1981 March 4

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, A. LOIZOU, MALACHTOS AND SAVVIDES, JJ.]

GEORGHIOS PANAYIOTOU KOUFOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 4036).

Criminal Procedure—Verdict—Verdict of "guilty"—Charge of premeditated murder—Majority judgment finding appellant guilty as charged but each Judge constituting the majority giving different reasons for his conclusion—It cannot be said that there has been either an inconsistent verdict or no verdict at all.

Criminal Procedure—Sentence—Conviction for premeditated murder based on majority judgment—Sentence of death need not to be signed by Judge who was in the minority.

Criminal Law—Evidence—Premeditated murder—Death by stabbing—Conviction based on circumstantial evidence which is as good as any other evidence—Blood stains of the group of blood of the victim on appellant's clothes—Evidence of motive, opportunity, conduct by appellant that preceded and followed the murder, inconsistent statements on his part regarding the way the victim met with her death—Expert evidence that fatal wound a homicidal one and not suicidal—Finding and conclusion of trial Court that fatal wound a homicidal one and was inflicted by the appellant duly warranted on the totality of the evidence.

Criminal Law—Evidence—Premeditated murder—Flight of appellant after the death of the victim—And inconsistent statements made by him out of Court regarding the manner the victim met with her death—Significance and approach to.

Evidence—Witness refreshing memory from statements made shortly after the incident—Principles applicable.

Criminal Procedure—Trial on information—Witness giving evidence before the Assize Court without having given evidence at the Preliminary inquiry—Formalities prescribed by section 111 of the Criminal Procedure Law, Cap. 155 complied with—And witness subjected to long deep and penetrating cross-examination by defence counsel—Defence not taken by surprice or in any way prejudiced by the calling of this witness.

Criminal Law—Premeditated murder—Principles applicable—Motive by itself not a decisive factor tending to establish premeditation—Death by stabbing—No evidence as to the circumstances surrounding the crime and as to what took place between appellant and the victim—Doubt whether prosecution established premeditation beyond reasonable doubt—Conviction of premeditated murder set aside—Conviction for homicide substituted therefor.

Criminal Law—Sentence—Homicide—Fourteen years' imprisonment.

The appellant was found guilty for having caused the death of his wife with premeditation. The father of the victim who was living in the outbuildings of the house of the couple was early in the morning of the 21st August, 1978, awaken by a loud cry of pain of his daughter. When he entered the house he saw blood stains in the bedroom leading all the way to the kitchen where he found the victim lying on the floor between the refrigerator and the door of the kitchen opening on to the verandah, wearingonly her brassiere and pants. On the floor near the foot of his daughter there was a knife. The victim died on her way to hospital. The cause of death was haemorrhage due to a stab wound of the heart. The appellant who slept at his house that night fled to the mountains before the arrival of his father-in-law and no one knew of his whereabouts for the next 24 hours when at about 7-7.15 of the 22nd August, 1978 he appeared at a factory at Limassol which is some miles from the scene of the crime and thereafter he went to the Police. His explanation for his flight was that he did so because of a fear that if he was found by any of the relatives of the deceased at the scene, they would naturally think that he was the culprit and his life would be in danger. The appellant alleged that his wife committed suicide but gave three inconsistent statements on three different occasions as to how he witnes-

sed the suicide happening. The shirt and vest of the appellant bore blood-stains of the same group as that of the victim. The issues that arose for consideration by the Assize Court were the following:-

(a) Whether the accused killed his wife or whether his wife committed suicide, and

(b) If it were held that it was the accused who killed his wife, whether he did so with premeditation.

Regarding issue (a) the Assize Court found that the murder was (i) homicidal and that it was the appellant who killed the victim. Finding (i) was based on the expert medical evidence, which was adduced by the Prosecution and came from Dr. Keith Simpson, whose conclusion that the wound was homicidal and not suicidal was based, inter alia, on the rarity of self-stabbing in women and on the situation and character of the wound. The finding that it was the appellant who killed his wife was reached by mainly taking into consideration the three inconsistent statements of appellant as to the circumstances of the suicide, the blood stains on his clothing and his flight. This last finding was unanimously reached by the three Judges constituting the Assize Court. Regarding the issue of premeditation two of the Judges (the President the of Assize Court and Pitsillides, S.D.J.) were of the view that premeditation had been established, whereas the third Judge (Artemis, D.J.) was of the view that the prosecution failed to establish premeditation. On the question of premeditation though the President and Pitsillides, S.D.J. agreed that it was proved on the evidence adduced, yet they arrived at that conclusion for somehow different reasons, or by evaluating differently the accepted facts. On the other hand, Artemis, D.J., though expressly stating that he was in full agreement with his brother Judges that it had been proved beyond reasonable doubt that it was the appellant who killed his wife for the reasons therein stated and that he was in full agreement with the Law and the authorities on the issue of premeditation, as set out in the judgments of his brother Judges, yet in applying the legal principles flowing therefrom to the facts of the case, he was of the view that the prosecution had failed to establish premeditation and gave his reasons for such conclusion.

Upon appeal against conviction counsel for the appellant mainly contended:

(a) That there was no verdict on the charge of premeditated murder as decided by the majority of the Court.

(b) That the sentence of death which was imposed on the appellant was signed only by the President and the S.D.J. and not by all three members of the Assize Court.

(c) That the findings of the trial Court were not warranted by the evidence.

(d) That there was an irregularity at the trial in that the Court allowed Dr. Simpson to give evidence before it without having given evidence at the Preliminary Inquiry and that thereby the appellant by the said irregularity and/or practice of the prosecution, was seriously prejudiced in his defence and that same goes to the root of the proceedings*.

(e) That the Assize Court attributed undue significance to the flight of the appellant after the death of the victim.

In addition to the above contentions the following issues arose for consideration by the Court of appeal:

(1) That witnesses whose reliability was attacked by the defence had refreshed their memory before giving evidence from statements made shortly after the incident in respect of which they were asked to testify.

(2) The significance which in law should be given to inconsistent statements made by an accused person out of Court.

* Dr. Simpson was called as a witness under the provisions of section 111 of the Criminal Procedure Law, Cap. 155, whereby a person who has not given evidence at the Preliminary Inquiry may be called by the prosecution at the trial before the Assize Court and give evidence provided the accused or his advocate has been previously given a notice in writing containing the name of the witness intended to be called and the substance of the evidence intended to be given; and these statutory provisions were complied with by the prosecution.

(3) Whether on the facts as found by the trial Court and on the conclusions drawn thereon, the appellant could safely and beyond reasonable doubt have been found guilty of the premeditated murder of his wife.

Held, per A. Loizou, J., Malachtos and Savvides, JJ. concurring, Triantafyllides, P. and Hadjianastassiou, J. dissenting.:

(1) That under our legal system the verdicts are two, "guilty" or "not guilty" the reasons leading to them being necessary to explain the conclusion reached but are not as such verdicts; that premeditation is a legal situation that in order to be established one has to turn to the facts and all particular features in them in order to make a proper appreciation of them; that it cannot be said in this case that there has been either an inconsistent verdict or no verdict at all, because there was a majority verdict by two Judges finding the appellant guilty as charged for the premeditated murder of his wife and this is the verdict against which this appeal could and has in fact been lodged; accordingly contention (a) must fail.

(2) That the fact that the sentence of death was not signed by the Judge who did not find the appellant guilty of an offence carrying such sentence, only showed consistency with his conclusion, and it would have been a great demand on a Judge's conscience to sign a sentence which, in his own judgment, could not have been imposed on an accused person, in the case as proved; accordingly contention (b) must fail.

(3) That the trial Court has come to the right findings and the right conclusions on admissible and properly received evidence, as regard the circumstances of the fatal stabbing and who inflicted it; that the case admittedly rested on circumstantial evidence but such evidence is as good as any other evidence when the links of the various pieces of evidence that make it up are properly connected and complete the circle of the chain leaving no room for doubt as to the ultimate conclusion that is reached on the basis of it; that in the present case there was motive, opportunity, conduct by the appellant that preceded, conduct that followed, statements and lies on his part over and above the medical findings and of course the opinion of medical experts;

that if the latter evidence did not exist the rest of the evidence was sufficient to find that the fatal wound was a homicidal one caused by the appellant and that was established beyond reasonable doubt and there was no room for doubt about it; that on the totality of the evidence before the trial Court its findings and conclusions unanimously reached by all three Judges were duly warranted and there will be no interference with them; accordingly contention (c) must fail.

(4) That considering the question of prejudice by examining the record of the proceedings, one cannot fail to observe that the length, the deep and penetrating way of Dr. Simpson's cross-examination by counsel for defence, leave no room to consider that the defence was taken by surprise or in any way prejudiced by the calling of this witness; that if that was felt then the right course would have been for counsel for the appellant to apply for an adjournment of the trial; and that accordingly contention (d) must fail.

(5) That under the heading "Indirect Confessional Evidence" there may be referred the acts of concealment, disguise, flight, and other indications of mental emotion usually found in connection with guilt (see Will's Principles of Circumstantial Evidence 7th ed. p. 138); that the trial Court examined this piece of evidence in conjunction with appellant's explanations about it and observed that this behaviour of the appellant, though not conclusive of his guilt, was a strong indication of it; that there was nothing wrong in this approach and no undue importance has been given to it; accordingly contention (e) must fail.

(6) That there is no general rule that prospective witnesses may not before giving evidence at a trial, see the statements which they made at or near the time of the events of which they are to testify, but if the prosecution is aware that statements have been seen by witnesses it will be appropriate to inform the defence; that in this case the approach of the trial Court was not inconsistent with the aforesaid statement of the law to which it directed itself properly; that they had in mind the fact that the witness had read his statement before giving evidence and they evaluated his evidence accordingly; that having watched him giving evidence, they were impressed, they said, very favour-

ably and accepted his testimony, being an independent witness who had given his statement to the Police when the events were fresh in his mind and when he had read his statement the Assize Court had no doubt that he merely refreshed his memory and nothing more.

(7) That the Assize Court merely elaborated on the inconsistent statements made by the appellant with regard to the circumstances under which his wife came to her death on that fateful morning in order to disbelieve his version that she had committed suicide; that there was nothing wrong in this approach and the trial Court have not attributed to the inconsistent statements any more significance than they ought to in the circumstances.

(8)(a) That the burden of establishing beyond reasonable doubt the element of premeditation is upon the prosecution; that this may be discharged either by direct evidence or by inference from the surrounding circumstances of the case; that, moreover, this inference has to be not only consistent with the evidence but the facts of the case must be such as to make it inconsistent with any other rational conclusion than that the act was committed with premeditation; that for premeditation to be established it is 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 intention; 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.

(b) That motive by itself though a factor tending to show that the killing was premeditated was not by itself a decisive one because one who has a motive to kill somebody may eventually happen to kill him in the course of a quarrel which he did not anticipate and without any premeditation; that as there was no evidence as to the circumstances surrounding the crime and as to what took place between the accused and the victim on the fatal morning, there are doubts, whether the prosecution have

established beyond reasonable doubt that the accused killed his wife with premeditation; that, further, there is no doubt that there preceded an altercation before the fatal wound was inflicted and it cannot, therefore, be concluded that the appellant had sufficient opportunity after forming his intention to reflect upon it and relinquish it; that viewing all the surrounding circumstances and intentions that might have existed at the time, it is secured to say that the appellant should have been found guilty of homicide, contrary to section 205 of the Criminal Code, Cap. 154, and under the powers that this Court has under section 145(1)(c) of the Criminal Procedure Law, Cap. 155 the conviction for premeditated murder is set aside and the conviction is substituted for the offence of homicide contrary to the aforesaid section 205.

Held, unanimously, that this is a homicide of a most serious nature; and that a sentence of fourteen years' imprisonment will be imposed on the appellant as from the date of his conviction.

Appeal allowed. Conviction for premeditated murder set aside; conviction for homicide substituted therefor.

