1982 February 26

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

ANDREAS POURIS AND ANOTHER

Appellants,

v.

THE REPUBLIC,

Respondent

(*Criminal Appeals Nos* 4013, 4015).

Findings of fact made by trial Court—Based on credibility of witnesses—Appeal—Where evidence has been accepted by a trial Court as credible discrepancies and contradictions in such evidence will not be treated by the Court of Appeal as a reason for interfering with a conviction if it is not satisfied that, in the light of all the evidence adduced at the trial, the conviction is unsafe

Criminal Law—Endeavouring by armed force to procure an alteration in the Government of the Republic—And carrying on war or a warlike undertaking—Sections 41 *and* 40 *of the Criminal Code, Cap.* 154, *respectively—Armed attack against police station—Manning a road block whilst being armed and arresting a number of law-abiding citizens—Coupled with the fact that such acts were committed in connection with the abortive coup d'etat of July,* 1974—*Conviction in respect of above offences abundantly warranted.*

Evidence—Expert evidence—Principles governing cogency of.

Criminal Procedure—Evidence—Evidence in rebuttal—Principles governing calling of, by the Prosecution

Criminal Law—Alibi—Manner in which Court proceeds after rejection of

Judges' Rules—Rules of Practice for the Police which do not entail the circumscription of judicial power—Even if Judges' Rules were infringed, in this case appellant's statement was rightly admitted in evidence once the trial Court was satisfied that it was free and voluntary

The appellants were found guilty on a count charging them that, together with other persons, between 15th and 17th July 1974, they endeavoured by armed force, contrary to section 41 of the Criminal Code, Cap. 154, to procure an alteration in the Government of the Republic, and on another count charging them that, together with other persons, and during the aforesaid period of time, they carried on war or a warlike undertaking, contrary to section 40 of Cap. 154, against persons supporting the Government of the Republic.

The trial Court found that the appellants on 15th July 1974 took part in an armed attack against Moni police station with the result that, after some fighting, the policemen who were defending the station had to surrender it to appellant 1 and the other gunmen who were attacking it with him.

Furthermore, the trial Court found that the appellants on 16th July 1974 were, while being armed, manning a road-block at the junction of the road leading to Pareklishia village from the Nicosia to Limassol main road, and, also, that on 17th July 1974 appellant 1 arrested a number of law-abiding citizens at Akrounta village, including a priest, and, after having, together with other gunmen who accompanied him, seriously illtreated them, they staged a mock execution of the priest and of another one of the said citizens.

Counsel for appellant 1 argued that the relevant findings of the trial Court, connecting appellant 1 with the unlawful activities in question, were not safe and he invited the Court to set aside, on this ground, his convictions on both the said counts. He, also, contended that the trial Court has wrongly accepted as correct expert evidence regarding the handwriting in which certain entries were made on 15th July 1974 in station diaries and other records of Moni police station. Such handwriting was identified as being that of appellant 1.

Appellant 3 gave evidence putting forward an alibi and called witnesses to support his alibi. The trial Court rejected his evidence and that of his witnesses. Counsel for this appellant mainly contended that the trial Court was wrong in doing so and that it wrongly allowed the Prosecution to call evidence in rebuttal as regards the alleged alibi. It was, also, contended that a statement which he gave to the police on 26th January 1978 was wrongly admitted in evidence because it was allege-

illy obtained in a manner inconsistent with the Judges' Rules in England

Held (I) *with regard to the appeal of appellant* 1

(1) That where evidence has been accepted by a trial Court as credible discrepancies and contradictions in such evidence will not be treated by this Court as a reason for interfering on appeal with a conviction if this Court is not satisfied that, in the light of all the evidence adduced at the trial, the conviction is unsafe, and that, therefore, there is no reason at all to interfere with the conviction of appellant 1

Held, further, the fact that appellant 1 was found to have committed the aforementioned unlawful acts against the security forces of the Republic and law-abiding citizens, who were at that time supporters of the Government of the Republic, coupled with the fact that he committed all the said acts in connection with the abortive coup d'etat against the Government of the Republic on 15th July 1974, warrant abundantly the conviction of appellant 1 in respect of both the aforementioned counts

(2) That in the light of the principles regarding the cogency of expert evidence which were expounded in, inter alia *Anastassiades* v. *The Republic* (1977) 2 C.L.R. 97, there is no difficulty in holding that such expert evidence was rightly relied on by the trial Court for the purpose of establishing that the handwriting of the entries concerned in the diaries and records of the Moni police station was that of appellant 1

Held, (II) *with regard to the appeal of appellant* 3

(1) That there was no contravention of the principles governing the calling of evidence in rebuttal by the prosecution, and that, consequently, such evidence was rightly received (see, inter alia, the textbook 'Criminal Procedure in Cyprus' by Loizou and Pikis (1975) pp. 119, 120)

(2) That after finding that his alibi was false the trial Court did not act in a manner incompatible with the relevant principles which were expounded in, inter alia, *Katsiamalis* v. *The Republic* (1980) 2 C.L.R. 107; and that

independently of the rejection of the alibi of appellant 3 there was ample evidence warranting his conviction on both counts.

