1979 June 19

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

GEORGHIOS CHRISTOFI,

*Appellant,*

*v.*

THE POLICE,

*Respondents.*

(*Criminal Appeal No.* 4031).

*Gaming—Conviction of assembling for the purpose of playing "zari", contrary to section* 6(1) *of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap.* 151—*No finding as to the game those assembled intended to play—An essential ingredient of the offence not proved—Conviction set aside—Section* 4 *of Cap.* 151.

The appellant was tried, together with five other persons, of the offence of assembling together with other persons for the purpose of playing a game commonly known as "zari", contrary to section 6(1)* of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151. In finding the appellant and his co-accused guilty the trial Judge said:-

> "Finally, I find that the prosecution has proved its case beyond any reasonable doubt and I find that the accused assembled together for the purpose of gambling and I find them guilty for committing such offence, without making any finding as to the game they intended to play".

Upon appeal against conviction Counsel for the appellant submitted that in view of the absence of any finding that the appellant and his co-accused were actually assembled for the purpose of playing "zari" the conviction of the appellant was wrong in law; and counsel for the respondents has conceded that, in the circumstances, he could not support a conviction under section 6(1) in the absence of such a finding, in view of

* Quoted at pp. 247-8 *post.*

the difference between a charge under section 6(1) and one under section 4* of Cap. 151.

*Held*, that since it has not been found that the appellant and his co-accused were assembled for the purpose of playing "zari", as charged, it follows that the appellant was convicted without an essential ingredient of the relevant offence having been proved and, therefore, his conviction, as well as the sentence passed upon him, have to be set aside; and that as, on the basis of all the material before it this Court does not, in the particular circumstances on this case, think that it should find him guilty of an offence under section 4 of Cap. 151 in the exercise of its powers under section 145(1)(c) of the Criminal Procedure Law, Cap. 155, he should be acquitted (see, also, *Pissourios and Others* v. *The Police* (1967) 2 C.L.R. 258).

*Appeal allowed.*

**Appeal against conviction.**

Appeal against conviction by Georghios Christofi who was convicted on the 31st March, 1979 at the District Court of Limassol (Criminal Case No. 2113/79) on one count of the offence of assembling with other persons for the purpose of playing a game commonly known as "zari", contrary to section 6(1) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 and was sentenced by Eleftheriou, Ag.D.J. to pay £10.— fine and £1.125 mils costs.

*E. Lemonaris*, for the appellant.

*A.M. Angelides*, Counsel of the Republic, for the respondents.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant, who was accused No. 7 before the trial Court, was convicted of the offence of assembling together with other persons for the purpose of playing a game commonly known as "zari", contrary to section 6(1) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151. He was sentenced to pay a fine of £10.

Section 6(1), above, reads as follows:-

"6.(1) Any person, wherever found, playing at any of the

* Section 4 reads as follows:

"4. Any persons gambling or assembled together for the purpose of gambling in a gaming house shall be guilty of an offence under this Law".

games commonly known as 'cholo', 'kazandi', 'zari' or 'roulette' or any other similar game which in the opinion of the Court trying the offence is a variation of any of such games or assembled together for the purpose of playing at any such game or any variation thereof as hereinbefore provided, shall be guilty of an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine."

The count on the basis of which the appellant was convicted charged him with having assembled together with his co-accused Nos. 2-6 for the purpose of playing "zari".

The trial Judge, in finding the appellant and his co-accused guilty, said:-

"Finally, I find that the prosecution has proved its case beyond any reasonable doubt and I find that the accused assembled together for the purpose of gambling and I find them guilty for committing such offence, without making any finding as to the game they intended to play."

Counsel for the appellant submitted that in view of the absence of any finding that the appellant and his co-accused were actually assembled for the purpose of playing "zari" the conviction of the appellant is wrong in law; and counsel for the respondents has very fairly conceded that, in the circumstances, he cannot support a conviction under section 6(1) in the absence of such a finding, in view of the difference between a charge under section 6(1) and one under section 4 of Cap. 151.

The said section 4 reads as follows:-

"4. Any persons gambling or assembled together for the purpose of gambling in a gaming house shall be guilty of an offence under this Law."

In *Pissourios and others* v. *The Police*, (1967) 2 C.L.R. 258, where the appellants had been found guilty of the offences, *inter alia*, of gambling and of assembling for the purpose of gambling, under section 4 of Cap. 151, Josephides J. said (at pp. 268-269):-

" It should be observed, however, that both in the statement

of the offence and the particulars of the offence of gambling and assembling for the purpose of gambling, no mention is made of the game '*zari*' or indeed of any other game. It is therein stated that the accused 'were found gambling' (2nd count), and that they 'were assembled together for the purpose of gambling' in the house of the first appellant (3rd count).

On the evidence adduced before the trial Judge we do not think that it was open to him to make a finding that the accused were either assembled for playing *zari* or that they were actually playing *zari*. They might have been playing at any other game of chance. For this reason we find ourselves unable to uphold the finding of the learned Judge with regard to the game of *zari*, and the question which now arises is whether on the primary facts as found by the trial Judge we, as an appellate Court, can draw the inference (Courts of Justice Law, 1960, section 25(3); *Kafalos* v. *The Queen*, 19 C.L.R. 121, 125; *Adem* v. *Mevlid* (1963) 2 C.L.R. 3; *Droushiotis* (*No.* 2) v. *Cyprus Asbestos Mines Ltd.* (1966) 1 C.L.R. 215 at p. 228; *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134; and *Aristidou* v. *The Republic* (reported in this Part at p. 43 *ante*), that the accused were either gambling or assembled for the purpose of gambling as actually charged.

On the facts as they stand, we do not think that it can be reasonably inferred that the accused were actually gambling; so that the only question now left is whether the inference can be drawn that the accused were assembled there for the purpose of gambling, without necessarily finding which kind of specific illegal game they intended to play. Depending on the circumstances of a case, we think that a Court is not precluded from finding persons guilty of this charge without specifying expressly the particular illegal game. The question is always a question of fact depending on the circumstances of the particular case."

Since in the present case it has not been found that the appellant and his co-accused were assembled for the purpose of playing "zari", as charged, it follows that the appellant was convicted without an essential ingredient of the relevant offence having been proved and, therefore, his conviction, as well as

the sentence passed upon him, have to be set aside; and as, on the basis of all the material before us, we do not, in the particular circumstances on this case, think that we should find him guilty of an offence under section 4 of Cap. 151 in the exercise of our powers under section 145(1)(c) of the Criminal Procedure Law, Cap. 155, he should be acquitted.

In the result, this appeal is allowed accordingly.

*Appeal allowed.*