Cases referred to:

R. v. *Hunt*, 52 Cr. App. R. 580;

R. v. *Durante* [1972] 1 W.L.R. 1612;

R. v. *Andrews-Weatherfoil Ltd. and Others* [1972] 56 Cr. App. R. 31;

Koutras v. *Republic* (1976) 2 C.L.R. 13;

Anastasiades v. *Republic* (1977) 2 C.L.R. 97 at p. 161;

Kouppis v. *Republic* (1977) 2 C.L.R. 361;

Khadar v. *Republic* (1978) 2 C.L.R. 132;

Davie v. *Edinborough Magistrates* [1953] S.C. 34;

Worley v. *Bentley* [1976] 2 All E.R. 449;

R. v. *Westwell* [1976] 2 All E.R. 812;

Vouniotis v. *Republic* (1975) 2 C.L.R. 34;

Halil v. *Republic*, 1961 C.L.R. 432;

R. v. *Shaban*, *VIII* C.L.R. 82;

Aristidou v. *Republic* (1967) 2 C.L.R. 43 at p. 74;

Au Pui-Kuen v. *Attorney-General of Hong Kong* [1979] 1 All E.R. 769 at pp. 771–772;

Rex v. *Cooper* [1969] 1 All E.R. 32;

Ktimatias v. *Republic* (1978) 2 C.L.R. 82 at pp. 96, 97;

Burks v. *United States* (1978) 90 S. Ct. 2141;

Savva v. *Police*, 18 C.L.R. 192 at pp. 193–194;

Antoniou and Others v. *Republic*, 1964 C.L.R. 116 at p. 129;

Katsaronas and Others v. *Police* (1972) 2 C.L.R. 17 at pp. 35–36;

Reg. v. *Stone* (Unreported, December, 13, 1954 C.C.A.);

R. v. *Drury*, 56 Cr. App. R. 104 at pp. 105, 114;

Zissimides v. *Republic* (1978) 2 C.L.R. 382 at pp. 432–433;

Pierides v. *Republic* (1971) 2 C.L.R. 263 at pp. 273–276;

Halder v. *R.*, 68 Cr. App. R. 120 at pp. 123–124;

Reid v. *Queen* [1979] 2 All E.R. 904 at pp. 905, 907.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Georghios Panayiotou Koufou who was convicted on the 2nd May, 1979 at the Assize Court of Limassol (Criminal Case No. 13691/78) on one count of the offence of premeditated murder contrary to section 203(1)(2) of the Criminal Code, Cap. 154 and was sentenced by Kourris, P.D.C., Pitsillides, S.D.J. and Artemis, D.J. to death.

G. Cacoyiannis with *P. Pavlou*, for the appellant.

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

Cur. adv. vult.

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

A. LOIZOU J.: The appellant was found guilty and sentenced to the statutory sentence of death by a majority verdict of two of the three Judges composing the Limassol Assize Court,

for having caused on the 21st August, 1978, the death of his wife with premeditation by an unlawful act, contrary to section 203(1)(2) of the Criminal Code, Cap. 154, as amended by Law No. 3 of 1962.

The Assize Court dealt first extensively in its judgment with the evidence adduced and the conclusions drawn therefrom with regard to the circumstances of the killing and the identity of the culprit, which facts were unanimously accepted by all three Judges and found that the appellant had killed his wife. Then the three members of the Assize Court proceeded to give their separate verdicts and reasons thereof on the question of premeditation as they were not in agreement.

The President of the Assize Court and H.H. Pitsillides, S.D.J., were of the view that premeditation had been established, whereas the third member, H.H. Artemis, D.J., was of the view that the prosecution failed to establish premeditation. On the question of premeditation though the President and H.H. Pitsillides agreed that it was proved on the evidence adduced, yet they arrived at that conclusion for somehow different reasons, or by evaluating differently the accepted facts. On the other hand, H.H. Artemis, D.J., though expressly stating that he was in full agreement with his brother Judges that it had been proved beyond reasonable doubt that it was the appellant who killed his wife for the reasons therein stated and that he was in full agreement with the Law and the authorities on the issue of premeditation, as set out in the judgments of his brother Judges, yet in applying the legal principles flowing therefrom to the facts of the case, he was of the view that the prosecution had failed to establish premeditation and gave his reasons for such conclusion.

Before proceeding any further with the facts and circumstances of the case as well as the grounds of appeal I find it convenient to dispose here of two of them argued on behalf of the appellant. The first is that there was no verdict on the charge of premeditated murder, as decided by the majority of the Court, for, inter alia, the following reasons:

(a) The two of the three members of the Assize Court, who purportedly constituted the majority (the third

member dissented), gave separate judgments disagreeing between themselves as to the grounds of which they based their conclusions, arrived at their verdict by different routes thereby not constituting between themselves a united majority and therefore not a majority at all.

(b) The judgment of the Court and the verdict arrived at was tainted by the lack of verdict and the lack of consensus as between all and each of the three members of the Assize Court. In this way, it became difficult or impossible to distinguish those facts on which there was unanimity, those facts on which there was majority agreement and those facts on which there was disagreement.

The second ground which was connected with this one was that the sentence of death imposed on the appellant was signed only by the President and the Senior District Judge, that is, the two Judges who found that the offence of premeditated murder that carried this sentence was proved, and not by all three members of the Assize Court.

It has been argued on behalf of the appellant on these two grounds that the disagreements between the two Judges in their reasons for the issue of the premeditation and the disagreement of the third member with the other two, left the case with no verdict at all.

Under section 47 of the Criminal Procedure Law, Cap. 155, a Court has a duty upon the trial of any person either acquit him and thereupon discharge him or convict him and impose on him such punishment as may be provided by the enactment under which he is convicted and as the circumstances of the case may require.

Under section 77 of Cap. 155, a Court does so at the conclusion of the hearing when after considering the whole case it delivers its judgment, for which purpose may adjourn the trial. Under subsection 2 of the aforesaid section when the Court consists of more than one Judge, and an Assize Court consist of three Judges, unless a majority of the Court considers the accused guilty, he has to be

acquitted; and under subsection 3 thereof, if the accused is found guilty the Court shall convict him and proceed to consider what sentence shall be imposed upon him.

Extensive argument has been advanced in the present case and reference has been made to a number of English authorities on the question of inconsistent verdicts. We have been referred, inter alia, to *Archbold's Criminal Pleading, Evidence and Practice*, 40th Ed., para. 622, and the authorities referred to therein, namely, *R.* v. *Hunt*, 52 Cr. App. Rep. 580, where it was held that the burden of establishing that verdicts are inconsistent rests on the defence; also to the case of *R.* v. *Durante* [1972] 1 W.L.R. 1612, where it was held that the further burden of showing that the verdicts were so inconsistent as to call for interference by an Appellate Court was also on the defence.

The case of *R.* v. *Andrews-Weatherfoil Ltd. and Others* [1972] 56 Cr. App. R. 31 was also cited on the issue of inconsistent verdicts.

A perusal of all these authorities shows that the question of inconsistent verdicts arose therein from different circumstances, and in respect of different counts or in case where there was trial by two juries on separate trials, though of course in the latter case there may be different evidence presented by the two trials or simply different views which the two juries separately take of the witnesses. There may be of course cases where inconsistent verdicts are returned by the same jury and the position there is usually more simple. As stated in *Archbold* (supra), para. 622 at pp. 451, 452, 453, "if the inconsistency shows that the single jury was confused or self-contradictory its conclusions are unsatisfactory or unsafe and neither verdict is reliable".

I need not go any further in presenting the legal position in England on this subject as the facts of the present case differ materially and do not bear out the point raised by learned counsel for the appellant. In our case there has been a majority verdict by two Judges for premeditation. In the separate judgments delivered they give different reasons for arriving at their conclusion. There was apparently a different appreciation of situations or more importance attached to certain aspects of the evidence by the one than by the other Judge. The Judges

in the majority had a different appreciation for the same facts and circumstances which had been commonly agreed and accepted by all three of them.

Premeditation is a legal situation that in order to be established one has to turn to the facts and all particular features in them in order to make a proper appreciation of them. It cannot be said in this case that there has been either an inconsistent verdict or no verdict at all. We have a majority verdict by two Judges finding the appellant guilty as charged for the premeditated murder of his wife and this is the verdict against which this appeal could and has in fact been lodged. We have also a minority verdict for homicide and again this verdict is also challenged by this appeal.

Under our legal system the verdicts are two, "guilty" or "not guilty", the reasons leading to them being necessary to explain the conclusion reached but are not as such verdicts.

The second question, namely, that the sentence of death was not signed by the Judge who did not find the appellant guilty of an offence carrying such sentence, only showed consistency with his conclusion, and it would have been a great demand on a Judge's conscience to sign a sentence which, in his own judgment, could not have been imposed on an accused person, in the case as proved.

It is true that in the case of *Koutras* v. *The Republic* (1976) 2 C.L.R., 13, in spite of the disagreement on the outcome of the appeal, all three Judges agreed to the sentence to be imposed on the lesser offence on which the majority of the Court found that appellant guilty and convicted him, but there was nothing in Law against that course, nor does that course suggest that all three Judges should have agreed to the imposition of the sentence, which in the opinion of one of them, same was not warranted as the accused was not guilty of any offence calling for such sentence. These two grounds therefore should fail.

I shall proceed now to set out the facts as unanimously found by the Assize Court and in the course of so doing I shall be dealing with some of the arguments advanced on behalf of the appellant as part of the ground of appeal that the verdict is unsatisfactory having regard to the evidence adduced.

The appellant, 31 years of age, was married to the deceased,

then aged 23. on the 18th February, 1972, and they had two children, aged 11 and 6 years respectively. They lived in their house in Limassol at No. 4 Filikis Eterias Street. Since the summer of 1977 the appellant formed a bond with a certain Lenia, wife of a Police Constable. and he made no secret of this relationship.

In the morning of the 21st August, 1978. at about 4.45 a.m. the father of the deceased. Theodoros Alecou Theodosiou, who was living with his wife in the outbuildings of the house of the couple, was awaken by a loud cry of pain of his daughter. He woke up his wife and in his underwear ran towards the rear verandah of the house. On finding the kitchen door locked, he attempted to get an access into the house through the children's bedroom window unsuccessfully and eventually he came to the front door which he found ajar. When he entered the house he saw bood-stains in the bedroom leading all the way to the kitchen where he found his daughter Aleca lying on the floor between the refrigerator and the door of the kitchen opening on to the verandah, wearing only her brassiere and pants. He then unbolted the kitchen door for his wife to come in. He saw a knife lying on the floor near the foot of his daughter which he took and went out in search of the appellant, whom he did not find. With the help then of two neighbours, Nicos Georghiou and Stavros Demetriou, Aleca was wrapped in a bedsheet, still alive, and by car taken to Limassol Hospital where on arrival at 5.20 a.m., Dr. Tsaparillas certified her to be dead. From the opening, however, and closing of her eyelids whilst in the car, it was inferred that she must have died on the way to the Hospital at approximately 5 to 5.15 a.m.

From there her dead body was conveyed to the mortuary and kept under guard until the arrival of Dr. Panos Stavrinos on the same day who first examined the body externally and then carried out a post-mortem examination, after the apparel she was wearing were seized as exhibits and the necessary photographs were taken. The brassiere (exhibit 26) was found to have a slit located at about the middle of the garment between the two cups.

I shall be referring, however, extensively to the findings and opinion expressed by Dr. Stavrinos when I shall be dealing with the medical evidence in the case. Suffice it to say now that her

death was due to haemorrhage due "to a stab wound of the heart".

The Police took scrapings of blood from the bloodstains found in the bedroom, corridor and kitchen of the house, which were examined together with the blood-stained sheet of the bed on which the couple was sleeping and the blood on one of a pair of flip-flops which was found in the bedroom and all this blood was found to belong to Group 'A' Rhesus positive which is the same one as the blood group of the deceased.

The appellant who slept at his house that night fled to the mountains before the arrival of his father-in-law and no one knew of his where abouts for the next 24 hours when at about 7-7.15 of the 22nd August, 1978, he appeared at the factory of a certain Aman which is off the main road leading to Nicosia, some miles outside the town of Limassol, and from the scene of the crime. There he met and spoke to Socratis Christodoulou, the brother of a certain Aman, and Georghia Efpraxia, one of the employees. From there he telephoned to Elli Potamitou, the mother-in-law of his brother Yiannakis Panayiotou, as a result of which these two relatives picked him up in the latter's car from the vicinity of the factory and acting on his expressed wishes, conveyed him and handed him over to Chief Inspector Polydorou at the Limassol Central Police Station who arrested him on the strength of a warrant that had already been issued against him.

The Assize Court attributed significance to the flight of the appellant in their findings and their observation that he only decided to give himself up to the Police when he was pursuaded to do so by Socratis Christodoulou who argued that this was the only reasonable solution to his problem, was contested by the defence as being a biased and arbitrary conclusion as the appellant had already decided on his own to give himself up. No doubt, in my view, he was encouraged to give himself up by the said witness irrespective of whether he had already decided to do so or he was wavering about it.

The explanation of the appellant for his flight was that he did so because of a fear that if he was found by any of the relatives of the deceased at the scene, they would naturally think that he was the culprit and his life would be in danger. This

fear appears to have been justified from the fact that the father of the deceased on finding his daughter stabbed took the knife and searched for the appellant, obviously for the purpose of revenge. But, of course, his fears alone could not have led him to the mountains, he could have, as the Assize Court put it, gone out of reach of his wife's relatives, and to have contacted the nearest Police Station which was a few hundred yards away, but he did not do this.