(3) That bearing in mind that the Judges' Rules in so far as they are applicable in Cyprus, are rules of practice for the police which do not entail the circumscription of judicial power (see *Azinas v. Police* (1981) 2 C.L.R. at p.64), even if it is correct that there was an infringement of the Judges' Rules in the present instance, the said statement of appellant 3 was rightly admitted in evidence once the trial Court was satisfied that it was free and voluntary.

Appeals dismissed.

Cases referred to:

Karamanis v. The Police (1977) 2 C.L.R.92 at p.96;

Constantinides v. The Republic (1978) 2 C.L.R.337 at p.378;

Fasouliotis v. The Police (1979) 2 C.L.R.180 at p. 185;

Katsiamalis v. The Republic (1980) 2 C.L.R.107 at pp.112-114;

Soulis v. The Police (1973) 2 C.L.R.68;

Matsentides v. The Police (1973) 2 C.L.R.250 at pp. 253, 254;

Anastassiades v. Republic (1977) 2 C.L.R.97;

Azinas v. The Police (1981) 2 C.L.R.9 at p. 64;

Papadopoullos v. Republic (1980) 2 C.L.R.10 at p.34.

Appeals against conviction.

Appeals against conviction by Andreas Pouris and another who were convicted on the 9th March, 1979 at the Assize Court of Limassol (Criminal Case No. 22534/77) on one count of the offence of procuring an alteration of the Government of the Republic contrary to section 41 of the Criminal Code Cap.154 and on one count of the offence of carrying on war or warlike undertaking contrary to section 40 of the Criminal Code Cap.154 and were sentenced by Loris, P.D.C., HadjiTsangaris, S.D.J. and Chrysostomis, D.J. to seventeen years' imprisonment and fourteen years' imprisonment on each count respectively, the sentences to run concurrently.

A. Eftychiou, for the appellants.

M. Kyprianou, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. In the course of the hearing of Criminal Appeals Nos. 4013-4019, which were filed by the seven accused in criminal case No. 22534/77, in the District Court of Limassol, all the appellants, except the appellant in Criminal Appeal No. 4013, Andreas Pouris, and the appellant in Criminal Appeal No. 4015, Charalambos Fournaris - (who were accused 1 and 3, respectively, at the trial before the Assize Court which convicted them and who are appellants 1 and 3, respectively, in the present proceedings before us) - abandoned their appeals against conviction and decided to pursue only their appeals against sentence.

We have thought fit, at the present stage of the proceedings, to decide on the appeals against conviction of appellants 1 and 3.

They were both found guilty on a count charging them that, together with other persons, between 15th and 17th July 1974, they endeavoured by armed force, contrary to section 41 of the Criminal Code, Cap. 154, to procure an alteration in the Government of the Republic, and on another count charging them that, together with other persons, and during the aforesaid period of time, they carried on war or a warlike undertaking, contrary to section 40 of Cap. 154, against persons supporting the Government of the Republic.

The trial Court found that appellant 1 on 15th July 1974 took part in an armed attack against Moni police station with the result that, after some fighting, the policemen who were defending the station had to surrender it to the appellant and the other gunmen who were attacking it with him.

Furthermore, the trial Court found that appellant 1 on 16th July 1974 was, while being armed, manning a road-block at the junction of the road leading to Pareklissia village from the Nicosia to Limassol main road, and, also, that on 17th July 1974 he arrested a number of law-abiding citizens at Akrounta

village, including a priest, and, after having, together with other gunmen who accompanied him, seriously illtreated them, they staged a mock execution of the priest and of another one of the said citizens.

The fact that appellant 1 was found to have committed the aforementioned unlawful acts against the security forces of the Republic and law-abiding citizens, who were at that time supporters of the Government of the Republic, coupled with the fact that he committed all the said acts in connection with the abortive coup d'etat against the Government of the Republic on 15th July 1974, warrant abundantly the conviction of appellant 1 in respect of both the aforementioned counts.

Counsel for appellant 1 has strenuously argued that the relevant findings of the trial Court, connecting appellant 1 with the unlawful activities in question, were not safe and he invited us to set aside, on this ground, his convictions on both the said counts.

The principles on the basis of which this Court approaches on appeal findings of fact which were made by trial Courts, especially when such findings are founded, as in the present instance, on the credibility of witnesses, have been set out in cases such as *Karamanis v. The Police*, (1977) 2 C.L.R. 92, 96, *Constantinides v. The Republic*, (1978) 2 C.L.R. 337, 378, *Fasouliotis v. The Police*, (1979) 2 C.L.R. 180, 185 and *Katsiamalis v. The Republic*, (1980) 2 C.L.R. 107, 112-114.

