criminal proceedings in our system of law. The Court therefore attached validity of an unrebuttable presumption of correctness, and this without any reasoning, thus rendering judicial control of its correctness in law or in fact impossible.

2. The findings of the trial Court whereby it rejected appellant's version as to the way he acted on the day of the crime and the rejection of his version regarding the way his left shoe had been stained were made in a defective and/or untrue and/or unreasonable assessment of the evidence in the case and were the product of wrongful admission or assessment of the evidence and/or failure to assess credible evidence which was legally adduced before the Court.

3. The findings and/or conclusions of the trial Court with regard to the type of the lethal weapon, the motive for the crime, and the finding that the appellant left the S.E.K.E.P. premises with the lethal weapon wrapped in some papers and that he hid the said weapon are erroneous and/or unsafe and/or unsatisfactory and/or are not supported by the evidence adduced and/or are against the weight of evidence and/or the evidence generally.

4. The trial Court by acting in the way it did in order to arrive at its decision regarding the guilt of the appellant tantamounts to shifting the burden of proof from the prosecution to the defence to establish his innocence, and amounts to substantial miscarriage of justice.

5. The credible and/or reliable and/or legally admissible evidence before the Court cannot but support only suspicions against the appellant and was insufficient to support a finding of guilt beyond reasonable doubt.

6. Even if the judgment of the trial Court that it was the appellant who killed the victim were to be held as correct the finding that the appellant acted with premeditation is contrary to law and/or constitutes a wrong interpretation of the law without this being relied upon by the prosecution as an ingredient of the offence and without being supported by the evidence adduced before the trial Court and/or in the absence of a sufficient reasoning by the Court.

The powers of the Supreme Court to interfere with the judgment of the trial Court are embodied in the provisions of s. 145 of the Criminal Procedure Law, Cap. 155, but these powers must be read and applied in conjunction with s. 25 (3) of the Courts of Justice Law 1960, Law 14/60, and in particular the power conferred therein on the Supreme Court to make any order which the circumstances of the case may justify, including an order for the retrial of the case.

In determining an appeal against conviction under s. 145, the Supreme Court, subject to the provisions of s. 153 of this law may (a) dismiss the appeal; (b) allow the appeal and quash the conviction if it thinks 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; (c) ..... and (d) order a new trial ......

As I said in *HjiSavva, alias Koutras* v. *The Republic*, (1976) 2 C.L.R. 13 at pp. 38-39, "the provisions of s. 145(1)(b) correspond in some respects to those of s. 4(1) of the Criminal Appeal Act, 1907, but it was said judicially that the variations in the wording of the two enactments are more of a phraseological rather than

substantial nature, as it appears from the case of *Kafalos* v. *The Queen*, 19 C.L.R. 121, where it was held that 'the phrase appearing in s. 145(1)(b), that is, 'unreasonable having regard to the evidence edduced', had a similar meaning to the corresponding provisions in the English enactment, that is to say, 'unreasonable, or cannot be supported having regard to the evidence'."

But I would like to make it clear that whereas a jury is not required to give reasons for its findings, a trial Court has to do so, and to that extent, a judgment of a trial Court in Cyprus is, in comparison to a verdict of the jury in England, more vulnerable on review. Furthermore, the Supreme Court, and I lay stress on this, is in accordance with the powers granted to it, under section 25(3) of the Courts of Justice Law 1960, in the same position as the trial Court to draw inferences from primary facts and may readily do so when in disagreement with the inferences drawn by the trial Court. See *Koumbaris* v. *The Republic*, (1967) 2 C.L.R. 1; *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134; *Mamas* v. *The Firm Arma Tyres* (1966) 1 C.L.R. 158; *Miliotis* v. *The Police* (1971) 2 C.L.R. 292; and *Varnava* v. *The Police*, (1973) 2 C.L.R. 317. See also the *Hjisavva* case (*supra*).

It is pertinent, of course, to state that section 145 of the Criminal Procedure Law, nowhere confers a right to appeal where the judgment is against the weight of evidence, and the employment of such terminology in the notice of appeal should be construed as meaning that the conviction must be set aside on the ground that it is unreasonable having regard to the evidence adduced. *Loftis* v. *The Republic*, 1961 C.L.R. 108 and *Kirzis* v. *The Medical Department of Famagusta*, (1969) 2 C.L.R. 213. See also *Charitonos* (*supra*); and *Vouniotis* v. *The Republic*, (*supra*).

There is no doubt that the powers vested in our Supreme Court by the Criminal Procedure Law, to interfere with a judgment of the trial Court are increased by virtue of the provisions of s. 25(3) of the Courts of Justice Law 1960, and I made it clear in a number of cases. In *Hjisavva alias Koutras* (*supra*), I have also made reference to s. 2(1)(a) of the English Criminal Appeal Act, 1968, which vests in the Court of Appeal additional powers also to interfere with the judgment of the trial Court in circumstances where it is of the opinion that the verdict is unsafe or unsatisfactory. These powers are almost similar to those vested

in our Supreme Court by virtue of the provisions of our s.25(3) and I quote a passage from the judgment of Widgery, L.J., in *R.* v. *Cooper*, [1969] 1 All E.R. 32 at p. 33:-

" However, now our powers are somewhat different, and we are indeed charged to allow an appeal against conviction if we think that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory. That means that in cases of this kind the Court must in the end ask itself a subjective question, whether we are content to let the matter stand as it is, or whether there is not some lurking doubt in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence as such; it is a reaction which can be produced by the general feel of the case as the Court experiences it. We have given earnest thought in this case to whether it is one in which we ought to set aside the verdict of the jury, notwithstanding the fact they had every advantage and, indeed, some advantages we do not enjoy. After due consideration, we have decided we do not regard this verdict as safe, and accordingly we shall allow the appeal and quash the conviction."

In *Stafford* v. *D.P.P.* [1973] 3 All E.R. 762, Viscount Dilhorne, speaking in the House of Lords as to the effect of s. 2(1)(a) of the 1968 Act said at p. 764:-

" The Act thus gives a wide power to the Court of Appeal and it would, in my opinion, be wrong to place any fetter or restriction on its exercise. The Act does not require the Court, in making up its mind whether or not a verdict is unsafe or unsatisfactory, to apply any particular test. The proper approach to the question they have to decide may vary from case to case and it should be left to the Court, and the Act leaves it to the Court to decide what approach to make. It should, in my opinion, be wrong to lay down that in a particular type of case a particular approach must be followed. What is the correct approach in a case is not, in my opinion, a question of law and, with respect, I do not think that the question certified in this case involves a question of law."