After his arrest he gave to Inspector Frangos a statement under caution which is exhibit 30 and to the contents of which inevitably there will be reference in due course.

On the same day the Police took his clothes, consisting of his shirt, trousers, vest, pants, socks and shoes for examination. They also took from him, with his consent, a sample of blood which upon examination it was found to be Group 'B'. The shoes, socks, trousers and pants were negative in blood but the shirt and vest bore blood-stains which after examination were found to be of Group 'A', Rhesus positive.

On the 15th September, 1978, he was formally charged (exhibit 31) and his reply was to the effect that he had not killed his wife.

The case for the prosecution was that the stab wound which caused the death of the deceased was inflicted by the appellant with premeditation, whereas the case for the defence was that the wound was self-inflicted by the deceased, that is, she committed suicide, and that even if the Court were to hold that it was the appellant who stabbed the deceased, then in any event premeditation had not been established by the prosecution.

The Assize Court summed up the following two questions as being the ones it had to decide:

(1) Whether the accused killed his wife or whether his wife committed suicide, and

(2) If it were held that it was the accused who killed his wife, whether he did so with premeditation.

A good part of the judgment of the Assize Court is covered by the medical evidence which for the prosecution consisted

of (a) that of Dr. Panos Stavrinos, a qualified pathologist, holding a Diploma of Pathology of the Royal College of Physicians and Surgeons and who attended a course on Advanced Forensic Medicine at the Metropolitan Police and who is now in charge of the Histopathology and Morbid Anatomy Department of the Nicosia General Hospital and in charge of the Medicolegal Examination of Police Exhibits; and (b) Professor Keith Simpson, of London, whose assistance the Cyprus Police enlisted in October 1978. He is the Senior Home Office Pathologist in the United Kingdom and Professor Emeritus in Forensic Medicine to the University of London, a Fellow of the Royal College of Pathologists, Fellow of the Royal College of Physicians and author of books on Forensic Medicine and the editor of the last edition of Taylor's Medical Jurisprudence. He has had some 40 years experience in this speciality, including a wide range of types of cases both in the United Kingdom and abroad, and he has personally made examinations of and records of over 100,000 medicolegal cases and gave evidence in Court in many countries outside the U.K.

For the defence two doctors were called: Dr. Georghios Doritis, a Psychiatrist who graduated Athens University in 1968 and specialist in psychiatry, is in private practice in Limassol since 1973, and a Government Psychiatrist at the Limassol Hospital on a part-time basis. Dr. Antonis Koutsellinis, who graduated the Medical School of the University of Athens in 1959, a Specialist in Forensic Medicine and Toxycology or Forensic Pathology, and he has been in this field for about 20 years; he was on a research contract in the U.S.A. on the first occasion a year, and on a subsequent occasion for three to four months. He is an Assistant Professor at the aforesaid School in charge of this field as the professor, holder of this seat, is not there for reasons with which we are not concerned. He has performed 2,000-3,000 post-mortem examinations. Though he is not a specialist psychiatrist, he followed courses in Athens and abroad on psychiatry and in view of that knowledge and experience, he expressed opinions on matters in this field as the very question of suicide brought in issue the psychological state of feloms de se and the characteristics in the behaviour as well as the motives adopted in committing suicide and on such other matters as the tentative wounds.

The findings of Dr. Stavrinos were summed up by the Court as follows:

"Before the post mortem examination he examined the dead body of the deceased and observed the following:

(1) At the left region of the chest below the left nipple and at a distance of 7 cms. anteriorly, at the (left) margin of the lower part of the body of the sternum, a stab penetrating would measuring 3 cms. in its length sideways with clean cut margins with bruise and haematoma of the surrounding soft tissues and muscles.

(2) At the left wrist posteriorly and externally there were tiny but very shallow lacerations with irregular scratches and a severe bruise at the first metacarpal region internally. The scratches were marked by this witness on photo 'Ξ' of exh. 3 with the letter 'X'. The bruise does not show in the photograph.

(3) A smooth but very shallow incised wound in the left palm which measured 7 1/2 cms. Again this wound appears in photograph 'Ξ' of exh. 3.

The doctor opened up the dead body and carried out an autopsy and found the following:

(1) The tract of the penetrating wound was straight and oblique in direction from the left side of the victim towards the right side and with a slight inclination from down upwards and inwards; it extended within the chest cavity. The wound penetrated the muscle of the right ventricle of the heart and communicated with the cavity of the right ventricle without lacerating the posterior muscles of the ventricle; the length of the wound on the right ventricle was 1 1/2 cms.

(2) The left lower margin of the body of the sternum was fractured and tiny bone fragments were missing and found embedded in the muscles of the vicinity internally.

(3) The pericardium was torn and the pericardial sac was full of clotted bood measuring 500 mls. Also the chest cavity contained 1 litre of clotted blood.

(4) Otherwise all other internal organs appeared to be healthy and without abnormalities.

In cross-examination the doctor was asked to define the position of the wound in relation to the rib interspace involved. Having given several different answers as to that position, with the aid of a human skeleton available in Court, he finally concluded in re-examination that the rib interspace involved was the one between the 5th and the 6th ribs.

In the opinion of the doctor the stab wound was caused by a sharp bladed instrument (τέμνον καὶ νύσσον ὄργανον)

He said that the knife (exh. 22) is such an instrument and could have caused the said stab wound".

The next piece of medical evidence for the prosecution came from Dr. Keith Simpson, for which the Assize Court had this to says:

"... ... ... the facts put to him are evidence raising a very strong presumption that the stab wound is homicidal and not self-inflicted. This kind of evidence, as the witness stated, led him to the conclusion that it was a homicidal wound. He gave his opinion and arrived at this conclusion basing himself on the following factors:

(1) The rarity of self-stabbing in women. He stated that he had been into his records for the last ten years and he had not had one case of a woman stabbing herself.

(2) The situation of the wound. In the witness's experience as he has testified, it is common to find stab wounds directed at the heart through the pit of the stomach where the heart is felt beating and where there is no resistance to a wound directed in that sort of way, in effect because of the absence of underlying bones.

(3) The absence of tentative cuts. The wound is unaccompanied by any tentative pricking of the skin or tentative cutting anywhere else, something common in suicides. He stated that it is common for suicides whether by cutting or by stabbing, to make feeling movements, tentative cuts or feelers, to locate the knife in the right place. This wound he said had no such marks.

(4) The character of the wound. It is a clean, straight,

penetrating wound with one slit entry which is not rocked passing straight into the heart at an angle to a considerable depth.

(5) The force used to inflict the wound. The witness explained that the fracture of the left lower margin of the body of the sternum indicates that very considerable force was applied. He clarified that the sternum is dense and tough and it is exceedingly difficult to press a knife through it. From his experience when he performs post mortem examinations he has to use a saw to cut through it. He further testified that bearing in mind the direction of the wound as put to him and the necessary force required to fracture the sternum on the assumption that the victim was right-handed, he considered the possibility of self-inflicting such a wound by any person, let alone a woman, to be quite untenable.

(6) The slit on the brassiere. The witness said that assuming that the slit on the brassiere was caused by the knife at the time of the infliction of the wound, which in his opinion was the reasonable inference, then this was another factor advocating against self-infliction of the wound. As he explained, from his experience, in cases of suicide the clothing is pulled aside or is pulled down almost always, though not necessarily always so, whereas in homicidal cases the body is taken as it is, i.e. dressed or undressed.

(7) The existence of the incised wound on the left palm of the deceased which the professor described as a 'protective' or 'defensive' wound as well as other minor injuries, i.e. scratches on the left wrist, though he conceded that this need not have necessarily been caused at the time of the stabbing".

The Assize Court then examined what the defence suggested to this witness regarding the stab wound on the deceased and that it could also be the result of self-infliction if the knife was either placed against the mattress and the deceased thrust her body against it or if the deceased, holding the knife on her chest, fell either accidentally or purposely on the floor and it summarized the statements of this witness as follows:

"With regard to the first suggestion the witness was positive in his opinion that such a wound could not have been caused in such a way, for the amount of force necessary was far greater than would result if the wound was inflicted in such a manner. Regarding the second possibility of falling on to the floor, the witness said that this was conceivable, provided that a number of unusual conditions existed and particularly that the deceased by coincidence happened to fall in that position on the floor quite cleanly, without rolling in any way. Any degree of rolling would have caused rocking of the knife in the wound thereby causing the slit of the wound to be twisted, ragged or torn. The witness went on to say in cross-examination that he found it difficult to accept that the fall was in such a way that it merely went on driving the knife straight in and did not flatten into the body or rock. Bearing in mind the strength necessary to drive a knife into the sternum, the doctor said that it would require not merely rolling out of bed but falling heavily with the whole weight of the body against the knife on to the floor. In such a case the witness would also expect to find smeared blood stains on the floor but he conceded that had the victim got up immediately and fallen on to the bed, that might have eliminated this possibility. He would also expect to see some marks on the floor, and more particularly so as the floor was wooden, caused by the handle of the knife, unless the fall was on the rug which was on the floor next to the bed.

As regards the incised wound found in the left palm of the deceased the witness conceded in cross-examination that it was possible for the wound to have been caused while the victim was pulling the knife out of her body, although he would have though that it would be natural to withdraw a knife with the hand on a safe part of it and not by the blade. He went on to say that if the knife was gripped to pull it out he would expect the cut to be deeper than if merely the knife had passed by it.

In re-examination this witness stated that the final conclusion to which he came, i.e. that the wound was homicidal and not suicidal was based on the following, taken collectively:

(1) On the rarity of self-stabbing in women.

(2) On the situation and character of the wound, which is not in the pit of the stomach but set at the edge of the breast bone and passing through it, a condition requiring great force.

(3) On the fact that it is a clean, straight, penetrating wound, with one slit entry, which is not rocked, passing straight into the heart to a considerable depth.

(4) On the fact that it is unaccompanied by any tentative pricking of the skin or tentative cutting anywhere else.

(5) On the fact that the body shows what in his view can be considered a defensive wound on the hand as well as other minor injuries".

The Assize Court then examined at length the evidence of the defence medical experts and dealt with the legal aspect of evidence given by expert witnesses and in that respect referred to the cases of *Anastassiades* v. *The Republic* (1977) 2 C.L.R., p. 97; *Kouppis* v. *The Republic* (1977) 2 C.L.R., p. 361; and *Khadar* v. *The Republic* (1978) 2 C.L.R., p. 132; and then adopted with respect what Lord President Cooper said in the case of *Davie* v. *Edinborough Magistrates* (1953) S.C., p. 34, which has been adopted and followed by this Court in the aforementioned cases. Lord President Cooper at p. 40 said the following:

> "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 dealt then with the evidence of Dr. Doritis and the factors he gave that led him to the opinion he expressed that the circumstances of the case were suggestive of suicide. The Assize Court rejected his opinion on the ground that the said factors did not exist and they were not prepared to give weight to his evidence.

I revert now to the evidence of Dr. Stavrinos. The Assize Court, after commenting on certain aspects of his handling

of exhibits and in particular the vest and shirt which were removed from the appellant and delivered to him which he kept in a cupboard and examined only after 17 days when he knew or ought to have known that in order to specify the age of a blood-stain one must examine it as soon as possible and in any event not later than 48 hours, said that they were not satisfied with the explanation he gave on this aspect. Moreover, they commented adversely on his lack of experience and in so far as the opinion he expressed said that they were not prepared to give much reliance to it and that when they were going to make their findings they intended to base themselves on the findings of more experienced doctors, that is, the evidence of Professors Simpson and Koutselinis. They stressed, however, that what they said with regard to that aspect of the doctor's testimony, same did not take "away the credibility and reliability of this witness on other topics of his evidence and particularly as to observations and findings both internal and external upon and in the body of the deceased. This witness was subjected to rigorous cross-examination and at very considerable length but he was not shaken as to his findings. He was positive that the edge of the left lower part of the body of the sternum was broken and fractured and that tiny bone fragments were missing and were found embedded in the muscles of the vicinity. In this respect, we may say, that he was certain that what he described as 'tiny bone fragments' were actually bone though not examined under the microscope because a pathologist according to his evidence and the evidence of Dr. Simpson, can find out whether such fragments are bone and not cartilage macroscopically. Furthermore, during the autopsy, Dr. Stavrinos observed the fracture on the sternum and the fact that tiny bone fragments were missing from it and that the ribs were not fractured at all. Therefore, the suggestion of the Defence (a) that the sternum was not fractured but merely chipped off at the side or (b) that the fragments were cartilage having been removed from the point where the ribs join the sternum and not bone, cannot stand".

