

1982 April 15

[A. LOIZOU, SAVVIDES, STYLIANIDES, JJ.]

ELENI K. YIANNAKOU,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 4256*).

5 *Findings of fact—Credibility of witnesses—Evaluation of—Primarily the duty of trial Judges—Court of Appeal does not interfere on appeal with findings of fact based on credibility of witnesses when satisfied that such findings were reasonably open to the trial Judge—Onus on appellant to satisfy Court of Appeal that trial Judge was wrong in believing prosecution witnesses and disbelieving her evidence, and she failed to do so.*

10 *Criminal Law—Sentence—Malicious injury to property—£75 fine and £65 compensation—Appellant 70 years of age with eight previous convictions, two of them for assault—Showed no repentance for her deeds—Appeal dismissed.*

15 The appellant was convicted of the offence of malicious injury to property and was sentenced to pay a fine of £75 and £65 compensation. She was, moreover, bound over in the sum of £200 for a period of two years. The trial Judge believed the evidence of the complainant and his wife who testified that the appellant threw two stones against complainant's car and damaged its windscreen; and the evidence of the Investigating officer who, when called to the scene, found that the windscreen of the car was broken and had a big hole in it. He also found 20 a stone on the seat next to the driver as well as another stone on the roof of the car. On the other hand the trial Judge disbelieved the version of the appellant who did not admit that

she broke the windscreen but she said that she threw stones in order to prevent complainant from passing through her field.

Upon appeal against conviction and sentence Counsel for the appellant contended:

- (a) That the approach of the trial Judge regarding the credibility of the witnesses was wrong because he based his evaluation only on the impression he gathered whilst they were giving their testimony in Court and for no other reason. 5
- (b) That considering the age of the appellant and taking into account the fact that she was also ordered to pay £65 compensation the sentence was manifestly excessive. 10

The appellant was 70 years of age and had eight previous convictions, two of them for assault.

*Held*, (1) that the question of the evaluation of the credibility of witnesses is primarily the duty of trial Judges and this Court does not interfere on appeal with findings of fact based on the credibility of witnesses when it is satisfied that such findings were reasonably open to the trial Judge; that the trial Judge had indeed the advantage of having a first hand impression of the testimony of the various witnesses and in addition to this factor there were certain undisputed facts on which he relied such as the admission of the appellant that she threw stones at the complainant and the fact that the windscreen of the car was smashed; that the onus is upon the appellant to satisfy this Court that the trial Judge was wrong in believing the prosecution witnesses and disbelieving her own and she has failed to do so; accordingly the appeal against conviction must fail. 15 20 25

(2) That although the appellant was a woman of 70 years of age, her past record and her conduct in relation to the present offence was not one to deserve more leniency than the one shown by the trial Judge in imposing the sentence in question, having at no time shown any repentance for her deeds; accordingly the appeal against sentence must, also, fail. 30

*Appeal dismissed.* 35

#### **Appeal against conviction.**

Appeal against conviction by Eleni K. Yiannakou who was convicted on the 7th September, 1981 at the District Court

of Limassol (Criminal Case No. 9440/81) on one count of the offence of malicious injury to property, contrary to section 324(1) of the Criminal Code, Cap. 154 (as amended by Law 4/74) and was sentenced by Eleftheriou, D.J. to pay C£75.—  
5 fine and C£65.— compensation and was further bound over in the sum of C£200.— for a period of two years to be of good behaviour and keep the peace.

*B. Vassiliades*, for the appellant.

10 *A. Frangos*, Senior Counsel of the Republic, for the respondents.

A. LOIZOU J. gave the following judgment of the Court. This is an appeal against the conviction of the appellant on a charge of malicious injury to property contrary to section 324(1) of the Criminal Code, Cap. 154, as amended by Law No. 4  
15 of 1974 and against the sentence imposed on her which was one of C£75.— fine and C£65.— compensation and in addition she was bound over in the sum of C£200.— for a period of two years to be of good behaviour and keep the peace.