Then, his Lordship, having quoted an extract from the Judgment of Widgery, L.J., in *R.* v. *Cooper*, said:-

" That this is the effect of s. 2(1)(a) is not to be doubted.

The Court has to decide whether the verdict was unsafe or unsatisfactory and no different question has to be decided when the Court allows fresh evidence to be called."

With this in mind, I would turn to consider what are the functions of expert witnesses, and I propose reviewing some old and new authorities:

Lord President Cooper, speaking in *Davie* v. *Edinburgh Magistrates*, (1953) S.C. 34 at p. 40 said:-

> " Their duty is to furnish the Judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the Judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence."

It is to be added that the Court of Session repudiated the suggestion that the Judge or jury is bound to adopt the views of an expert, even if they should be uncontradicted, because, 'the parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert' (See *Davie supra*).

Although an expert may be regarded as giving independent expert evidence to assist the Court, it is wrong for the jury to be directed that his evidence should be accepted in the absence of reasons for rejecting it. See *R.* v. *Lanfear* [1968] 1 All E.R. 683 per Lord Diplock L.J., explaining *R.* v. *Nowell*, 32 Cr. App. R. 173.

According to Phipson on Evidence, 11th edn., 510, paragraph 1286, "The testimony of experts is often considered to be of slight value, since they are proverbially, though perhaps unwittingly, biased in favour of the side which calls them, as well as over-ready to regard harmless facts as confirmation of preconceived theories; moreover, support or opposition to given hypotheses can generally be multiplied at will". (*Abinger* v. *Ashton*, L.R. 17 Eq. 358, 373-374 per Jessel M.R.) "Indeed, where the jury accept the mere untested opinion of experts in preference to direct and positive testimony as to facts, a new trial may be granted." (See *Aitken* v. *McMeckan* [1895] A.C. 310, P.C. at pp. 315, 316; cf. *Newton* v. *Ricketts*, 9 H.L.Cas. 262, 266. See also Halsbury's Laws of England, 3rd edn., at p. 278 paragraph 507 where it is stated that the evidence of expert witnesses may be of a partisan character and, therefore, to be regarded with

caution). In support of this statement, the case of *Aitken* v. *McMeckan* (*supra*) is quoted and *Perera* v. *Perera* [1901] A.C. 354 P.C. at p. 359.

In *James Frank Rivett*, 34 Cr. App. R. 87, Goddard, L.C.J. delivering the judgment of the Court of Criminal Appeal, said regarding the medical evidence at p. 94:-

"The second matter for emphasis is that it is for the jury and not for medical men of whatever eminence to determine the issue. Unless and until Parliament ordains that this question is to be determined by a panel of medical men, it is to a jury, after a proper direction by a Judge, that by the law of this country the decision is to be entrusted. This Court has said over and over again that it will not usurp the functions of the jury, though it may by virtue of the Criminal Appeal Act set aside a verdict if satisfied that no reasonable jury could have found a verdict of Guilty in a particular case. Here, no doubt, they had the opinion of medical men of undoubted integrity and whose qualifications none would question. But they had also the facts and the undisputed facts of all the surrounding circumstances. This is not a case where a scientific witness can say with certainty, as in the case of a bodily disease, from specific symptoms such as rash, a coma or other physical sign that a disease exists."

In *Thomas Mason*, 7 Cr. App. R. 67, Lord Alverstone, C.J., said at pp. 68 and 69:-

"The question raised is whether the evidence of an expert is admissible when he has not seen the body, but has only heard the evidence of those who have. The point as to the form of the question was not taken at the trial; one question was put in rather a leading form, but coming at the end of Mr. Pepper's evidence, the point is unimportant. He was not asked the very question which the jury had to decide, since the possibility of a third person having been the assailant was only excluded from the case by other evidence. The proposition is rightly stated in Archbold, at p. 452—'So, upon an indictment for murder, the deceased's wounds, & c., being described, a surgeon may be called upon to give in evidence his opinion whether the deceased died in consequence of his wounds, or from natural causes'. There is no difference in principle as to a question of death from

natural causes and death occasioned by injuries self-inflicted. The evidence was clearly admissible, and was rightly dealt with in the summing up as an opinion based on an assumed state of facts".

In a recent case in *R.* v. *Turner* [1975] 1 All E.R. 70, Lawton, C.J. read the judgment of the Court of Appeal, Criminal Division, and dealing with the medical evidence, and having explained *Lowery* v. *The Queen* [1973] 3 All E.R. 662, said at p. 73:-

"Before dealing with the submission made on behalf of the appellant in this court we would like briefly to refer to the questions which counsel for the appellant suggested he could properly put to the psychiatrist. What he was proposing to do was to use a common forensic device to overcome objections of inadmissibility based on hearsay. The use of this device was criticised by Lord Devlin in *Glinski* v. *McIver*: ([1962] 1 All E.R. 696 at 723) he thought it was objectionable. It is certainly unhelpful. Before a Court can assess the value of an opinion it must know the facts on which it is based. If the expert has been misinformed about the facts or has taken irrelevant facts into consideration or has omitted to consider relevant ones, the opinion is likely to be valueless. In our judgment counsel calling an expert should in examination in chief ask his witness to state the facts on which his opinion is based. It is wrong to leave the other side to elicit the facts by cross-examination."

Then, having dealt with the submissions of counsel he continued his judgment in these terms at p. 74:-

"The first question on both these issues is whether the psychiatrist's opinion was relevant. A man's personality and mental make-up do have a bearing on his conduct. A quick-tempered man will react more aggressively to an unpleasing situation than a placid one. Anyone having a florid imagination or a tendency to exaggerate is less likely to be a reliable witness than one who is precise and careful. These are matters of ordinary human experience. Opinions from knowledgeable persons about a man's personality and mental make-up play a part in many human judgments. In our judgment the psychiatrist's opinion was relevant. Relevance, however, does not result in evidence being

admissible: it is a condition precedent to admissibility. Our law excludes evidence of many matters which in life outside the Courts sensible people take into consideration when making decisions. Two broad heads of exclusion are hearsay and opinion. As we have already pointed out, the psychiatrist's report contained a lot of hearsay which was inadmissible. A ruling in this ground, however, would merely have trimmed the psychiatrist's evidence: it would not have excluded it altogether. Was it inadmissible because of the rules relating to opinion evidence?