This conclusion of the Assize Court is significant as it is on these findings that Professor Simpson gave his evidence for which the trial Court had this to say:

> "Professor Simpson gave his evidence in a clear and concrete way and we do not think that this witness has been evasive or unconvincing as suggested by Defence Counsel;

on the contrary, he was often ready to make concessions which might weaken his opinion, a fact that shows that he was ready to give an honest opinion on the matter. The Professor was cross-examined at length on the opinions he expressed; he was also cross-examined rigorously on each and every ground on which he based his opinions; 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 this connection the Professor said that he had adequate material to base his opinion; he went on to say that had he performed the autopsy he would have saved the sternum for others to see and he would also have made a separate report about the clothing. He also accepted the possibility of alternatives which were put to him, but under certain conditions. But till the very end of his evidence he felt quite sure that his opinion was correct and concluded that the wound was homicidal. We do not think that the evidence of Professor Simpson is based on wrong facts and has no value at all as suggested by the Defence."

With regard to the evidence of Dr. Koutselinis the Assize Court had this to say:

"..... Professor Koutselinis finally expressed the view that all the findings in this case are indications pointing towards suicide for the following reasons:

(1) The situation of the wound is such to be accessible to a right-handed suicide.

(2) The psychological condition of the victim caused by the problem she had with her husband shows a tendency towards suicide which under certain circumstances and under the pressure of extraneous events can lead to a sudden suicidal attempt. In this view he was strengthened by the history of a previous suicidal attempt.

(3) The absence on the body of any injuries indicating a scuffle between the victim and a culprit.

It should be pointed out at this stage, even though at a latter stage a detailed comparison of this witness's evidence and that of other witnesses will be made, that the grounds

(1) and (3) he gave could not properly be considered as indications of suicide, but at the most as neutral factors pointing to neither direction. This is more obvious from the witness's suggestion that the time of the stabbing - being in the early morning - is indicative of suicide as early morning is the most likely hour of emotional loading which finds an outlet in suicide. As, however, this hour could be equally a time at which a homicide may be committed, one cannot really say that the fact of the hour of the stabbing points in any one of the two directions. As to the previous attempt of suicide, we shall express our view when we come to analyse the evidence of Dr. G. Doritis. It is also, we think, somewhat presumptive on the part of this witness to state that there is absence of injuries indicating a scuffle which leads him to the conclusion that this is an indication of suicide, in view of the fact that the injuries on the left hand and wrist though equivocal, could, in our judgment, be considered as such evidence. So, in our view this witness could have at least made no mention of this as a ground for saying that the present case contained indications of suicide".

The Assize Court then dealt at length with the question of tentative cuts which a person who is about to commit suicide with a knife causes to himself in the vicinity of the fatal wound, the injury of the sternum and the slit on the brassiere. I do not intend to elaborate on the question of the tentative wounds but the injury of the sternum calls to be dealt with more extensively. On these points the trial Court had this to say:

". . Although we would not be prepared to find as a fact that the point of the knife hit the sternum on the front part of it at a distance of approximately 1-1 1/2 cms. from the edge as suggested by Professor Simpson, we are satisfied that it was quite possible for the point of the knife at such angle to have hit at least the margin of the sternum. Therefore, we find that the view of Professor Simpson that the situation of the wound and the tract of the wound are fully consistent with the findings of Dr. Stavrinos that the knife broke and fractured the left margin of the sternum is quite consistent with the real evidence in the case. This is also consistent with the knife having thereafter entered the right ventricle of the heart, part of which, as it was finally stated

by Professor Koutselinis and as it appears from exh. 40, lies behind the sternum, the heart near the 5th rib interspace being according to his evidence only 1-1 1/2 cms. from it. The evidence of Professor Koutselinis on the consistency of the tract of the wound with the fracture of the sternum is quite unsatisfactory and no reliance can be placed on it. In his examination-in-chief the effect of his testimony was that the knife could not have passed from the entry slit, strike the sternum and reach the right ventricle. In cross-examination he expressed the view that this could happen, i.e., he stated that the knife could have reached the right ventricle either having hit or scraped the sternum or having not done so. In re-examination he again excluded this possibility saying that his former view was general and not referable to the present case and propounded the strange theory that for the sternum to have been struck, the direction of the knife should have been with an inclination from the right side of the body of the deceased towards the left, which, of course, obviously would not tally with the location of the slit of the wound. Much has been said by the Defence of the use by Professor Simpson of the words 'passing through the sternum' which were used by this witness when he described the way the knife must have fractured the sternum. Having in mind the explanation given by Professor Simpson when he stated what he meant by using these words, we do not think that this is an assumption on his part that is not born out by the evidence of Dr. Stavrinos as to the fracture he found on the sternum. The evidence of Professor Simpson that the knife passed through the sternum is quite consistent with the evidence of Dr. Stavrinos who said that the knife broke and fractured the sternum. This, obviously, means no more than that part of the blade of the knife must have passed through the edge of the sternum.

In the light of the foregoing and accepting Professor Simpson's opinion that for any bone fragments to be detached and for a fracture to be caused the point of the knife must have hit the sternum, we find as a fact that the point of the knife did hit and fracture the edge of the sternum.

As to the structure of the sternum the experts agreed but

the opinion of Professor Simpson differs from the opinion of Professor Koutselinis as regards the strength required to fractur. it".

On the question of the brassiere the finding of the Assize Court was the following:

"... Bearing in mind the medical evidence of both sides, we also find that though it is usual for suicides to move or lift up clothing but which could by no means be excluded as not happening, especially in a case involving a flimsy garment not capable of offering any resistence like the brassiere in the present case, we find that this fact is of no real significance in pointing either towards homicide or suicide. However, what in this instance is somewhat more indicative of homicide rather than suicide is the fact that the slit on the brassiere does not correspond with the situation of the wound when the brassiere is worn in place; for if this were a case of suicide, one would have expected the brassiere to have been in position when the self-stabbing occurred, and its not being in position, is slightly more suggestive of homicide as it indicates that some scuffle might have taken place as a result of which the brassiere moved at the time of the stabbing."

On the force required to fracture the sternum and whether such force could have been self-inflicted, the Assize Court said that having accepted the opinion of Professor Simpson on this point they had no hesitation to hold that the wound could not have been self-inflicted by suicide and especially by a woman as in the present case and went on to say the following:

"..... Even though the other factors, (except the injuries on the left hand and the wrist and the situation of the wound), as we have intimated above, are not each by itself conclusive of homicide, taken all collectively they point towards homicide, and without ascribing undue weight to them we consider that their effect is to strengthen our finding that this is a case of homicide which we base on the force required to cause such a wound. Another factor that tends to have the same effect is that the wound in the present case is directed slightly from down upwards, which both Professor Simpson and Professor Koutselinis accepted as something generally

found in cases of homicide and not suicide; and we cannot fail to observe that Professor Koutselinis stated that this was one of the reasons why he expressed the view that in this case this is another ground indicative of suicide, obviously basing himself on the wrong assumption that the wound in the present case did not have that upward direction.

We have based our conclusion as to force on our finding that the point of the knife hit the edge of the sternum. But even if we were to find that only the edge of the knife did so (and then it would have to be the blunt edge for if it were the sharp one it would not have caused a fracture but a cut) our conclusion would still have been the same; because, again, for a fracture to be caused and for bone fragments to be detached and embedded in the muscles at least the same force should have been exerted. We say 'at least the same force' for, in our view, it is most probable, if not certain, that even greater force and a steadier direction of the knife by the hand ought to have been applied in such a case, for otherwise the knife would have slided off the sternum into softer tissues on its way to the heart."

Significant in this case and independent of the medical evidence are the contents of the statements of the appellant made on three different occasions which are dealt with by the Assize Court. The first ones are the statements the appellant made on the 22nd August, 1978, that is, the day following the offence and the explanation he gave to them about the death of his wife to Socratis Christodoulou, the brother of Aman, whom upon asking him as to how his wife died, he said that his wife had stabbed herself with a knife and had died and on further asking him as to how this had happened, the accused replied that he had an argument with his wife and whilst arguing somebody came to bring him eggs and he went outside to take the eggs and when he entered into the house he saw his wife holding a knife, he did not manage to take it away from her and she stabbed herself. When asked what he did then, the appellant replied that he left and when he was asked why he did so, he said that he had to go away because if any of the members of the family of the deceased came and found him there, they would think that he had killed her.

The second statement was to Yiannakis Panayiotou who ac-

companied him in the car to the Police Station where he was going to give himself up and who asked him what had happened and the appellant replied that he believed that his wife had committed suicide and when the witness asked him how this had come about, the appellant replied that at that moment he was in the bathroom and as soon as he came out of it he saw her stabbed, giving also as to his flight the same explanation that he gave to the other witness about his fears of retaliation from the relatives of the deceased who might suspect him as the culprit. The statement the appellant gave to the Police and in particular the explanation he gave therein as to the death of his wife is also material and the relevant part is to the effect that they got up in the morning, his wife was awake and asked him where he would go when she saw him dressed and told her that Kouzalis who would fetch eggs would be coming. He left from the bedroom and went to the bathroom to wash himself and when he finished and was returning to the bedroom, he heard a scream of his wife, he ran to the bedroom where he saw his wife holding a knife with her hand and leaning and falling down from bed on the ground and blood running on her. And that when he saw her so and heard their child crying, opened the door and he left because he was afraid lest he was killed also for having killed his wife. This statement was adopted by the appellant in an unsworn statement from the dock as correct.

The appellant, therefore, clearly gave three inconsistent versions of what he allegedly witnessed happening that morning and the Assize Court came to the conclusion that the appellant was, in fact, lying when he was putting forward his allegation that his wife had committed suicide, as had he really witnessed such happening the Assize Court would certainly have expected the appellant, as they said, to have given a consistent story to all those to whom he spoke.

With regard to the written statement the trial Court had this to say:

> "Reverting now to the written statement made to the Police by the accused which became his version before this Court when it was adopted from the dock, it is obvious that this version is not supported by the real evidence in the case. It is a fact that Professor Simpson said that if the deceased fell on to the floor and got on to the bed at once before the

bleeding started, one might not find any blood stains where she fell. But the allegation of the accused in this statement is that when she fell on to the floor, bleeding had already started; in fact, as he said, blood was pouring from the deceased. Therefore, one would have expected to find at least some quantity of blood on the floor where she fell and not only the two drops on the flip-flop, which in any way was at some distance from the bed, and the real evidence is that no blood at all was found at this spot. It should also be noted that the accused's allegation is that the deceased held the knife with one hand when she fell, which in our judgment, would have certainly caused a rocking of the knife in the wound, if the deceased fell on to the floor with the knife on her chest, which is not so in the present case.

Therefore, having in mind the inconsistency of this version with the versions put forward in the oral statements made by the accused, as well as the inconsistency of this version contained in exh. 30, with the real evidence as explained above, we have no hesitation in rejecting the story of the accused as untrue".

Another piece of evidence which was again unconnected with the medical evidence was the flight of the appellant which is not devoid of significance in the chain of circumstantial evidence.

The Assize Court then gave its final conclusion which is the following:

"*Conclusion*

Having analysed the evidence and in view of our findings as to the medical evidence, particularly, as to the force required to inflict the wound in question, and bearing in mind the three inconsistent statements of the accused and the lies told therein by the accused, as we have hereinabove stated, and taking also into consideration our findings as to the blood stains on his clothing and their effect thereof on the case, as well as the flight of the accused in the light of our observations, we have no hesitation in holding that the combined effect of all these grounds is that the prosecution have proved beyond reasonable doubt that it was the accused who stabbed the deceased with the knife, exh. 22, in the bedroom of their house on the fatal morning of 21.8.78, causing her death.

We would like here to add that we consider the other evidence so overwhelming against the accused that we would have still been satisfied beyond reasonable doubt of the fact that it was the accused who killed his wife, even without the medical experts' opinion".

Having outlined the facts of the case as found by the trial Court, the conclusions drawn thereon and the reasons given for reaching both, I am faced with the dilemma as to whether I should examine one by one the several arguments advanced on behalf of the appellant in this appeal whereby these facts and conclusions were challenged, a course that inevitably would take in all fairness several hundred pages as the address of counsel for the appellant has taken, or whether I should give briefly my conclusions on the facts bearing in mind that there is a judgment of an Assize Court and it was upon the appellant to show that that judgment was wrong and of course try to give the reasons for arriving at such a conclusion myself as briefly as possible.

Having heard counsel dealing with every aspect of the case and every piece of evidence at such length and so thoroughly and having had, page after page of the record, read and re-read again in connection with one or another aspect, I have reached the conclusion that the trial Court with its meticulous judgment has come to the right findings and the right conclusions on admissible and properly received evidence, as regards the circumstances of the fatal stabbing and who inflicted it. The case admittedly rested on circumstantial evidence but such evidence is as good as any other evidence when the links of the various pieces of evidence that make it up are properly connected and complete the circle of the chain leaving no room for doubt as to the ultimate conclusion that is reached on the basis of it.