20 The particulars of the offence as set out in the charge are that the appellant on the 4th April, 1981 at Pissouri jerby road, in the District of Limassol, did wilfully and unlawfully caused C£65.— damage to motorcar DL.207, the property of Christodoulos A. Liasi, of Pissouri.

25 The facts as found by the trial Judge on the evidence before him are these: On the 4th April, 1981, the complainant with his wife went to locality Limnari driving his motor-car under registration No. DL.207 and carried a small tractor in order to cultivate his vineyard. On arriving there he unloaded the tractor, started its engine and proceeded to the vineyard leaving  
30 his car behind. Whilst they were cultivating the vineyard, the appellant, who is his sister and the owner of the adjoining plot of land, threw two stones against the car of the complainant and damaged its windscreen.

35 The Police were called to the scene and the investigating officer found that the windscreen of the said car was broken and had a big hole in it. He also found a stone on the seat next to the driver as well as another stone on the roof of the car and fragments of glasses on the driver's seat.

In answer to the formal charge the appellant did not admit that she broke the windscreen of the car of her brother but she said that she threw stones in order to prevent him from passing through her field, through which he had no right of passage and she prohibits him from doing so and that she did not see his car there at all. 5

The prosecution called as witnesses the complainant, his wife and the Investigating Officer, P.C. Loizou. The appellant when called upon to make her defence gave evidence on oath, but called no defence witnesses. Her version was that she threw stones at the complainant for the reason that he was uprooting plants from her vineyard, but as pertinently observed by the learned trial Judge these allegations were never put to the witnesses of the prosecution. The trial Judge believed the version of the witnesses for the prosecution and found the appellant guilty. 10 15

This appeal challenges the findings of fact of the trial Judge based on the credibility of witnesses and counsel appearing for the appellant has urged that the approach of the trial Judge regarding the credibility of witnesses was wrong inasmuch as he based his said evaluation only on the impression he gathered whilst they were giving their testimony in Court and for no other reason. We do not agree with this argument of counsel as there were more reasons than that of the demeanour of the witnesses that justified him fully in preferring the evidence of the witnesses for the prosecution than that of the appellant. 20 25

That question of the evaluation of the credibility of witnesses is primarily the duty of trial Judges and this Court does not interfere on appeal with findings of fact based on the credibility of witnesses when it is satisfied that such findings were reasonably open to the trial Judge. The trial Judge had indeed the advantage of having a first hand impression of the testimony of the various witnesses, a fact mentioned in his judgment. But in addition to that factor there were certain undisputed facts on which he relied. That is, the admission of the appellant that she threw stones at the complainant, that she had a grievance because of his exercising a right of way over her property to which, according to her, he was not entitled and also the fact that the car of the complainant was there and its windscreen smashed with a hole in it and two stones, one found on the seat 30 35 40

next to the driver and the other on the roof of the car and with broken glasses scattered on the seat. No doubt all these rightly added to the credibility of the witnesses whose testimony the trial Judge preferred and in our view the appellant was rightly  
5 found guilty. Consequently her appeal against conviction must be dismissed.

The appellant has failed to satisfy us, as the onus is upon her to do so, that the trial Judge was wrong in believing the prosecution witnesses and disbelieving her own, but we are, in the  
10 circumstances, satisfied that the version accepted by the trial Court was no doubt the true one.

As regards the appeal against sentence, counsel for the appellant has argued that the one imposed on the appellant taking also into account the fact that she was also ordered to pay C£65.  
15 — compensation for the damage to the windscreen, was manifestly excessive considering also her age.

The appellant had eight previous convictions, two of them being for assault in 1972 and although a woman of 70 years of age, her past record and her conduct in relation to the present  
20 offence was not, in our view, one to deserve more leniency than the one shown by the trial Judge in imposing the sentence in question, having at no time shown any repentance for her deeds.

For all the above reasons her appeals against conviction and sentence are dismissed.

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*Appeal dismissed.*