The foundation of these rules was laid by Lord Mansfield C.J. in *Folkes* v. *Chadd* [1782] 3 Doug K.B. 157 at 159 and was well laid: 'The opinion of scientific men upon proven facts', he said, 'may be given by men of science within their own science.' An expert's opinion is admissible to furnish the Court with scientific information which is likely to be outside the experience and knowledge of a Judge or jury. If on the proven facts a Judge or jury can form their own conclusions without help then the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon it may make judgment more difficult. The fact that an expert witness has impressive scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves; but there is a danger that they may think it does."

Finally, his Lordship concluded as follows at p. 75:-

" In coming to the conclusion we have in this case we must not be taken to be discouraging the calling of psychiatric evidence in cases where such evidence can be helpful within the present rules of evidence. These rules may be too restrictive of the admissibility of opinion evidence. The Criminal Law Revision Committee in its eleventh report (Evidence (General) (1972) Cmnd 4991, paras 266–271) thought they were and made recommendations for relaxing them. The recommendations have not yet been accepted by Parliament and until they are, or other changes in the law of evidence are made, this Court must apply the existing rules (see *Myers* v. *Director of Public Prosecutions* [1964] 2 All E.R. 881 per Lord Reid). We have not overlooked what Lord Parker C.J. said in *Director of Public Prosecutions*

v. *A. & BC Chewing Gum Ltd.*, [1967] 2 All E.R. 504 about the advance of science making more and more inroads into the old common law principle applicable to opinion evidence; but we are firmly of the opinion that psychiatry has not yet become a satisfactory substitute for the common sense of juries or magistrates on matters within their experience of life."

See also *D.P.P.* v. *Jordan*, [1976] 3 All E.R. 775 H.L. where Lord Wilberforce adopted and followed the view as to an expert's opinion, of Lawton L.J. in *R.* v. *Turner* (*supra*) at p. 74.

Mitas v. *Rex*, 18 C.L.R. 63, was a very complicated case indeed, and the trial Court had before it the post mortem examination of the victim prepared by Dr. Economides, the Government Medical Officer some eight or ten hours after his death. Dr. Rose who gave evidence for the defence did not see the body and his opinion had to be based solely on the evidence of Dr. Economides and on his observations when he inspected the place at which the shooting occurred. Chief Justice Jackson, dealing with the medical evidence said at p. 67:-

> " We think that the Assize Court went a little too far in saying that such evidence is generally unreliable. Evidence of that kind must clearly be received with the greatest caution and it is usually given with no less.
>
> Having heard the evidence of Dr. Economides, Dr. Rose told the Assize Court, very positively, that in his opinion the dead man must have been shot by more than two persons; probably by four, and he gave reasons for his opinion. We shall be obliged to consider this evidence in some detail at a later point in our judgment. At the moment we are concerned only with the conclusions of the Assize Court upon it. While rejecting much of Dr. Rose's evidence they were clearly influenced by it to some extent, for they said in their judgment that they did not exclude the possibility that the shots were fired by more than one person and they finally gave it as their belief that 'it was the accused who killed the deceased, with, perhaps, the assistance of one more person'.
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> It was not, of course, the object of the defence to suggest by means of Dr. Rose's evidence that others, in addition to the appellant, had taken part in the crime. The defence

was that the appellant was in no way concerned in it. The argument based on Dr. Rose's evidence was that the shooting had occurred in a manner so different from the manner alleged by the prosecution that no faith could be placed in their case".

Then the learned Chief Justice goes on at p. 69:-

"It seems clear, therefore, that it was the evidence of Dr. Rose, and that alone, which led the Assize Court to admit the possibility that more than one person might have taken part in the shooting. The trial Court, as we have said, rejected the main suggestion of this witness's evidence, namely, that there were four assailants. If they rejected the possibility of four, why did they admit the possibility of two? Since they did not tell us, we do not know. But as they appear to have been influenced by Dr. Rose's evidence to that extent, we have been obliged to give it a good deal more attention than we would otherwise have thought necessary".

Then the Court of Appeal, having observed that they were not bound by the findings of the trial Court even on questions of fact, they heard further evidence from Dr. Economides and from Dr. Rose and said at p. 76:-

"Making full allowance for possibilities of error in that experiment, it clearly showed, at any rate, that there was no foundation whatever for the statement of Dr. Rose on this point. Indeed we think it safe to conclude from this experiment that any of the shots might have been fired from a distance of a few feet. It might not be safe to be more precise.

Having formed, for the reasons that we have given, the very strong opinion that Dr. Rose's evidence must be entirely rejected, we must turn again to the judgment of the Assize Court".

In *Reg.* v. *Frances*, 4 Cox C.C. 57, the prisoner was indicted for wilful murder. The defence was that the prisoner, at the time he committed the act which caused the death, was in a state of insanity, and witnesses were called on the part of the prisoner to show that insanity had existed in many members of the prisoner's family, and that he himself had been insane three years previous. At the close of the case for the defence, a physician, who had been in Court during the whole case, was put

into the witness-box and asked whether, from all the evidence he had heard both for the prosecution and for the defence, he was of opinion that the prisoner, at the time he did the act in question, was of unsound mind. Alderson B., delivered a very short judgment and said at p. 58:- 5

> " And I do not think it ought to be put at all. I am quite sure that decision was wrong. The proper mode is to ask what are the symptoms of insanity, or to take particular facts, and, assuming them to be true, to ask whether they indicate insanity on the part of the prisoner. To take the 10 course suggested is really to substitute the witness for the jury, and allow him to decide upon the whole case. The jury have the facts before them, and they alone must interpret them by the general opinions of scientific men".