In the present case there was motive, opportunity, conduct by the appellant that preceded, conduct that followed, statements and lies on his part over and above the medical findings and of course the opinion of medical experts. And as the trial Court rightly said, even if the latter did not exist, the rest was sufficient to find that the fatal wound was a homicidal one caused by the appellant and that was established beyond reasonable doubt and there was no room for doubt about it.

On the totality of the evidence before the trial Court its findings and conclusions unanimously reached by all three Judges were duly warranted and I am not prepared to interfere with them. What remains to consider now are certain legal aspects of the case in addition to those with which I have already dealt and the question as to whether the infliction of the wound from the circumstances as found by the Assize Court, premeditation as understood to-day in our law, has been proved beyond reasonable doubt or not, could also be inferred with the same degree of certainty as is required in a criminal prosecution.

The first of these legal points is the following:

It has been argued on behalf of the appellant that the trial was irregularity in that the Court allowed Dr. Simpson to give evidence before it without having given evidence at the Preliminary Inquiry and that thereby the appellant by the said irregularity and/or practice of the prosecution, seriously prejudiced him in his defence and that same goes to the root of the proceedings. Dr. Simpson was called as a witness under the provisions of section 111 of the Criminal Procedure Law, Cap. 155, whereby a person who has not given evidence at the Preliminary Inquiry may be called by the prosecution at the trial before the Assize Court and give evidence provided the accused or his advocate has been previously given a notice in writing containing the name of the witness intended to be called and the substance of the evidence intended to be given. There is a proviso to this statutory provision but we are not concerned with it. There is no doubt that the aforesaid prerequisites of this statutory provision were complied with by the prosecution. What was, however, contended more was the insufficiency of the information about the evidence of this witness given by the prosecution and the fact that the trial Court in its judgment "wrongly, arbitrarily and unreasonably considered that Dr. Stavrinos's evidence at the Preliminary Inquiry ought to have given to the defence sufficient notice of the evidence intended to be given and actually given by Dr. Simpson at the trial". This statutory provision is in effect a codification of the corresponding English Position and Practice as to be found in *Archbold* Criminal Pleading, Evidence and Practice, 40th Ed., para. 446, where reference is made to the Criminal Justice Act of 1967 and to a number of decisions and here it is stated:

"... The same point, however, having been raised in *R. v.*

Greenslade, 11 Cox 412, Brett J., after consulting Willes J., said that he had the authority of the latter for saying that his ruling in *R. v. Stiginani* was incorrectly reported and that evidence tendered in the circumstances above mentioned, if relevant, ought to be received, although the fact of notice of its intended production not having been given to the defendant or his solicitor was a subject of strong comment.

If a defendant is taken by surprise by additional evidence, notice of which has not been served upon him, he may apply for the adjournment of the trial: *R. v. Wright* [1934] 23 Cr. App. R. 35. This, in effect, represents the current practice".

Considering the question of prejudice by examining the record of the proceedings, one cannot fail to observe that the length, the deep and penetrating way of Dr. Simpson's cross-examination by counsel for defence, leave no room to consider that the defence was taken by surprise or in any way prejudiced by the calling of this witness. If that was felt then the right course would have been for counsel for the appellant to apply for an adjournment of the trial. Of course, in our case the statutory requirements as already said, have been complied with and I do not need to pronounce on the question whether if no such compliance exists, such evidence if tendered at the trial could be at all received.

The next issue for determination is the extent of the significance, if any, which the Assize Court should have given to the flight of the appellant after the death of the victim.

As already said the trial Court examined this piece of evidence in conjunction with his explanations about it and observed that this behaviour of the appellant, though not conclusive of his guilt, was a strong indication of it. In my view there was nothing wrong in this approach. No undue importance has been given to it.

As stated in Wills' Principles of Circumstantial Evidence 7th edition under the heading "Indirect Confessional Evidence" at p. 138, "To this head may be referred the acts of concealment, disguise, flight, and other indications of mental emotion usually found in connection with guilt." And further down at p. 141 it is stated:

"It is not possible to lay down any express test by which these various indications may be infallibly referred to any more specific origin than the operation of fear. Whether that fear proceeds from the consciousness of guilt, or from the apprehension of undeserved disgrace and punishment, and from deficiency of moral courage, is a question which can be judged of only by reference to concomitant circumstances."

And in the concluding paragraph at p. 142 it is stated:

"In the endeavour to discover truth, no legitimate evidence should be excluded; but great care should be exercised to prevent an undue importance being given to circumstances not necessarily irreconcilable with innocence although they may create suspicious. Circumstances of such a character are mere make-weights, and nothing can be more dangerous than to eke out a weak case by attributing to them an importance which they ought not to possess (see observations of Abbot, J., in *Rex* v. *Donnall*, supra, pp. 139-140, and of Shaw, C.J., in Prof. Webster's case, referred to supra, p. 140)."

The flight of the appellant had, therefore, to be viewed in the context of the whole evidence and this appears to have been the approach of the Assize Court. No more importance was attributed to this factor than it ought to.

Another question raised was the fact that witnesses, and in particular prosecution witness Socratis Christodoulou, whose reliability was attacked by the defence, had refreshed their memory before giving evidence from statements made shortly after the incident in respect of which they were asked to testify. The position with regard to this point can be found in the cases of *Worley v. Bentley* [1976] 2 All E.R. 449, approved in *R. v. Westwell* [1976] 2 All E.R. p. 812.

In *Westwell* case Bridge L.J., at p. 814 had this to say:

"There is no general rule that prospective witnesses may not before giving evidence at a trial, see the statements which they made at or near the time of the events of which they are to testify. They may see them whether they make a request to do so or merely accept an offer to allow them to

do so. On the other hand, there is no rule that witnesses must be allowed to see their statements before giving evidence. There may be cases where there is reason to suppose that the witness has some sinister or improper purpose in wanting to see his statement and it is in the interests of justice that he should be denied the opportunity. Examples are suggested in the Home Office circular and in the judgment of this court in *R.* v. *Richardson*. However, in most cases and particularly where, as often happens, there is a long interval between the alleged offence and the trial, the interests of justice are likely to be best served and witnesses will be more fairly treated if, before giving evidence, they are allowed to refresh their recollection by reference to their own statements made near the time of the events in question. As was said by the Supreme Court of Hong Kong in 1966, in passages quoted with approval by this court in *R.* v. *Richardson*, if a witness is deprived of this opprotunity his testimony in the witness box becomes more a test of memory than truthfulness; and refusal of access to statements would tend to create difficulties for honest witnesses but would be likely to do little to hamper dishonest witnesses."

And further down he said:

"Since hearing the argument in this appeal, our attention has been called to the decision of the Divisional Court in *Worley* v. *Bentley* in which the same point arose. The court held that it was desirable but not essential that the defence should be informed that witnesses have seen their statements. We agree. In some cases the fact that a witness has read his statement before going into the witness box may be relevant to the weight which can properly be attached to his evidence and injustice might be caused to the defendant if the jury were left in ignorance of that fact.

Accordingly, if the prosecution is aware that statements have been seen by witnesses it will be appropriate to inform the defence. But if, for any reason, this is not done, the omission cannot of itself be a ground for acquittal. If the prosecution tell the defence that the witness has been allowed to see his statement the defence can make such use of the information as it thinks prudent, but in any event the defence, where such a fact may be material, can

ask the witness directly when giving evidence whether the witness has recently seen his statement. Where such information is material it does not ultimately matter whether it is volunteered by the prosecution or elicited by the defence".

The approach of the trial Court was not inconsistent with the aforesaid statement of the law to which it directed itself properly. They had in mind the fact that the witness had read his statement before giving evidence and they evaluated his evidence accordingly. Having watched him giving evidence, they were impressed, they said, very favourably and accepted his testimony, being an independent witness who had given his statement to the Police when the events were fresh in his mind and when he had read his statement the Assize Court had no doubt that he merely refreshed his memory and nothing more.

The next question that merits examination is the significance which in law should be given to lies and inconsistent statements made by an accused person out of Court. This question was extensively dealt by this Court in the case of *Vouniotis* v. *The Republic*, in the light of a number of authorities referred to therein and I need not deal with it now as the Assize Court in the present case merely elaborated on the inconsistent statements made by the appellant with regard to the circumstances under which his wife came to her death on that fateful morning in order to disbelieve his version that she had committed suicide and they concluded by saying: "Having in mind the inconsistency of this version with the version put forward in the oral statements made by the accused, as well as the inconsistency of this version contained in exhibit 30 with the real evidence as explained above, we have no hesitation in rejecting the story of the accused as untrue". I find nothing wrong in this approach. They have not attributed to it any more significance than they ought to in the circumstances.

It now remains for me to examine whether on the facts as found by the trial Court and on the conclusions drawn thereon, the appellant could safely and beyond reasonable doubt have been found guilty of the premeditated murder of his wife. Once I accept that she came to her death as a result of the wound inflicted on her by him in the circumstances already outlined

in this judgment. On this point we have a concurrence of opinion in their verdict for premeditated murder of the President of the Court and H.H. Pitsillides, Senior District Judge. They have arrived, however, at that verdict by a different evaluation of the significance of various pieces of evidence accepted in the unanimous findings of the Assize Court. There is also the dissenting judgment of H.H. Artemis, D.J.; there is no disagreement as to the principles governing premeditation which have been extensively set out and reiterated since Independence in a number of cases and which I need not repeat here. Suffice it to say that they start with the cases of *Halil* v. *The Republic*, 1961 C.L.R., 432, where reference is made to the principles governing premeditation to be found in the case of *R.* v. *Halil Shaban*, VIII C.L.R. 82, and duly summed up in the case of *Anastassiades* v. *The Republic* (1977) 2 C.L.R., 97, where at page 161 L. Loizou, J., summed up the position as follows:

> "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 reflet 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".

Not doubt the burden of establishing beyond reasonable doubt the element of premeditation is upon the prosecution. This may be discharged either by direct evidence or by inference from the surrounding circumstances of the case. Moreover

this inference has to be not only consistent with the evidence but the facts of the case must be such as to make it inconsistent with any other rational conclusion than that the act was committed with premeditation (see as I said in the *Anastassiades* case (supra) at p. 150).

Judge Artemis found that motive by itself as held in the *Anastassiades* case (supra), though a factor tending to show that the killing was premeditated, was not by itself a decisive one because one who has a motive to kill somebody may eventually happen to kill him in the course of a quarrel which he did not anticipate and without any premeditation. The situation of the wound, the reaction of the accused to the accusations of a previous homicidal attempt, the flight of the accused, were also found to be both consistent with the absence of premeditation as a whole. On the question of the flight he said, the failure of the appellant to contact the nearest Police Station after he was out of reach of the deceased's relatives, amounted to evidence showing that the appellant was the perpetrator of the deed and not that the killing was the result of premeditation for "any killer either with or without premeditation have tried to evade detection and arrest".

He dealt also with the question of the knife used in inflicting the fatal wound and that it was accepted that it was not one of the domestic utensils used by the family and that it was first seen by witnesses in the house after the stabbing, he was not satisfied that the only inference that could be drawn from that was that the appellant brought it to the house, let alone that he brought it with the purpose of killing his wife. The knife could have been brought to the house a few days before by anybody including the appellant for any purpose unconnected with the crime and he concluded:

> "Not knowing the circumstances under which the stabbing took place, I consider it very unsafe to infer that the accused in order to use it had to go from the bedroom and get it from somewhere and that this would have amounted to premeditation as it would have given the accused ample time to reflect and relinquish his decision to kill the victim, especially as I do not know what his state of mind was at the time.

For all the above reasons and as I have no evidence as to the circumstances surrounding the crime and as to what took place between the accused and the victim on the fatal morning, I am not satisfied that the prosecution have established beyond reasonable doubt that the accused killed his wife with premeditation. In the result, in my judgment, the accused ought to be convicted only of homicide contrary to section 205 of the Criminal Code, Cap. 154".

I share the doubts expressed in this dissenting judgment with regard to the proof of premeditation in the present case. There is no doubt that there preceded an altercation, to say the least, before the fatal wound was inflicted. Also the Assize Court in dealing with the slit on the brassiere did not exclude that it moved out of place as a result of a scaffold. I cannot, therefore, conclude that the appellant had sufficient opportunity after forming his intention to reflect upon it and relinquish it.

The question of premeditation, as pointed out, is a question of fact. But as stated by Tiser, C.J., in the case of *Rex* v. *Halil Shaban*, VIII C.L.R., p. 82, at p. 84:

"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.

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.

