1983 March 31

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

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant.

v.

COSTAS PANAYIOTIDES,

Respondent.

(*Criminal Appeal No.* 4375).

Criminal Procedure—Appeal against acquittal—Trial Judge erroneously approaching the evidence before him—And not taking judicial notice of a notice issued under regulation 55(1) *of the Motor Vehicles and Road Traffic Regulations,* 1973 *which was published in the official Gazette—Acquittal set aside—Retrial ordered—Interpretation Law, Cap.*1 *section* 7 *and section* 2 *definition of "public instrument" which includes a "notice".*

Motor Vehicle—Changing body of—Regulation 54(1) *of the Motor Vehicles and Road Traffic Regulations,* 1973*—Correct application of, depends, in each particular case, on the evaluation of all relevant evidence, bearing in mind the object of such regulation—Undue weight attributed to printed leaflet issued by manufacturers for purposes of repairs.*

Judicial Notice—Motor Vehicles and Road Traffic Regulations, 1973*—Notice issued under regulation* 55(1) *and published in the Official Gazette—Can be judicially noticed—Interpretation Law, Cap.*1, *section* 7 *and section* 2 *definition of "public instrument" which includes a "notice".*

The respondent was charged, by means of the first count, with having altered the body of a registered motor vehicle, contrary to regulation 54(1) of the Motor Vehicles and Road Traffic Regulations, 1973; and, also, by means of the second count, of having used such motor vehicle as a private motor vehicle, contrary to the provisions of regulations 16(1) and 17(6) of the aforesaid Regulations.

At the close of the case for the prosecution the trial Judge found that a prima facie case had not been made out against the respondent sufficiently to require him to make his defence on the first two counts and proceeded to acquit him; and, as a result, the present appeal has been filed.

In deciding that there was not established an "alteration of the body" of the van in question, contrary to the above regulation 54(1) the trial Judge relied on a printed leaflet, showing various parts of the body of the van, which had been issued by the manufacturers of the van for purposes of repairs. As regards the second count the trial Judge found that regulations 16(1) and 17(6), above, had to be read together with regulation 55(1) of the Regulations in question and he proceeded to state that the prosecution had failed to produce the official Gazette of the Republic in which a Notice issued under regulation 55(1) had been published; and the Judge added that he could not take judicial notice of it. He referred, in this respect, to the cases of *Scott v. Baker* [1968] 2 All E.R. 993 and *R. v. Ashley* [1968] Crim. L.R.51.

During the hearing of the case it transpired that it was common ground that the aforementioned Notice has actually been published in the official Gazette.

Held, (1) that the trial Judge attributed undue weight, to the extent of treating it as being evidence of practically decisive nature, to the said printed leaflet; that such leaflet had been issued by the manufacturers of the van for purposes of repairs and this Court does not think that what the manufacturers depicted in a leaflet as being various parts of the body of the van for purposes of repairs to its body can, or has to, be taken as coinciding always with what is the "body" - and its parts - of such van in the sense of regulation 54(1), above; that the correct application of regulation 54(1) depends, in each particular case, on the evaluation of all relevant evidence, bearing in mind the object of such regulation (and see, inter alia, in this respect, *Sisis v. The Police* (1972) 2 C.L.R. 20); that, therefore, in view of the erroneous approach of the trial Judge to the evidence before him the acquittal of the respondent on the first count has to be set aside.

(2) That it was not a correct course for the trial Judge to refuse to take judicial notice of the publication of the Notice in que-

stion on the ground that a copy of the relevant issue of the official Gazette had not been produced at the trial (see Interpretation Law, Cap.1, section 7 and section 2 definition of "public instrument" which includes a "notice"); and that, therefore, he ought to have judicially noticed it.

(3) That as in the present case the acquittal occurred at the close of the case for the prosecution and, therefore, the respondent never had an opportunity to make his defence, as he was not called upon to do so, the only proper course which is open to this Court, in the circumstances, is to order a retrial.

Appeal allowed. Retrial ordered.

Cases referred to:

Sisis v. The Police (1972) 2 C.L.R.20;

Scott v. Baker [1968] 2 All E.R.993;

R. v. Ashley [1968] Crim. L.R.51;

Tyrrell v. Cole [1918] 120 L.T.156 at p.158;

Duffin v. Markham [1919] 88 L.J.K.B.581 at p.582;

Palastanga v. Solman [1962] Crim. L.R.334.

Appeal against acquittal.

Appeal by the Attorney-General of the Republic against the judgment of the District Court of Nicosia (Kramvis, Ag. D.J.) given on the 27th October, 1982 (Criminal Case No. 8705/82) whereby the respondent was acquitted of the offence of altering the body of a registered motor vehicle contrary to regulation 54(1) of the Motor Vehicles and Road Traffic Regulations, 1973.