Finally, the doctrine that an expert may not give a deliberate 15 opinion on matters which do not call for expertise was again vividly illustrated in the Canadian case of *R.* v. *Kusmack*, (1955) 20 C.R. 365. As I was unable to trace in the library of the Supreme Court this case, I think I should quote from Cross on Evidence, 4th ed., where this case is reported at p. 383 under 20 the heading "Evidence of Opinion":

> " The accused was charged with murder by cutting his victim's throat, and his defence was that she had a knife in her hand when he seized her wrists, hitting her arm, with the result that the knife accidentally struck her throat. 25 One of the grounds on which a new trial was ordered was that a doctor who had been called to give expert evidence concerning the cause of death had referred to some wounds on the decased's hands, saying that he thought they were inflicted when she was protecting her throat from attack. 30 In the words of Porter, J.:
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> > ' The subject on which the witness is testifying must be one upon which competency to form an opinion can only be acquired by a course of special study or experience. It is upon such a subject and such a 35 subject only that the testimony is admissible'. (This was only one of the grounds on which a new trial was ordered, and the decision was confirmed on appeal without reference to it).

The doctor's observations about the wounds on the hands 40

were purely conjectural, they were not made in consequence of his medical skill, and they were likely to confuse the jury. In fact they were the very kind of observation which illustrates the need for a rule excluding certain types of opinion evidence".

Having reviewed the authorities at length, I lay stress in my judgment that counsel calling an expert should in examination in chief ask his witness to state all the facts on which his opinion is based and that it is wrong to leave the other side to elicit the facts by cross-examination. I would, therefore, reject the criticism made during the appeal that the other side ought to have called their expert—who was advising counsel for the defence—to give his opinion contradicting Professor Simpson's evidence (see the observations in *Rex* v. *Turner* (*supra*) at p. 73G).

Having regard to the submissions of counsel for the appellant, the first question is whether the trial Court did assess the value of the opinion of Professor Simpson. Having considered anxiously the evidence of Professor Simpson as a whole, including the long cross-examination and particularly those passages where he admitted or conceded that he was misinformed as to the facts and that he took into consideration irrelevant facts, I think I have no difficulty in reaching the view that the Court failed to assess the opinion of the expert because:

(a) He was asked to express an opinion on a really inadequate post-mortem report;

(b) Dr. Kyamides failed to give instructions to photograph all the wounds of the victim;

(c) that even the photographs which the police took in accordance with the instructions of Dr. Kyamides did not give a complete and accurate picture of the injuries the victim had received and that in particular to injury (d) referred to in the post-mortem this was most inaccurate and incorrect and it revealed no such injury to the left side of the forehead of the victim;

(d) that the plan to scale showing the room where the victim was lying dead was wrong and was prepared on wrong information. Furthermore, this plan was not only useless but also misleading when compared with photographs on *exhibit* 6, and it was clear that it presented wrong information and measurements;

(e) that although no evidence was given at the P.I. by Professor Simpson as to the photograph 14 and no reliance was placed on it as it was said that it was an old and spoiled photograph, yet at the trial the expert thought that it had some point of value, but he was not solely relying on that photograph in fixing the position of the assailant;

(f) that the Court failed to consider or warn itself that the opinion of an expert based on such material was likely to have been not so valuable in spite of the fact that during the trial Professor Simpson explained that he realized that the photographs were not giving the right picture of the injuries and that the standard followed by Dr. Kyamides in carrying out the post mortem was inadequate;

(g) that in view of the alternative theories and sometimes contradictory statements made during the cross-examination, by Professor Simpson, particularly as to where the assailant was standing when he was attacking the victim and the way the latter reacted in protecting himself from the first blows, I would have expected again some observations from the Court.

The second question is whether the trial Court directed its mind whether the facts upon which the expert's opinion was based were proved by inadmissible evidence in view of the fact that it was conceded by the expert that he had received such inadmissible evidence.

There is no doubt that most of the evidence of Professor Simpson was relevant and admissible in that it provided an opinion from a person who had impressive qualifications on matters where he could furnish the Court with scientific information relating particularly to the wounds of the victim and the manner of how the wounds would bleed and the blood would come out splashing, because of the blows on the skull of the victim. But once again the Court failed to consider that other evidence put forward by the expert was within the experience and knowledge of the Court. Furthermore, the Court has failed to consider whether the evidence with regard to the place where the assailant was standing and the blows he delivered on the victim, as well as the wounds on the deceased's hands when he was protecting his head from the blows—was

inadmissible because the Professor's observations about the wounds on his hands were purely conjectural, and were not made in consequence of his medical skill and were likely to confuse the Court. In fact, these were the very kind of observation which illustrates the need for a rule excluding this type of opinion evidence. (See *R.* v. *Kusmack* (*supra*)).

The third question is whether the trial Judges did form their own independent judgment. I have given this problem a lot of consideration and attention before making up my mind and particularly I went over that part of the evidence where Professor Simpson dealt with the splashing of blood on the left shoe of the appellant, but there is no doubt in my mind that the trial Court, having dealt with those passages, did not in any way, as I said earlier, either assess the value of the opinion or direct its mind whether the expert's opinion was based also on inadmissible evidence. For the reasons I have given at length in this judgment, and fully aware of the difficulties which both counsel were confronted in trying to explain or point out to the Court how and in what manner the blows were delivered on the victim by the assailant, I have reached the conclusion that the trial Court did not have in mind the warning given by Lord President Cooper in *Davie* v. *Edinburgh Magistrates* (*supra*) that the duty of the experts is to furnish the Judges with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable the Judges to form their own independent judgment by the application of those criteria to the facts proved in evidence. Furthermore, the Judges are not bound to adopt the views of an expert even if they remain uncontradicted because the parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert. With the greatest respect to the three trial Judges, having seriously considered the long and able arguments from both sides, I have felt at the end that they did not form their own independent judgment and in fact allowed Professor Simpson to decide the guilt of the accused, and in my view this is indeed a serious misdirection in law.

The next complaint of counsel was that the trial Court was wrong in making adverse comments and in drawing the inference that the appellant was guilty of killing the victim because of his conduct on the day of the murder.

It has been said that evidence of a statement or accusation made in the presence of the accused is admissible as evidence of his conduct or demeanour on hearing it. The value of the

evidence depends entirely on the behaviour of the accused, for the fact that someone makes a statement to him subsequently to the commission of the crime cannot in itself have any bearing on his guilt. As a matter of strict law, the statement made is admissible whatever the reply of the accused, whether he denied 5 or accepted the statement or kept silence. As a matter of practice, the evidence will only be admitted if his behaviour in answer to the accusation is such as to acknowledge its truth either by direct admission or by implication.