In the present case we are not satisfied that the fact justify a finding of premeditation".

In the present case, viewing all the surrounding circumstances and intentions that might have existed at the time, I feel at the end of the day secured to say that the appellant should have been found guilty of homicide, contrary to section 205 of the Criminal Code, Cap. 154, and under the powers that this Court has under section 145(1)(c) of the Criminal Procedure Law, I set aside the conviction for premeditated murder and convict the appellant for the offence of homicide contrary to the aforesaid section, namely, that on the 21st August, 1978, at Limassol, in

the District of Limassol, by an unlawful act he did cause the death of Alecca Georghiou Koufou, late of Limassol.

MALACHTOS J.: I agree with the judgment just delivered by my brother Judge A. Loizou, which I had the advantage to read in advance, for the reasons given and the conclusions reached by him and I have nothing useful to add.

SAVVIDES J.: I agree with the judgment just delivered by my brother Judge A. Loizou, which I had the advantage to read in advance, for the reasons given and the conclusions reached by him and I have nothing useful to add.

TRIANTAFYLLIDES P.: The salient facts of this case have been set out adequately in the judgment just delivered by A. Loizou J. and I need not repeat them.

I find myself unable to agree with the view of the majority of my brother Judges that the conviction of the appellant for premeditated murder should be set aside and that he should, instead, be convicted of the offence of homicide, because I am of the opinion that the proper course in this case is to set aside the conviction of the appellant and make an order for the retrial of the case.

My reason for reaching this conclusion is that from the separate judgments of the three trial judges on the issue of premeditation (by means of which the appellant was found guilty of the offence of premeditated murder by two of them, Kourris, P.D.C., and Pitsillides, S.D.J., and guilty only of the offence of homidice by the other one, Artemis D.J.) there emerges a serious divergence of findings and views as regards essential aspects of this case which renders the basic finding that the appellant has killed his wife unsafe and unsatisfactory.

In my opinion the situation that has thus arisen is closely analogous to that which is brought about by inconsistent verdicts of a jury on different counts, in the same case, on the basis of essentially the same evidence.

In *R.* v. *Hunt*, [1968] 2 Q.B. 433, Lord Parker C.J. stated the following (at p. 438):

> "In the course of his argument the Court has been referred to a great number of cases dealing with apparently inconsistent verdicts, in some of which the verdict has been upheld

and in others in which it has been quashed. They ares of course, by their very nature cases in which the two count, being compared and which are said to be inconsistent are closely linked either on the facts or by reason of motive or in regard to the nature of the defences, but the principle, as it seems to this Court, in every case is whether the inconsistency is such that it would not be safe to allow the verdict, which prima facie is entirely a proper verdict, to stand.

There is a useful passage in regard to the approach that the Court should make which was given by Devlin J. in the unreported case of *Reg.* v. *Stone*[1]. Devlin J. there said, at page 3 of the transcript:

> 'When an appellant seeks to persuade this Court as his ground of appeal that the jury had returned a repugnant or inconsistent verdict, the burden is plainly upon him. He must satisfy the Court that the two verdicts cannot stand together, meaning thereby that no reasonable jury who had applied their mind properly to the facts in the case could have arrived at the conclusion, and once one assumes that they are an unreasonable jury, or they could not have reasonably come to the conclusion, then the convictions cannot stand. But the burden is upon the defence to establish that' ".

In *R.* v. *Drury*, 56 Cr. App. R. 104, Edmund Davies L.J. said (at pp. 105, 114):

> "This is a most puzzling case. It gives rise once more to the question of how the inconsistent verdicts of juries are to be regarded in this Court. We reject as too bold the proposition that the simple fact that a jury has returned inconsistent verdicts, acquitting on some count or counts and convicting on others, means that in every such case this Court is obliged ex necessitate to quash the convictions. There are cases which, in our view, can arise when it would be proper for this Court to say that, notwithstanding the inconsistency, the conviction or convictions must stand. It all depends upon the facts of the case.

This is one of those cases where the verdicts of the jury

1. Unreported, December 13, 1954, C.C.A.

on different counts, depending as they do upon the same basic ingredients, are so violently at odds that we see no alternative but to hold that the convictions on the second and third counts, notwithstanding the cogency of the evidence to which we have referred, must in the light of the acquittal on the first count be regarded as unsafe and unsatisfactory".

In *R.* v. *Durante*, [1972] 1 W.L.R. 1612, Edmund Davies L.J. stated the following (at pp. 1616,1617):

"One would have thought upon that material that if the jury were going to convict at all they would say he clearly handled a cheque which he knew to be a stolen cheque, and then, having proceeded to fill it in and telling the public-house owner that it was a cheque for his week's wages, he must also be guilty of attempting to obtain with intent to defraud money upon that cheque. But they did not do that. They convicted on the handling charge only. The verdicts accordingly are remarkably inconsistent

. . . . . .

However that may be, and whatever the explanation for the jury arriving at such conflicting verdicts, we are satisfied that in the result the conviction of this man on the first count cannot be regarded as either safe or satisfactory. Accordingly, despite what many would regard as the clear evidence of guilt upon that count, we quash his conviction thereupon and allow the appeal".

In the present instance when each one of the three judgments which were delivered at the trial regarding the issue of premeditation, is examined on its own it appears to have been based on a reasonable and carefully considered approach to that issue in the light of all the material aspects of the case as a whole. When, however, the said judgments—and especially those of the two trial judges who found by majority the appellant guilty of premeditated murder—are compared to each other there clearly emerges such conflicting and divergent views regarding not only the issue of premeditation but, also, in relation to other vital aspects of the case which are relevant to such issue, that I have, in the end, been left with the definite impression that, in effect, there are three judgments each one

of which, for reasons which conflict, and are not reconcilable, with those in the other judgments, finds that the appellant has killed his wife.

In the light of the foregoing I have to treat as unsafe and unsatisfactory the conviction of the appellant and I am, therefore, of the view that it ought to be set aside in the exercise of the powers vested in the Supreme Court, as an appellate tribunal, by virtue of section 145(1) of the Criminal Procedure Law, Cap. 155, and section 25(3) of the Courts of Justice Law, 1960 (Law 14/60).

In this respect it is useful to refer, too, to the following passage from the judgment in the case of *Zisimides* v. *The Republic*, (1978) 2 C.L.R. 382 (at pp. 432–433):

> "An examination of our own case-law discloses that convictions in criminal cases have been examined on appeal with a view to deciding whether they were unsafe or unsatisfactory and had, therefore, to be set aside, even though the terms 'unsafe' or 'unsatisfactory' are not to be found, as such, in either section 145 of Cap. 155 or section 25(3) of Law 14/60; this is so because it stands to reason that an unsafe or unsatisfactory conviction has to be treated either as being unreasonable having regard to the evidence adduced, or as entailing a substantial miscarriage of justice in the sense of section 145(1)(b) of Cap. 155, or as calling for the exercise of the wide powers conferred on this Court, on appeal, by means of section 25(3) of Law 14/60".

I have examined, next, whether or not it is in the interests of justice to order, on the present occasion, a new trial:

In this connection I have borne in mind the relevant principles as expounded in, inter alia, the cases of *Pierides* v. *The Republic*, (1971) 2 C.L.R. 263, 273–276 and *Kouppis* v. *The Republic*, (1977) 2 C.L.R. 361, 391–392, and in the hereinafter cited English case-law:

In *Holder* v. *R.*, 68 Cr. App. R. 120, Viscount Dilhorne said (at pp. 123–124):

> "No doubt the Court entrusted with the power to order a new trial will, when considering the exercise of its discretion, have regard to many matters, including the gravity

of the charge, the time that has elapsed since the alleged commission of the offence and whether it is possible to hold a proper new trial were one ordered. As Lawton L.J. said in *TURNEL* [1975] 61 Cr. App. R. 67, 79: 'It is in the interests of the public that criminals should be brought to justice, and the more serious the crimes the greater is the need for justice to be done'. In *NIRMAL* v. *R.* [1972] Crim. L.R. 226 the Judicial Committee did not uphold an order for a new trial made by the Fiji Court of Appeal when the only object of the new trial would have been to have given the prosecution an opportunity to make out a new case or to fill gaps in the evidence. In *SAUNDERS* [1973] 58 Cr. App. R. 248, Lord Widgery C.J. said at p. 255: '..... it is not in the Court's knowledge that it has ever before been contemplated that a retrial should take place some three and a half years after the original offence was committed. A delay of one year, perhaps two years, is not uncommon, but none of us can remember a case in which it has been thought right to order a retrial after such a long period when regard is had to the fact that this appellant has already stood his trial once, and has been in prison for a number of years and would, if a new trial is ordered, have to run the gauntlet and the hazards and prejudice of being tried, again'.

Lord Widgery's observations were related to England. In some other territories the process of justice may operate more slowly".

Also, in *Au Pui Kuen* v. *Attorney-General of Hong Kong*, [1979] 1 All E.R. 769, Lord Displock stated the following (at pp. 770, 771–772, 773):

"This is an appeal from an order of the Court of Appeal of Hong Kong dated 17th February 1977 whereby it allowed the appeal of the appellant Au Pui-Kuen against his conviction of murder and (by a majority) exercised its discretion under s. 83E(1) of the Criminal Procedure Ordinance to order that the appellant be retried.

The power to order a retrial when a conviction is quashed owes its origin not to the common law of England but to the Indian Code of Criminal Procedure more than

a 100 years ago. A similar power, not always conferred by identical words, has subsequently been incorporated in the criminal procedure codes of many other Commonwealth jurisdictions. In some, as was the case in Hong Kong before 1972, the power to order a new trial is unqualified by any explicit reference to the requirements of justice; in some 'shall order' is substituted for 'may order' which appears in the Hong Kong Ordinance. In their Lordships' view these minor verbal differences are of no significance. The power to order a new trial must always be exercised judicially. Any criminal trial is to some degree an ordeal for the accused; it goes without saying that no judge exercising his discretion judicially would require a person who has undergone this ordeal once to endure it for a second time unless the interests of justice require it. So the amendment to the Hong Kong Criminal Procedure Ordinance which inserted the express reference to the interests of justice did no more than state what had always been implicit in the judicial character of the unqualified power to order a new trial conferred by the Indian Criminal Procedure Code and the pre-amendment terms of the Hong Kong Criminal Ordinance. The pre-amendment terms of the Hong Kong Ordinance were, in their Lordships' view, rightly construed in *Ng Yuk Kin v R*[1] as authorising the ordering of a new trial only in cases where the interests of justice so require.

The strength of the evidence adduced against the accused in the previous trial is clearly one of the factors to be taken into consideration in determining whether or not to order a new trial. At the one extreme it may be so tenuous that a verdict of guilty on that evidence would be set aside as unsafe or unsatisfactory under s 83(1)(a) of the Criminal Procedure Ordinance. In such a case the Court of Appeal would be exercising its discretion unjudicially if it ordered a new trial; for under the adversary system of criminal procedure which is followed in common law jurisdictions it would be contrary to the interests of justice to allow a new trial so as to give the prosecution a second chance

1. (1955) 39 Hong Kong LR 49.

to get its tackle in order by adducing additional evidence. In the United States of America where new trials in criminal cases are a commonplace a similar principle has recently been held by the Supreme Court of the United States to be applicable in both federal and state Courts: see *Burks* v. *United States*[1] and *Greene* v. *Massey*[2].

At the other extreme the evidence of the previous trial may have been so strong that any reasonable jury if properly directed would have convicted the accused and that no miscarriage of justice had actually occurred. In such a case instead of quashing the conviction and ordering a new trial the appropriate course would be to dismiss the appeal under the proviso to s. 83(1).

Between these two extremes, however, there lies a whole gradation in the apparent credibility and cogency of the evidence that has been adduced at the trial rendered abortive by some technical blunder of the judge. The strength or weakness of the evidence is a factor to be taken into account but it is only one among what may be many other factors; and if the Court of Appeal are of opinion that on a proper consideration of the evidence by the jury a conviction might result it is not a necessary condition precedent to the exercise of their discretion in favour of ordering a new trial that they should have gone further and reached the conclusion that a conviction on the retrial was probable".

Lastly in *Reid* v. *The Queen*, [1979] 2 All E.R. 904, Lord Diplock said (at pp. 905, 907):

"In this appeal brought by leave of the Court of Appeal of Jamaica the appellant seeks to have set aside an order of the Court of 11th March 1977, whereby it ordered a new trial of the appellant on a charge of murder of which he had been convicted by the verdict of a jury on his trial in the Home Circuit Court on 7th May 1976.

. . . . . .