It has, also, been held that where evidence has been accepted by a trial Court as credible discrepancies and contradictions in such evidence will not be treated by this Court as a reason for interfering on appeal with a conviction if this Court is not satisfied that, in the light of all the evidence adduced at the trial, the conviction is unsafe (see, in this respect, *Soulis v. The Police*, (1973) 2 C.L.R. 68, *Matsentides v. The Police*, (1973) 2 C.L.R. 250, 253, 254 and *Constantinides* case, supra, 378).

With the above in mind we see no reason at all to interfere with the conviction of appellant 1; and, actually, the evidence against him was really overwhelming.

It has, also, been contended that the trial Court has wrongly accepted as correct expert evidence regarding the handwriting in which certain entries were made on 15th July 1974 in station

diaries and other records of Moni police station. Such handwriting was identified as being that of appellant 1.

We have examined the expert evidence in question in the light of the principles regarding the cogency of expert evidence which were expounded in, inter alia, *Anastassiades v. The Republic,* (1977) 2 C.L.R. 97, and we have no difficulty in holding that such expert evidence was rightly relied on by the trial Court for the purpose of establishing that the handwriting of the entries concerned in the diaries and records of the Moni police station was that of appellant 1; and, indeed, the subversive nature of statements forming part of such entries is so revealing of his intentions at that time as to render his participation in the armed raid against the said police station conduct which, in our opinion is by itself sufficient to warrant his conviction, without even the flimsiest shadow of a doubt, in respect of both the offences of which he was found guilty.

For all the foregoing reasons we find no difficulty at all in dismissing the appeal of appellant 1 against his conviction.

Appellant 3 was found by the trial Court to have taken part in the armed raid against Moni police station on 15th July 1974, to have been involved in the manning of the aforementioned road-block at the Pareklissia road junction on 16th July, 1974, and to have participated in arresting law-abiding citizens of Akrounta village on 17th July, 1974.

Unlike appellant 1, who did not give evidence on oath but elected to make a statement from the dock, appellant 3 gave evidence putting forward an alibi and called, also, witnesses to support his alibi; but the trial Court rejected his evidence and that of his said witnesses and we cannot agree with counsel for this appellant that the trial Court was wrong in doing so.

Counsel for appellant 3 has argued that the trial Court wrongly allowed the prosecution to call evidence in rebuttal as regards the alleged alibi of appellant 3. The principles governing the calling of evidence in rebuttal by the prosecution in a criminal case are to be found in, inter alia, the textbook "Criminal Procedure in Cyprus" by Loizou and Pikis (1975) pp.119, 120, and we need not repeat them in this judgment once again. Having perused the ruling of the trial Court by virtue of which the prosecution was allowed to adduce rebutting evidence we are sa-

tisfied that there has been no contravention of these principles and that, consequently, such evidence was rightly received.

Moreover, we cannot accept as correct the submission of counsel for appellant 3 that the trial Court, after finding that his alibi was false, relied on this finding in order to reach with certainty the conclusion that his guilt had been proved beyond reasonable doubt, in a manner incompatible with the relevant principles which were expounded in, inter alia, the *Katsiamalis* case, supra. Anyhow, we are of the opinion that independently of the rejection of the alibi of appellant 3 there was ample evidence warranting his conviction on both counts.

It has been contended, also, on behalf of appellant 3, that a statement which he gave to the police on 26th January 1978 was wrongly admitted in evidence because it was allegedly obtained in a manner inconsistent with the Judges' Rules in England. Bearing in mind that the said Judges' Rules were found by our Supreme Court in *Azinas v. The Police,* (1981) 2 C.L.R. 9, 64, to be, in so far as they are applicable in Cyprus, rules of practice for the police which do not entail the circumscription of judicial power, we are of the view that, even if it is correct that there was an infringement of the Judges' Rules in the present instance, the said statement of appellant 3 was rightly admitted in evidence once the trial Court was satisfied that it was free and voluntary.

In the light of all the foregoing we find that there is no reason to interfere with the conviction, on both the counts in question, of appellant 3.

We would like to conclude this judgment by stressing that not only we have not been satisfied by counsel for appellants 1 and 3, on whom the relevant onus lay, that their convictions should be interfered with by this Court on appeal, but we can go so far as to say that we are fully satisfied, beyond even a lurking doubt (see, in this respect, inter alia, *Papadopoullos v. The Republic,* (1980) 2 C.L.R. 10, 34), that such convictions were amply warranted by the evidence adduced and that, consequently, the appeals of both these appellants against their convictions should be dismissed.

Appeals dismissed.