In the words of Cave, J. in *R.* v. *Mitchell*, [1892] 17 Cox C.C. 10 503 at p. 508:-

> " Now the whole admissibility of statements of this kind rests upon the consideration that if a charge is made against a person in that person's presence it is reasonable to expect that he or she will immediately deny it, and that the absence 15 of such a denial is some evidence of an admission on the part of the person charged, and of the truth of the charge. Undoubtedly, when persons are speaking on even terms, and a charge is made, and the person charged says nothing, and expresses no indignation, and does nothing to repel 20 the charge, that is some evidence to show that he admits the charge to be true. But, where a statement is made in such circumstances that the prisoner cannot repel the charge, it is absurd to say that his remaining silent is any evidence of the truth of the charge". 25

In D.P.P. v. *Christie*, [1914-1915] (Rep.) All E.R. 63, Lord Atkinson said at p. 67:-

> " The rule of law undoubtedly is that a statement made in the presence of an accused person, even upon an occasion which should be expected reasonably to call for some 30 explanation or denial from him, is not evidence against him of the facts stated save so far as he accepts the statement, so as to make it, in effect, his own. If he accepts the statement in part only, then to that extent alone does it become his statement. He may accept the statement by word or 35 conduct, action or demeanour, and it is the function of the jury which tries the case to determine whether his words, action, conduct, or demeanour at the time when a statement is made amounts to an acceptance of it in whole or in part. It by no means follows, I think, that a mere denial by the 40 accused of the facts mentioned in the statement necessarily

renders the statement inadmissible, because he may deny the statement in such a manner and under such circumstances as may lead a jury to disbelieve him, and constitute evidence from which an acknowledgement may be inferred by them. Of course, if at the end of the case the presiding Judge should be of opinion that no evidence has been given upon which the jury could reasonably find that the accused had accepted the statement so as to make it in whole or in part his own, he can instruct the jury to disregard the statement entirely. It is said that, despite this direction, grave injustice might be done to the accused, inasmuch as the jury, having once heard the statement, could not or would not rid their mind of it".

Lord Reading, J., delivering a separate speech in the same case said at p. 71:-

" In general such evidence can have little or no value in its direct bearing on the case unless the accused, upon hearing the statement, by conduct and demeanour, or by the answer made by him, or in certain circumstances by the refraining from an answer, acknowledged the truth of the statement either in whole or in part, or did or said something from which the jury could infer such an acknowledgement; for if he acknowledged its truth, he accepted it as his own statement of the facts. If the accused denied the truth of the statement when it was made, and there was nothing in his conduct and demeanour from which the jury, notwithstanding his denial, could infer that he acknowledged its truth in whole or in part, the practice of the judges has been to exclude it altogether".

In *Hall* v. *Reginam*, [1971] 1 All E.R. 322, Lord Diplock, dealing with the same question, and having referred to Archbold, Pleading Evidence and Practice in Criminal Cases, 37th ed., paragraph 1126 (*about a statement made in the presence of an accused person accusing him of a crime*) said at pp. 323–324:-

" It is a clear and widely-known principle of the common law in Jamaica, as in England, that a person is entitled to refrain from answering a question put to him for the purpose of discovering whether he has committed a criminal offence. A fortiori he is under no obligation to comment when he is informed that someone else has accused him of an offence. It may be that in very exceptional circumstances an inference

may be drawn from a failure to give an explanation or a disclaimer, but in their Lordships' view silence alone on being informed by a police officer that someone else has made an accusation against him cannot give rise to an inference that the person to whom this information is communicated accepts the truth of the accusation. This is well established by many authorities such as *R.* v. *Whitehead* [1928] All E.R. Rep. 186 and *R.* v. *Keeling* [1942] 1 All E.R. 507. Counsel has sought to distinguish these cases on the ground that in them the accused had already been cautioned and told in terms that he was not obliged to reply. Reliance was placed on the earlier case of *R.* v. *Feigenbaum* [1919] 1 K.B. 431 where the accused's silence when told of the accusation made against him by some children was held to be capable of amounting to corroboration of their evidence. It was submitted that the distinction between *R.* v. *Feigenbaum* (*supra*) and the later cases was that no caution had been administered at the time at which the accused was informed of the accusation. The correctness of the decision on *R.* v. *Feigenbaum* (*supra*) was doubted in *R.* v. *Keeling* (*supra*). In their Lordships' view the distinction sought to be made is not a valid one and *R.* v. *Feigenbaum* (*supra*) ought not to be followed. The caution merely serves to remind the accused of a right which he already possesses at common law. The fact that in a particular case he has not been reminded of it is no ground for inferring that his silence was not in exercise of that right, but was an acknowledgement of the truth of the accusation.

It follows that in their Lordships' view there was no evidence on which the resident magistrate was entitled to hold that the charge against the appellant was made out".

In a recent case, *Parkes* v. *The Queen* [1976] 3 All E.R. 380, Lord Diplock, delivering the opinion of the Privy Council adopted and followed the dicta of Cave, J., in *R.* v. *Mitchell* (*supra*) and of Lord Atkinson in *R.* v. *Christie* (*supra*). Having distinguished the case of *Hall* v. *Reginam* (*supra*), and having quoted a passage from that case from p. 324, he continued in these terms at p. 383:-

"As appears from this passage itself, it was concerned with a case where the person by whom the accusation was communicated to the accused was a police constable whom

he knew was engaged in investigating a drug offence. There was no evidence of the accused's demeanour or conduct when the accusation was made other than the mere fact that he failed to reply to the constable".

5 Later on he said:-

" Here Mrs. Graham and the appellant were speaking on even terms. Furthermore, as Smith C.J. pointed out to the jury, the appellant's reaction to the twice-repeated accusation was not one of mere silence. He drew a knife 10 and attempted to stab Mrs. Graham in order to escape when she threatened to detain him while the police were sent for.

In their Lordship's view, Smith C.J. was perfectly entitled to instruct the jury that the appellant's reaction to the 15 accusation including his silence were matters which they could take into account along with other evidence in deciding whether the appellant in fact committed the act with which he was charged".

20 In *R.* v. *Chandler*, [1976] 3 All E.R. 105, "the appellant was suspected of being one of the members of a gang which had been formed to obtain television sets dishonestly. In the presence of his solicitor, the appellant was questioned by a detective sergeant at a police station. Both before and after being 25 cautioned he answered some questions and remained silent or refused to answer other questions in relation to other alleged members of the gang. He was charged with conspiracy to defraud and at his trial did not give evidence. The only evidence against him was the interview at the police station. The Judge 30 directed the jury that it was for them to decide whether the appellant had remained silent before the caution in the exercise of his common law right or had 'remained silent because he might have thought that if he had answered he would in some way have incriminated himself'. The appellant was convicted and 35 appealed".