Cl. Theodoulou (Mrs.), Counsel of the Republic, for the appellant.

N. Pelides with *J. Spanopoulos* and *Ph. Pelides*, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. This is an appeal by the Attorney-General of the Republic against the acquittal of the respondent, who was the accused in criminal case No. 8705/82 in the District Court of Nicosia.

The appeal was made under section 137 of the Criminal Procedure Law, Cap. 155.

The respondent was charged, by means of the first count, with having altered the body of a registed motor vehicle (No. MB321) contrary to regulation 54(1) of the Motor Vehicles and Road Traffic Regulations, 1973 (see No.159 in the Third Supplement, Part I, to the Official Gazette of 13.7.73); and, also, by means of the second count, of having used such motor vehicle as a private motor vehicle, contrary to the provisions of regulations 16(1) and 17(6) of the aforesaid Regulations.

There was a thrid count charging the respondent with having failed to have with him his driving licence but we are not concerned in the present proceedings with such count, on which the respondent was convicted after he had pleaded guilty to it at the trial.

At the close of the case for the prosecution the trial judge found that a prima facie case had not been made out against the respondent sufficiently to require him to make his defence on the first two counts and proceeded to acquit him; and, as a result, the present appeal has been filed.

In the light of our powers under section 145(3) of Cap. 155, we can in allowing this appeal - as we have decided to do - set aside the judgment of acquittal and convict, and sentence, the respondent of any offence of which he might have been convicted on the evidence which has been adduced at the trial or order that the appellant should be retried. As in the present case the acquittal occurred at the close of the case for the prosecution and, therefore, the respondent never had an opportunity to make his defence, as he was not called upon to do so, we think that the only proper course which is open to us, in the circumstances, is to order a retrial.

We shall now proceed to give our reasons for allowing this appeal, but, bearing in mind that we will order a retrial, we shall limit such reasons to the extent to which it is necessary to explain why we have allowed this appeal and we shall avoid saying anything which may prejudice or otherwise affect the outcome of the retrial of the respondent.

Our said reasons are mainly as follows:

The respondent was charged with having changed the body of the motor vehicle in question, which is a light goods vehicle of the type known as a van, because he, allegedly, placed at the back of the van a rear seat and he removed a metal panel at each one of the sides of the body of the van and replaced it with a glass pane.

In our opinion, in deciding that there was not established an "alteration of the body" of the van in question contrary to the aforementioned regulation 54(1) the trial judge attributed undue weight, to the extent of treating it as being evidence of practically decisive nature, to a printed leaflet showing various parts of the body of the van. Such leaflet had been issued by the manufacturers of the van for purposes of repairs and we do not think that what the manufacturers depicted in a leaflet as being various parts of the body of the van for purposes of repairs to its body can, or has to, be taken as coinciding always with what is the "body" - and its parts - of such van in the sense of regulation 54(1), above. The correct application of regulation 54(1) depends, in each particular case, on the evaluation of all relevant evidence, bearing in mind the object of such regulation (and see, inter alia, in this respect, *Sisis v. The Police,* (1972) 2 C.L.R. 20).

In view of the erroneous approach, as aforesaid, of the trial judge to the evidence before him we are of the opinion that the acquittal of the respondent on the first count has to be set aside.

As regards the second count the trial judge found that regulations 16(1) and 17(6), above, had to be read together with regulation 55(1) of the Regulations in question and he proceeded to state that the prosecution had failed to produce the Official Gazette of the Republic in which a Notice issued under regulation 55(1) had been published; and the judge added that he could not take judicial notice of it. He referred, in this respect, to the cases of *Scott v. Baker,* [1968] 2 All E.R. 993 and *R. v. Ashley,* [1968] Crim. L.R. 51.

During the hearing of the case it transpired that it is common ground that the aforementioned Notice has actually been published in the Official Gazette (see No. 142 in the Third Supplement, Part I, to the Official Gazette of 26.4.74).

In our opinion it was not a correct course for the trial judge to refuse to take judicial notice of the publication of the Notice

in question on the ground that a copy of the relevant issue of the Official Gazette had not been produced at the trial:

Section 7 of the Interpretation Law, Cap. 1, provides as follows:

> "7. Every Law and any public instrument made or issued under any Law or other lawful authority and having legislative effect shall be published in the Gazette and unless it be therein otherwise provided shall take effect and come into operation on the date of such publication and shall be judicially noticed."

In section 2 of Cap. 1 "public instrument" is defined as including, inter alia, "regulations" as well as a "notice".

It was not disputed that the Notice which was published on 26th April 1974, as aforesaid, is a public instrument in the sense of section 7 of Cap. 1.