Having reached, in their Lordships' view quite rightly,

1. (1978) 98 S.Ct 2141.
2. 98 Ct 2151.

the conclusion that the inconsistencies and gaps in the evidence of identity adduced at the first trial were such as to render any verdict of guilty against the appellant unreasonable or, in the words of corresponding provisions in other common law jurisdictions including England, 'unsafe or unsatisfactory', the Court in their Lordships' view ought not to have ordered a new trial in order that the Crown should have another chance to fill the gaps. In doing so they erred in principle.

The interest of justice that is served by the power to order a new trial is the interest of the public in Jamaica that those persons who are guilty of serious crimes should be brought to justice and should not escape it merely because of some technical blunder by the judge in the conduct of the trial or his summing-up to the jury. There are, of course, countervailing interests of justice which must also be taken into consideration. The nature and strength of these will vary from case to case. One of these is the observance of a basic principle that underlies the adversary system under which criminal cases are conducted in jurisdictions which follow the procedure of the common law: it is for the prosecution to prove the case against the defendant. It is the prosecution's function, and not part of the functions of the Court, to decide what evidence to adduce and what facts to elicit from the witnesses it decides to call. In contrast the judge's function is to control the trial, to see that the proper procedure is followed, and to hold the balance evenly between prosecution and defence during the course of the hearing and in his summing-up to the jury. He is entitled, if he considers it appropriate, himself to put questions to the witnesses to clarify answers that they have given to counsel for the parties; but he is not under any duty to do so, and where, as in the instant case, the parties are represented by competent and experienced counsel it is generally prudent to leave them to conduct their respective cases in their own way.

It would conflict with the basic principle that in every criminal trial it is for the prosecution to prove its case against the defendant if a new trial were ordered in cases where at the original trial the evidence which the prose-

cution had chosen to adduce was insufficient to justify a conviction by any reasonable jury which had been properly directed. In such a case whether or not the jury's verdict of guilty was induced by some misdirection of the judge at the trial is immaterial: the governing reason why the verdict must be set aside is that the prosecution having chosen to bring the defendant to trial has failed to adduce sufficient evidence to justify convicting him of the offence with which he has been charged. To order a new trial would be to give the prosecution a second chance to make good the evidential deficiencies in its case, and, if a second chance, why not a third? To do so would, in their Lordships' view, amount to an error of principle in the exercise of the power under s. 14(2) of the Judicature (Appellate Jurisdiction) Act 1962".

It is in the light of the relevant principles, which are expounded in the above cases, that I formed the view that a new trial ought to have been ordered in the present case.

HADJIANASTASSIOU J.: The appellant, Georghios Panayiotou Koufou, was convicted on the 2nd May, 1979, of murdering his wife Alecca G. Koufou. He was tried in the Assize Court of Limassol and was sentenced to death by a majority verdict. The President of the Assize Court and Judge Pitsillides were of the view that premeditation had been established, but on the contrary Judge Artemis was of the opinion that the prosecution had failed to establish premeditation.

The appellant and the deceased who were 32 years and 23 years of age respectively, were married on the 18th February, 1972, and they had two children one 6 years and the other 11 months. The accused and the deceased lived in their own house in Limassol which was situated at No. Filikis Eterias Street. In the morning of 21st August, 1978, a fateful day for the deceased, she was found in the kitchen of her house almost dead. Her father, Theodosios Aleccou Theodosiou, who was living with his wife in the outbuildings of the house of the couple, was awakened by a scream. He woke up his wife and in his underwear ran to the near verandah of the house. He pushed the door of the kitchen, but because it was secured from inside, he ran towards the children's bedroom window. He pushed the

shutters in order to obtain access into the house, but he did not manage to do so. He then rushed to the front door, and having entered the house, he went into the bedroom, where he found blood stains leading all the way to the kitchen. In the kitchen he saw his daughter Alecca, lying on the floor between the refrigerator and the door of the kitchen, opening to the verandah, wearing only her brassiere and pants. He saw a knife at a distance of about 1 ft from the deceased. In the meantime, when he unbolted the door, his wife entered into the room. He took the knife, and as he did not find the appellant, he went outside the house in search of him. Having failed to find him, he called for help and his neighbours Nicos Georghiou and Stavros Demetriou arrived there.

The deceased was wrapped in a bed sheet with the help of the neighbours and was placed in the car of Georghiou in the rear seat with Stavros Demetriou. Upon their arrival at the hospital, she was examined by Dr. Antonia Tsaparilla who certified that Alecca was dead. The time was 5.00 - 5.15 a.m.

The body of the deceased was taken to the mortuary and kept under police guard awaiting the arrival of Dr. Panos Stavrinos. The doctor examined the body externally first and later on he carried out the post-mortem examination. Finally he testified that her death was due to haemorrage due to a stab wound of the heart.

On the following day the appellant at about 7 - 7.15 a.m. of the 22nd August, 1978, visited the factory of a certain Amman and because he was absent he spoke to Socrates Christodoulou, the brother of Amman, and to another employee. He telephoned to Elli Potamitou, the mother-in-law of his brother Yiannakis Panayiotou, and as a result later on he was picked up by both Panayiotou and Polemitou. They drove him to the police station and handed him over to Chief Superintendent Polydorou at the Limassol Central Police Station. He was arrested on the strength of a warrant which was issued earlier against him. After his arrest he gave a statement under caution to Inspector Frangos. This statement which was intended to explain the reason why he had fled from his house that morning, and the reason why his wife had committed suicide, as he claimed, appear in his statement to the police, but I shall be referring to it later on in this judgment. On the same day the police took his clo-

thes, consisting of his shirt, trousers, vest, pants, socks and shoes for examination. They also took from him a sample of blood which upon examination it was found to be Group B. The shoes, socks, trousers and pants were negative in blood but the shirt and vest bore bloodstains which after examination were found to be of Group A, Rhessus positive.

On 15th September, 1978, he was formally charged and his reply was a denial that he had killed his wife.

The case for the prosecution was that the stab wound which caused the death of the deceased was inflicted by the appellant with premeditation and because he was in love with another woman. On the contrary, the case for the defence was fought and argued mainly that the wound was self-inflicted by the deceased and that she committed suicide because she was jealous of her husband having a mistress; and that even if the trial Court were to find that it was the appellant who stabbed the deceased, again premeditation had not been established by the prosecution. The trial Court fully aware of the importance of the two points raised by the prosecution and the defence, proceeded and heard evidence from Dr. Panos Stavrinos, a qualified pathologist; and from Professor Keith Simpson of London for the prosecution. The defence called Dr. Doritis a psychiatrist in private practice in Limassol since 1973 and who also worked on a part-time basis in the Hospital of Limassol. The defence called also Antonis Koutselinis from Greece, a graduate of the Medical school of Athens since 1959. He was also a specialist in Forensic Medicine and Toxigology of Forensic Pathology for about twenty years.

The president of the Court in dealing first with the evidence of Dr. Stavrinos who carried out the post-mortem examination on the dead body of the deceased Alecca and who certified that her death was due to haemorrage due to a stab penetrating wound, recorded his evidence in these terms:-

"(1) The track of the penetrating wound was straight and oblique in direction from the left side of the victim towards the right side and with a slight inclination from down upwards and inwards; it extended within the chest cavity. The wound penetrated the muscle of the right ventricle of the heart and communicated with the

cavity of the right ventricle without lacerating the posterior muscles of the ventricle; the length of the wound on the right ventricle was 1 1/2 cms.

(2) The left lower margin of the body of the sternum was fractured and tiny bone fragments were missing and found embedded in the muscles of the vicinity internally.

(3) The pericardium was torn and the pericardial sac was full of clotted blood measuring 500 mls. Also the chest cavity contained 1 litre of clotted blood.

(4) Otherwise all other internal organs appeared to be healthy and without abnormalities."

In addition Dr. Stavrinos was of the opinion that the stab wound was caused by a sharp bladed instrument and that the knife found was such an instrument and could have caused the said stab wound. In the opinion of the doctor the wound was homicidal and not suicidal for these reasons: (1) The knife penetrated with force and proof of this was the fact that the edge of the body of the sternum was fractured and bone fragments were found embedded in the muscles of the vicinity, as well as the presence of haematoma and bruising of the surrounding muscles. (2) There was only 1 stab wound with clean-cut edges. (3) The stab wound was on the chest wall and the doctor explained that suicides do not usually select parts of the body where there are underlying bones but soft parts with no such bones. (4) There were "protective" or "defensive" injuries, to wit, the incised wound in the left palm and the scratches on the left wrist, most probably caused by finger nails. Then Dr. Stavrinos in explaining the opinion he put forward, he testified that the force required to inflict such a wound to such a depth and, in particular, causing a fracture of the body of the sternum, was such as it could not have been self-inflicted. He further stated that had it been a case of suicide he would have expected to find tentative wounds, i.e., wounds which were not vital or fatal wounds inflicted before the fatal wound. Finally on this issue Dr. Stavrinos added:-

"In cases of suicide the edges of the wound are twisted or ragged because the knife enters slowly into the body. Further, he said that the existence of what he termed 'protective' wounds suggests that they were caused in an attempt

by the victim to ward off an attack by an assailant, but in cross-examination he conceded that the incised wound in the palm could have possibly been caused accidentally whilst the deceased was pulling the knife out of her body."

In cross-examination, when it was put to this witness that the wound found on the body of the deceased could have been caused by the latter holding the knife against the mattress, and falling on it with great force, his reply was that that would not have caused an injury similar to the wound in question because the tract was oblique which meant that the person committing suicide must have been holding the knife obliquely, a fact that would not deprived the blow of the necessary force. Indeed, *Dr. Stavrinos added that he would not expect to find the bruise* and the haematoma of the surrounding tissues and muscles nor the fracture of the sternum. The President, having in mind that part of the cross-examination added that in effect his whole answer was that the force applied in such a manner would have fallen short of the force required to cause the wound in question. Indeed, he added, he also excluded the possibility of the wound having been caused by a fall on the floor by the deceased while she held the knife against her chest.

There was further evidence for the prosecution and Professor Keith Simpson whose assistance the Cyprus Police enlisted in October 1978, with some forty years experience, expressed the opinion that the facts put to him are evidence raising a very strong presumption that the stab wound was homicidal and not self-inflicted. That kind of evidence, led him to the conclusion that it was a homicidal wound and his conclusion was based on these factors:- (1) The rarity of self-stabbing in women. He further stated that he had looked into his records for the last ten years and he had not had one case of a woman stabbing herself. (2) The situation of the wound. In the witness's experience, as he has testified, it is common to find stab wounds directed at the heart through the pit of the stomach where the heart is felt beating and where there is no resistence to a wound directed in that sort of way, in effect because of the absence of underlying bones. (3) The absence of tentative cuts. The wound was unaccompanied by any tentative pricking of the skin or tentative cutting anywhere else, something common in suicides. He stated that it is common for suicides whether by cutting

or by stabbing, to make feeling movements, tentative cuts or feelers, to locate the knife in the right place. This wound he said had no such marks. (4) The character of the wound. It is a clean, straight, penetrating wound with one slit entry which is not rocked passing straight into the heart at an angle to a considerable depth. (5) The force used to inflict the wound. The witness explained that the fracture of the left lower margin of the body of the sternum indicated that very considerable force was applied. He clarified that the sternum is dense and tough and it is exceedingly difficult to press a knife through it. From his experience when he performs post mortem examinations he has to use a saw to cut through it. He further testified that bearing in mind the direction of the wound as put to him and the necessary force required to fracture the sternum on the assumption that the victim was right-handed, he considered the possibility of self-inflicting such a wound by any person, let alone a woman, to be quite untenable. (6) The slit of the brassiere. The witness said that assuming that the slit on the brassiere was caused by the knife at the time of the infliction of the wound, which in his opinion was the reasonable inference, then this was another factor advocating against self-infliction of the wound. As he explained, from his experience, in cases of suicide the clothing is pulled aside or is pulled down almost always, though not necessarily always so, whereas in homicidal cases the body is taken as it is, i.e., dressed or undressed. (7) The existence of the incised wound on the left palm of the deceased which the professor described as a "protective" or "defensive" wound as well as other minor injuries, i.e., scratches on the left wrist, though he conceded that this need not have necessarily been caused at the time of the stabbing.

In cross-examination it was suggested to this witness that the stab wound on the deceased would have been also the result of self-infliction if the knife was either placed against the mattress and the deceased thrust her body against it or if the deceased, holding the knife on her chest, fell either accidentally or purposely on to the floor. The President in dealing with the first suggestion put to Professor Simpson said that the witness was positive in his opinion that such a wound could not have been caused in such a way for the amount of force necessary was far greater than would result if the wound was inflicted in such a manner. Regarding the second possibility of falling on to the

floor, he added, the witness said that this was conceivable, provided that a number of unusual conditions existed and particularly that the deceased by coincidence happened to fall in that position on the floor quite cleanly, without rolling in any way. Any degree of rolling, he said, would have caused rocking of the knife in the wound thereby causing the slit of the wound to be twisted, ragged or torn.