Lawton, L.J. read the judgment of the Court of Appeal, and having set out part of the interview containing the questions put by the detective sergeant said at p. 107:-

" At this stage the appellant was cautioned. The question-40 ing continued. The appellant answered some questions and refused to make any comment when asked others.

In his summing-up the trial Judge commented on this interview".

Then at p. 108 he said:-

"Counsel submitted that these comments should not have been made because of the decisions in a long line of cases, the most recent being *R.* v. *Ryan* [1964] 50 Cr. App. R. 144 and *R.* v. *Mann* [1972] 56 Cr. App. R. 750. It is unnecessary for us to review these cases. They were all cases in which it is clear that a caution had been given or the circumstances were such that this Court is entitled to infer that one had been given. When this was pointed out to counsel, he invited our attention to what Lord Diplock had said in *Hall* v. *Reginam* (*supra*)."

Then, Lawton L.J. having quoted two passages from the opinion of Lord Diplock in *Hall* v. *Reginam* (*supra*), added at p. 110-111:-

" It would be unfortunate if the law of evidence was allowed to develop in a way which was not in accordance with the common sense of ordinary folk. We are bound by *R.* v. *Christie* ([1914] A.C. 545), not by *Hall* v. *Reginam* ([1971] 1 All E.R. 322), and *R.* v. *Christie*, in our judgment, does accord with common sense.

When the trial Judge's comments are examined against the principles enunciated in both *R.* v. *Mitchell* ([1892] 17 Cox C.C. 503) and *R.* v. *Christie* (*supra*) we are of the opinion that the appellant and the detective sergeant were speaking on equal terms since the former had his solicitor present to give him any advice he might have wanted and to testify, if needed, as to what had been said. We do not accept that a police officer always has an advantage over someone he is questioning. Everything depends on the circumstances ... Some comment on the appellant's lack of frankness before he was cautioned was justified, provided the jury's attention was directed to the right issue which was whether in the circumstances the appellant's silence amounted to an acceptance by him of what the detective sergeant had said. If he accepted what had been said, then the next question should have been whether guilt could reasonably be inferred from what he had accepted. To suggest, as the Judge did, that the appellant's silence could indicate guilt was to short circuit the intellectual

process which has to be followed. Phillips in his Treaties on the Law of Evidence (10th Ed. (1852) vol. 1 p. 344) pointed out this very error".

Finally, his Lordship said:-

"The same kind of error is seen in the comment which the Judge made whether the appellant had been evasive in order to protect himself. He may have been; but that was not what the jury had to decide. It follows, in our judgment, that the comments made were not justified and could have led the jury to a wrong conclusion.

This is no legalistic quibble. We have looked closely at the evidence provided by the interview. There was no other as the appellant did not give any. Even if the comments had been made in accordance with *R.* v. *Christie* (*supra*) we should have quashed the conviction as being unsafe. The appellant, for example, refused to say anything about the fact that his name and driving licence number had got on to a hire purchase document. This could not amount to anything more than the acceptance by him that these particulars were where the detective sergeant said they were. Further, he made no comment when asked if he knew Apicella; at the most this could only amount to some evidence that he did know him. He lied when he said he did not know Joy; but proof that he lied did not amount to proof of any fact other than that he lied. It is unnecessary to examine the interview in any more detail. It suffices to say that it did not provide a safe foundation for an inference that the appellant had been a member of the conspiracy alleged.

It was for these reasons that we allowed the appeal".

It appears that when the trial Judges' comments are examined against the principles enunciated in the authorities I have just quoted, I am of the opinion that the appellant and the police were not speaking on equal terms in the circumstances of the present case. I would, therefore, accept that the police had an advantage over the appellant whom they were questioning. Furthermore, it is clear to me that the refusal of the appellant to answer further questions put to him by the police on November 21, 1975, or to answer any questions put to him after he had made a statement to the police later on, is not a matter which

can be justified or be taken into account against the appellant. The refusal of the appellant to answer questions or his silence in the circumstances did not amount to an acceptance by him of what Chief Insfepctor Aristocleous said in his presence. To suggest, as the Judges did, that the conduct of the accused was to conceal facts and lead the police on a wrong track, in my view, was wrong and should not have been taken against the appellant because, as has been said by Lawton L.J., in *R.* v. *Chandler* (supra), that would mean "that the appellant's silence could indicate guilt was to circuit the intellectual process which has to be followed". I would go further and state that once the appellant was reminded of his rights to remain silent or to refuse to answer questions, to hold that against him, that would in effect render his rights nugatory in the circumstances of this case. But the same kind of error is seen in the further comments of the trial Judges which they made that the appellant had been evasive in an effort to avoid or protect himself from being implemented in the crime. The appellant may or may not have been, but that was not what the trial Judges had to decide at that stage. It follows, therefore, that the comments made by the trial Judges were not justified and could have led them to a wrong conclusion. This, indeed, is a further substantial misdirection in my view.

Then I turn to the next piece of circumstantial evidence, that is to say, the lethal weapon, going to prove the guilt of the appellant. The next complaint of counsel was that the evidence regarding the identification of the said weapon or chopper, and that it was used by the appellant to kill the victim was based (a) on unreliable and biased evidence; and (b) that the Judges misdirected themselves in drawing that inference. Furthermore, counsel argued that the Judges misdirected themselves also in relying on the evidence of Mrs. Vartholomeou when they had rejected part of her evidence, and in drawing the inference that the appellant was carrying under his arm papers containing the said chopper after he killed the victim.

There is no doubt that evidence of identity may be given in a Court in a number of different cases, but, in each instance, the proposition in support of which it is tendered is the same, namely, that two persons or things are identical. The existence of a particular person or thing must be assumed before any such question can arise, and the Court then has to determine which of two contentions is established: The contention that the person

or thing to which reference is made by one of the parties is the person or thing whose existence is assumed, or the contention that the two are different ... Owing, perhaps, to the existence of several notorious instances of mistaken identity, a certain amount of case law has evolved on this subject. (See Cross on Evidence, 4th ed., at p. 48). See also *R.* v. *Turnbull*, [1976] 3 All E.R. 549 where Lord Widgery, C.J., said at p. 552 that an adequate warning should be given to jury about the special need for caution as to the quality of the identification evidence.