Thus the trial judge ought to have judicially noticed it.

Even if we were, however, to decide the matter on the basis of case-law in England, such as that which was referred to by the trial judge, we would, again, be inclined to find that his decision to acquit the respondent on the second count was not the proper course.

It is correct that from the summary of the report in the Criminal Law Review of the *Ashley* case, supra - (the full report is not available)- it appears that the Court of Appeal in England found that the Prison Rules, 1964, should have been proved by production of a Queen's Printer's copy.

Also, in the case of *Tyrrell v. Cole* [1918] 120 L.T. 156, 158, Darling J. held that a direction issued by a Food Controller, which appeared to be a leaflet that might have been printed by anybody and distributed by anybody to persons walking along the streets, had to be proved in the proper manner.

In *Duffin v. Markham,* [1919] 88 L.J. K.B. 581, it was held by the trial Court that it could not have judicial cognizance of an Order made by a Food Controller and that such document had to be proved; and for this reason it proceeded to dismiss the charge. The report (at p. 582) of the judgments given in that same case or appeal reads as follows:

"DARLING, J., after stating the facts, said that the course adopted by the Justices was not the proper one. They ought to have told the prosecutor that they had power to allow him to put in a Stationery Office copy of the Order if he had one available; and if he had not, that they would grant an adjournment. It was clear that if, in such circumstances, the Justices did not offer an adjournment, the Court could review their decision - see per Cave, J., HARGREAVES v. HILLIAM. The Justices had apparently availed themselves of a mere oversight on the part of the prosecution to dismiss the informations, when it was obvious that, on the facts, there was no defence. They should have treated the objection of the respondents' solicitor as a mere technical triviality. The appeal must be allowed.

AVORY, J., agreed. In holding that after the close of the case for the prosecution no proof of the Order could be given, the Justices were wrong. Their proper course was to ask the prosecution to put in a copy of the Order, or to ask their clerk to give them one. Quite apart from the power of the Justices to allow the case to be reopened, for which the judgment of Cave, J., in HARGREAVES v. HILLIAM was ample authority, if the prosecution were not prepared at the moment to hand in a Stationery Office copy of the Order, and if there was no copy in Court, the Justices had power to adjourn the case to enable proper proof of the Order to be given, and in such a case as the present it was their judicial duty to do so.

SALTER, J., said that under the provisions of section 11, sub-section 4 of the New Ministries and Secretaries Act, 1916, and the Documentary Evidence Acts of 1868 and 1882, the prosecution could prove the Order under which the proceedings were taken by producing in Court and putting in a Stationery Office copy. Assuming that the prosecution did not produce and put in the document in question, the Justices ought to have adjourned the case to enable that to be done."

In *Palastanga v. Solman*, [1962] Crim. L.R. 334, the defendant was charged with causing by a motor vehicle an unnecessary obstruction, contrary to regulation 89 of the Motor Vehicles

(Construction and Use) Regulations, 1955, and the charge was dismissed by the trial Court which sustained a preliminary point taken by counsel for the defence that the burden of proving the regulation was on the prosecution and that since the Stationery Office copy of the regulation had not been produced this burden had not been discharged. It was held, in allowing the appeal, that the preliminary point taken, as aforesaid, was "a disgraceful point to make, and the court would reserve the question whether the regulation was so notorious that the justices could take judicial cognizance of it. The justices should have adjourned the matter, if the submission was persisted in, to allow the prosecutor to obtain a Stationery Office copy of the regulations, and should then have ordered the defendant to pay all the costs. The failure to produce the Stationery Office copy did not justify the dismissal of the summons."

So, even in England where there does not seem to exist an explicit provision such as section 7 of our Cap. 1 and where the corresponding provision of the Interpretation Act, 1889 - section 9 - applies only to Acts, and not, also, to statutory instruments, the proper practice, in other than exceptional cases, appears to be not to dismiss a charge on the ground that a statutory instrument has not been duly proved, but to treat the matter as a mere technicality and to afford, instead, to the prosecution an opportunity to prove such instrument.

Before concluding this judgment we should observe that the other case which was relied on by the trial judge, namely the case of *Scott,* supra, is really distinguishable from the present one, as it was only held in that case that it had not been proved by the prosecution that a device used by a police constable for a breath test in relation to a driver whose breath smelt alcohol was of an approved type and that a prima facie case had not been established merely by showing that breath test devices had been issued to the police and that the device used on the occasion in question was a device so issued.

For all the foregoing reasons this appeal is allowed, the acquittal of the respondent on the first two counts is set aside and a retrial of the case, necessarily before another judge of the District Court of Nicosia, is hereby ordered.

Appeal allowed. Retrial ordered.