With these observations in mind, and having regard to the evidence which I have referred to earlier, I have no difficulty in reaching the view that such evidence regarding the said chopper was a most unreliable piece of evidence indeed, and should not have been treated by the trial Judges as reliable. It was evidence given by persons who were not only biased against the appellant but it was also of a partisan character, when one considers the examination in chief, and cross-examination, particularly of Takis Kokkinos.

In these circumstances, having reviewed the evidence, I shall exercise my powers and interfere with the inferences drawn that the appellant used the very same chopper which was seen and identified by the said witnesses, and the finding by the trial Court that it was used in killing the victim.

Now, as to the evidence of Mrs. Vartholomeou, the cleaner, I regret to add, that once again the trial Judges drew wrong inferences from her evidence and misdirected themselves because they have failed to attach sufficient weight to the fact that her evidence might have been tainted (a) because she has been taken to Strovolos Police Station five or six times after the murder and statements were being taken from her and she was being interrogated at length; (b) that she was taken to the S.E.K.E.P. premises by the police on one day for the purpose of repeating the work she did on the day of the murder, and on another occasion in order to prepare a plan; and (c) that she was reminded by the police of her statement after she had given evidence at the preliminary enquiry for the prosecution. With this in mind, in my view, the Judges ought to have approached the evidence of this witness with caution, and in any event, it was not safe to rely on the inferences drawn that in the papers which the appellant was carrying under his arm was the said chopper.

Having regard to the evidence of these four witnesses, I have reached the conclusion that the learned Judges, by accepting their evidence, committed a substantial miscarriage of justice.

Finally, counsel for the appellant contended that the trial Judges misdirected themselves as to the medical evidence which was consistent with the second theory put forward by Professor Simpson, particularly with regard to the blood found on the shoe of the appellant due to the shaking of his hand which was full of blood, and in trying to get rid of it. Counsel further argued that in effect the trial Court in refusing to examine this theory cast on the defence the evidential burden to prove his innocence, and because no evidential burden as such is cast on the defence beyond raising that issue.

In *Paul Frank Ayres* v. *The Republic*, (1971) 2 C.L.R. 16, the accused appealed against conviction and sentence on one count of the offence of homicide, contrary to s. 205 of the Criminal Code, Cap. 154, and was sentenced by the Assize Court of Famagusta to 15 years' imprisonment. The appeal was heard mainly on the ground that the Court misdirected itself on the law and the facts, and the burden of proof on the issues of intent and accident. Triantafyllides, J., (as he then was) delivering the first judgment, posed this question: "Was the wound on her head caused by a blow with the said bottle, and how long before her death and in what circumstances was this wound inflicted?" In answering this question he said at p. 21:-

> " Without knowing definitely the answers to questions such as these it is impossible to form any safe view as to whether or not the events which led to the deceased being wounded on her head are related in a material way to, and can help to throw light on, the circumstances in which she subsequently died.
>
> There remains, next, the doubt, which inevitably arises, in the light of the already quoted medical evidence, regarding the situation in which the pressure which caused her death was applied on the throat of the deceased: It is not known what happened and the medical evidence does not exclude the probability that the pressure may have been applied without the intent necessary to establish the offence of homicide, of which the Appellant was convicted.
>
> In this case, as in every criminal case, it was up to the prosecution to establish the guilt of the Appellant; he did not have to establish his innocence; and in the light of all the foregoing I am of the view that it was not safe to convict the Appellant. His appeal has, therefore, to be allowed".

Vassiliades, P., having quoted that part of Dr. Kyamides' evidence, which was strongly challenged by counsel for the appellant, said at p. 25 that:

"In view of this witness' evidence, we have come to the conclusion that the findings of the trial Court upon which the conviction was based, are unsatisfactory; and should not be sustained. (*Meitanis* v. *The Republic*, (1967) 2 C.L.R. 31 at p. 41; *Tattari* v. *The Republic* (1970) 2 C.L.R. 6). The conviction based on those findings, therefore, loses its foundation".

Then, having dealt with the legal aspect of the defence of accident, he continued in these terms:-

"Adopting the generally accepted proposition in our legal system, that the burden of proof in a case like this, lies throughout on the prosecution, learned counsel contended that the defence of accident, when raised by the defendant, must find support in the evidence. I do not think that we can do better in this connection than refer to the case of *Jayasena* v. *The Queen* [1970] 2 W.L.R. 448 P.C., where the Privy Council dealt with the defence of accident and self-defence on appeal from the Supreme Court of Ceylon, with the help of eminent counsel and a Board of very experienced Judges in our times, if I may say so with all respect ...... The case was decided on the legislative provisions in the Penal Code and in the Evidence Ordinance in force in Ceylon; but in comparing the position with that under English law and discussing the effect of *Woolmington* case on the latter (*Woolmington* v. *The Director of Public Prosecutions* [1935] A.C. 462) the decision in the Jayasena appeal is all the more helpful. When the defence of provocation, self-defence, accident or other such relevant matters to the crime under consideration, are raised at the trial on behalf of the defendant, the trial Court must fully consider them; carefully and persistently preserving an open mind in the matter until the end of the day, as it is at that stage and upon the evidence considered as a whole, in the light of the final submissions made by both sides, that the Court must reach their verdict. It is at that stage of the trial, and in that frame of mind, that the Court must put to themselves the question whether they are satisfied in their own mind and conscience that every ingredient of the offence charged, stands proved to their full satisfaction, free of

any shade of doubt arising from realities, probabilities or reasonable possibilities, even when these appear to be rather remote. This is easier said than done. But the trial Court's duty is not easy; and it is part of the appellate Court's responsibility to see that such difficult duty is properly discharged. 5

Having said that, I think that I can now conclude by stating that there exists a shade of suspicion on the Appellant that he is the person directly connected with the circumstances which led to the victim's death in this case". 10

I also had occasion to deliver a separate judgment, and in commenting about the observations of the Court that the application of such pressure on the throat (of the victim) is consistent with only one view, an intent to cause death, I said at pp. 35–36:–

" With the utmost respect to the trial Court's view, I am inclined to take the opposite view, because after reviewing the medical evidence adduced on behalf of the prosecution, I have reached the conclusion that such evidence is not consistent with only one view, viz., to cause death, but on the contrary, the evidence gives some reasonable indication that the application of pressure on the throat of the victim was unintentional. 15 20

No doubt, so strong is the presumption of innocence that in order to rebut it, the crime must be brought home to a prisoner 'beyond reasonable doubt', and the graver the crime the greater will be the degree of doubt, that is reasonable. This is the result of *Mancini* v. *D.P.P.* [1942] A.C. 1 explaining *Woolmington* relied upon by the trial Court. 25

If, therefore, the defence suggests an alternative theory which is possible and consistent with the evidence, the accused must be acquitted. See *Rex* v. *Turkington* [1931] 22 Cr. App. R. 91 at p. 92. Moreover, since intention is necessarily in issue in a murder case, when evidence of death and malice has been given, the accused is entitled to show by evidence or by examination the circumstances adduced by the prosecution, that the act on his part which caused death was either unintentional or provoked. It is hardly possible, therefore, when the defence of accident is raised, not to be given due weight by the trial Court whether the accused has given evidence on the subject or 30 35 40

not. Because 'if the jury are left in reasonable doubt whether the act was unintentional or provoked, the person is entitled to be acquitted'. Per Lord Sankey in the *Woolmington* case. Be that as it may, since there was no direct
5 evidence which might contribute to the circumstances by throwing light upon the probable reasons for the death of the victim, I entertain serious doubts, for the same questions mentioned by my brother Triantafyllides, J., the answers of which could have helped this Court to decide whether
10 the trial Court could with certainty, in the light of the evidence before us, have reached its conclusions that the Appellant intentionally killed the deceased.

For the reasons which I have endeavoured to explain, I am of the opinion that the trial Court misdirected itself
15 regarding the medical evidence, and the burden of proof on the issues of intent and accident, and since it was not safe to convict the Appellant, I would allow the appeal and quash the conviction exercising my powers under section 145 of the Criminal Procedure Law, Cap. 155".

20 Having considered carefully the submissions of counsel in the light of what was said in the *Ayres* case (*supra*), I have reached the conclusion that the learned Judges misdirected themselves on the law and the facts, because the medical evidence is consistent with the second alternative adopted by Professor
25 Simpson, viz., that it was possible because of the shaking of the hand of the appellant to produce the fine spots that were found on his left shoe when the fingers were spread and his hand had to be over the left side of the left shoe. This theory is also consistent with the statement of the appellant made from the
30 dock. It is true, of course, that in his statement, the appellant did not say so in so many words that his fingers were spread in shaking his hand when trying to get rid of the blood, but in my view, it makes no difference because in doing so, the fingers spread automatically. In any event, it was for the Judges to
35 consider that part of the statement carefully and persistently preserving an open mind in the matter. What is surprising, however, is that in view of that medical evidence, the trial Judges, although they were at pains to try to explain the stand taken by Professor Simpson, nevertheless, they have failed to reach a
40 conclusion as to whether it was possible that the blood drops found on the left shoe of the appellant could have been caused by the shaking of the hand in the way described, and thus they placed the onus on the appellant to prove his innocence.

Having reached the conclusion that in this case there had been a substantial miscarriage of justice on a number of issues, I have carefully and anxiously considered, in the light of the reasons I have stated in my judgment, what would be the proper course to adopt in deciding this appeal. Having considered a number of cases, such as *Ioannis Nestoros* v. *The Republic*, 1961 C.L.R. 217; *Petrides* v. *Republic* 1964 C.L.R. 413; *Costas HjiCosta* (*No.* 2) v. *The Republic*, (1965) 2 C.L.R. 95; *Andreas Zanettos* v. *The Police*, (1968) 2 C.L.R. 232; *Phivos Petrou Pierides* v. *The Republic* (1971) 2 C.L.R. 263, I have made up my mind, in the interest of justice, that this is not a case in which I would be prepared to apply the proviso to s. 145(1)(b) of the Criminal Procedure Law, Cap. 155. With this in mind, I turn to *Pierides* case (*supra*), and I would approve and adopt what was said by Triantafyllides, P. 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".

Having reviewed a mumber of cases, the learned President said at p. 276:-

> " Having carefully weighed together all proper factors we are of the opinion, unlike in the case of *Isaias* v. *The Police* (1966) 2 C.L.R. 43, in which the Supreme Court found, in the light of the individual circumstances of that case, 'the scales of justice leaning against a new trial', that in the present case the scales of justice lean towards a new trial, for, *inter alia*, the reason for which a new trial was ordered in the *Nestoros* case (*supra*).
>
> The conviction, therefore, of the Appellant on both counts is set aside, as well as the sentence imposed on him in respect thereof, and a new trial is ordered, only on the count charging him with setting fire to goods in a building, contrary to section 319 of Cap 154".

In *Anderson* v. *Reginam*, [1971] 3 All E.R. 768, Lord Guest, dealing with the very same point said at pp. 772 and 773:-

> " The test which an Appeal Court is to apply to the proviso was recently referred to by Viscount Dilhorne in *Clung 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 Prosecutions*, [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' ".

There can be no doubt that the provisions of the proviso to s. 145(1)(b) of Cap. 155 provide for the dismissal of an appeal despite errors in the judgment of the trial Court, where the Appeal Court considers that no substantial miscarriage of justice has occurred.

Directing myself, therefore, with the principles enunciated in those weighty judicial pronouncements referred to earlier in this judgment, I have reached the conclusion for the reasons I have given at length not to apply the proviso because this is a classic case in which a substantial miscarriage of justice has actually occurred both on the facts and on the law. I would, therefore, quash the conviction because justice requires that there should be a rehearing, once in Cyprus the Court of Appeal has always enjoyed wider powers than in England.

Once I am not in a position to know what had happened during the time and after the time the appellant and the victim

were having their drinks in their office, and in view of the rest of the evidence, I am of the opinion that the prosecution has failed to prove the necessary ingredient of premeditation, being a question of fact in each case. (*Rex* v. *Shaban*, 8 C.L.R. 82 at p. 84). 5

With this in mind, the appeal is allowed, the conviction quashed, and a new trial ordered on the count of homicide, under the provisions of s. 205 of the Criminal Code, Cap. 154.

TRIANTAFYLLIDES, P.: In result the appeal is dismissed by majority of three to two, and a new date of execution, the 31st 10 May 1977, is fixed.

Appeal dismissed.