Then the witness dealing with the incised wound found in the left palm of the deceased, he conceded in cross-examination that it was possible for the wound to have been caused while the victim was pulling the knife out of her body, although he would have thought that it would be natural to withdraw a knife with the hand on a safe part of it and not by the blade. He went on to add that if the knife was gripped to pull it out he would expect the cut to be deeper than if merely the knife had passed by it.

Finally Dr. Simpson summed up his views in re-examination and he is recorded as stating that he came to the conclusion that the wound was homicidal and not suicidal for the following reasons taken collectively:-

"(1) On the rarity of self-stabbing in women.

(2) On the situation and character of the wound, which is not in the pit of the stomach but set at the edge of the breast bone and passing through it, a condition requiring great force.

(3) On the fact that it is a clean, straight, penetrating wound, with one slit entry, which is not rocked, passing straight into the heart to a considerable depth.

(4) On the fact that it is unaccompanied by any tentative pricking of the skin or tentative cutting anywhere else.

(5) On the fact that the body shows what in his view can be considered a defensive wound on the hand as well as other minor injuries."

Dr. Doritis who gave evidence for the defence having stated the factors that lead a person to commit suicide added that suicide arises from a wide variety of causes, some within the individual and some within his or her environment. It is usual for these causes, he added, to overlap but generally it is more than

one of these factors that cause suicide. Some researches, he added, are of the opinion that other factors are correlated with suicide such as social class, place of living, marital status, age and sex.

Then having expounded a number of theories, he added that the method of suicide varies a lot and that common method used in one country is not in another and that stabbing is one of the methods. The method of stabbing depends on many factors, such as the personality, availability of resources and on fashion, but again it is difficult for one to know why a person who committed suicide chose a perticular method. When he was further asked about a case where a person chooses a knife as the instrument of suicide and the heart as the region of the body where he would expect a person committing suicide to hit, the reply was that he would expect the blow to be on the left chest wall.

Professor Koutselinis who had the opportunity of following Dr. Stavrinos when giving evidence in chief, and who was given the facts and the evidence relevant to this case, to enable him to express his opinion, is recorded as saying:-

> "As to the direction of the wound, he testified that bearing in mind the position of the slit of the wound, being away from the sternum, and the fact that the knife pierced the right ventricle of the heart, it would have been impossible for the knife to have hit the sternum. But he said that even if the sternum was hit or scraped - even though he agreed as to the structure of the sternum with Professor Simpson - he was of the view that not much force would be required to do so, and such force could have been exercised by the deceased herself. As regards the accessibility of the area where the wound was inflicted to a suicide, his evidence is to the effect that it was easily accessible both to a homicide and a suicide."

Then the President of the Court, turning to the injuries found on the deceased, recorded the following statement:-

> "Testifying as to the injuries found on the left hand and wrist of the deceased he said that the scratches on the wrist could have been explained in a number of ways and they were not indicative of homicide. Similarly the incised wound in the palm, in his view, was caused when the knife

was pulled out by the deceased, as, had it been a protective wound he would have expected it to be much deeper and ragged, and also that he would have expected such wounds to be numberous."

With that in mind, he went on to add:-

"We shall later on in this judgment refer to his evidence in more detail as regards the direction of the wound and its consistency with the fracture of the sternum, the question of the clean-cut edges of the wound, the slit in the brassiere and the position of the heart in the human body."

Turning once again to the evidence of Professor Koutselinis, the President said that he finally expressed the view that all the findings in this case are indications pointing towards suicide for the following reasons:-

"(1) The situation of the wound is such to be accessible to a right-handed suicide.

(2) The psychological condition of the victim caused by the problem she had with her husband shows a tendence towards suicide which under certain circumstances and under the pressure of extraneous events can lead to a sudden suicidal attempt. In this view he was strengthened by the history of a previous suicidal attempt.

(3) The absence on the body of any injuries indicating a scuffle between the victim and a culprit."

Finally, the President had this to say:-

"It should be pointed out at this stage, even though at a later stage a detailed comparison of this witness's evidence and that of other witnesses will be made, that the grounds (1) and (3) he gave could not properly be considered as indications of suicide, but at the most as neutral factors pointing to neither direction. This is more obvious from the witness's suggestion that the time of the stabbing - being in the early morning - is indicative of suicide as early morning is the most likely hour of emotional loading which finds an outlet in suicide. As, however, this hour could be equally a time at which a homicide may be committed, one cannot really say that the fact of the hour of the stabbing points in any one of the two directions. As to the previous

attempt of suicide, we shall express our view when we come to analyse the evidence of Dr. G. Doritis. It is also, we think, somewhat presumptive on the part of this witness to state that there is absence of injuries indicating a scuffle which leads him to the conclusion that this is an indication of suicide, in view of the fact that the injuries on the left hand and wrist though equivocal, could, in our judgment, be considered as such evidence. So, in our view this witness could have at least made no mention of this as a ground for saying that the present case contained indications of suicide."

With those observations in mind, the President found it convenient to make some preliminary findings of facts which have not been the subject of controversy. He also summarized those findings of fact which, as it was put, flow as conclusions from the circumstantial and medical evidence in this case. Then he made the following findings:-

"(1) The deceased Alecca Georghiou Koufou, died in the morning of 21.8.78 from shock and haemorrage caused by a stab penetrating wound on the left chest wall piercing the right ventricle of the heart;

(2) the said wound was inflicted with the knife, exh. 22, which was found in the kitchen of the house near the legs of the deceased and which was covered with blood up to 6 inches from its point. Even though according to the evidence it should have been expected to find some finger-prints on the knife, at least of the last person who handled it, bearing in mind the evidence of Professor Simpson that sliding of the hand on the handle of the knife would obliterate any finger-prints, we are of the view that the absence of any finger-prints is not of any significance in the case;

(3) the stabbing took place in the bedroom of the couple and thereafter the deceased proceeded to the kitchen through the corridor where she collapsed by the kitchen door opening on to the verandah."

Then the President, fully aware that an expert's opinion must be based on facts which have been proved by admissible evidence,

dealt further with the evidence of Dr. G. Doritis. Indeed, dealing with the submission of counsel for the defence that the evidence of Dr. Doritis regarding the psychological state of a person is of the utmost importance as to what effect it could have on the question of suicide and that it is supported by the evidence of Professor Koutselinis which stands uncontradicted, he had this to say:-

> "It is so, but his evidence was challenged during his cross-examination and particularly on the factors of depression and insomnia both as part of the depression and as an independent factor. This witness said that he considered the deceased suffered from insomnia because on the night of the Friday (18.8.78) towards Saturday (19.8.78) she did not sleep and because on the morning of the Monday on which the stabbing took place, she woke early in the morning. But, in cross-examination he said that insomnia is the difficulty to sleep or early morning wakening. We do not think that this opinion of Dr. Doritis is justified or correct because on the night in question she did not sleep as she was arguing with her husband. Again, on Monday morning she woke early in the morning because her husband got up early from bed. But even if during the said night she could not sleep and because of this she started arguing with her husband and, even if she woke early in the morning on Monday without any reason, then again his opinion is not justified that she was suffering from insomnia only because she did not sleep or woke early on these two occasions. This is contrary to Mayer-Gross Slater and Roth, 3rd Edn., page 797 where it is stated that in the predictive profile there must exist severe insomnia with persistent disproportionate concern about it and/or regular morning wakening with restlessness and intrusion of distressing thoughts."

In addition, the President, having dealt with the evidence that the deceased was suffering from insomnia, had this to say:-

> "This witness did not convince us that the deceased was suffering from depression, let alone endogenous depression because the facts on which he based his opinion do not warrant the conclusion that she suffered from the kind of depression envisaged in the predictive profile referred to above in which it is stated that depression is one with guilt

feelings, self-accusation, self-depreciation, nihilistic ideas and great motor restlessness."

Then, once again turning to the topic of suicide, he had this to say:-

"Now, with regard to the previous suicidal attempt, a factor on which this witness based his opinion, we are of the view that in the light of the evidence adduced it has not been established that there was a previous suicidal attempt by the deceased. There is no admissible evidence before the Court indicating that the deceased attempted to commit suicide. The only admissible evidence as to the incident is the reaction of the accused when confronted with the accusation that he had forced his wife to take poison, which if we were to accept as an admission on his part, would not only show that there was no suicidal attempt, but it would indicate that there was an attempt on his part to poison his wife. In view of the above we are of the opinion that the factors on which this witness based his opinion that the circumstances are suggestive of suicide do not exist and we are not prepared to give any weight to his evidence."

In dealing with the further submission of counsel for the appellant to reject or not to rely on the prosecution witnesses, Dr. Stavrinos and Professor Simpson, because the evidence does not exclude the possibility of the knife having been pushed into the body of the victim upon her falling on the floor, and is sufficient to entitle the appellant to an acquittal once the evidence is such as not to exclude beyond reasonable doubt the possibility of suicide, said:-

"It is true that Dr. Stavrinos treated certain exhibits such as the vest and the shirt, which were removed from the accused and taken to him, in a way that does not set an example for other pathologists to follow. He locked these articles in a cupboard and examined them after seventeen days when he knew or ought to have known that in order to specify the age of a blood stain he must have examined it as soon as possible and in any event not later than 48 hours. Also we are not satisfied with the explanation that he gave about the use of the word 'huge' in describing the blood stain on the shirt, both in his report, exh. 15, and in his evidence at

the Preliminary Inquiry. Further, we expected him to know more about the ribs of the human body and, more particularly so, in the present case where the knife penetrated according to his evidence between the ribs."

Then he goes on:-

"The inexperience of this witness showed most in his attempt to justify his opinion as to the interpretation of the wounds found on the body of the deceased. In so far as such opinion is concerned, we are not prepared to give much reliance to it when we come to make our findings and we intend to base ourselves on the evidence of more experienced doctors, that is, the evidence of Professors Simpson and Koutsellinis."

With the greatest respect to the trial Court, after this damning attack on this witness, the next statement does not do credit to the witness, and the further observations were intended to minimize the attack made on Dr. Stavrinos. Dealing further with Dr. Stavrinos, the President made these observations:-

"But what we have said above does not take away the credibility and reliability of this witness on other topics of his evidence and particularly as to observations and findings both internal and external upon and in the body of the deceased..... He was positive that the edge of the left lower part of the body of the sternum was broken and fractured and that tiny bone fragments were missing and were found embedded in the muscles of the vicinity. In this respect, we may say, that he was certain that what he described as 'tiny bone fragments' were actually bone though not examined under the microscope because a pathologist according to his evidence and the evidence of Dr. Simpson, can find out whether such fragments are bone and not cartilage macroscopically. Furthermore during the autopsy Dr. Stavrinos observed the fracture on the sternum and that the ribs were not fractured at all. Therefore, the suggestion of the Defence (a) that the sternum was not fractured but merely chipped off at the side or (b) that the fragments were cartilage having been removed from the point where the ribs join the sternum and not bone, cannot stand. We are of the view that the suggestion of the defence that this would be inconsistent with the tract of the wound has no merit."

In dealing with the criticism made by counsel for the defence against Professor Simpson, that he was evasive and or unconvincing he said:-

"Professor Simpson gave his evidence in a clear and concrete way and we do not think that this witness has been evasive or unconvincing as suggested by Defence Counsel; on the contrary, he was often ready to make concessions which might weaken his opinion, a fact that shows that he was ready to give an honest opinion on the matter. The Professor was cross-examined at length on the opinions he expressed; he was also cross-examined vigorously on each and every ground on which he based his opinions; 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 this connection the Professor said that he had adequate material to base his opinion; he went on to say that had he performed the autopsy he would have saved the sternum for others to see and he would also have made a separate report about the clothing. He also accepted the possibility of alternatives which were put to him, but under certain conditions. But till the very end of his evidence he felt quite sure that his opinion was correct and concluded that the wound was homicidal. We do not think that the evidence of Professor Simpson is based on wrong facts and has no value at all as suggested by the Defence."

I think it is convenient to add at this stage that counsel for the defence rightly in my view complained about the failure of the prosecution to call Dr. Simpson at the preliminary inquiry, and I agree that the defence was prejudiced because they did not know about the opinion of Dr. Simpson and that they were not aware of the kind of case they had to face until a very few days before he was called as a witness. The President of the Court, dealing with this point raised by the defence, had this to say:-

"Obviously, the Defence must have known that the evidence of Professor Simpson was intended to support the evidence of Dr. Starvinos and they knew of his evidence from the date of the Preliminary Inquiry. We do not think that the Defence was in any way prejudiced, and this transpired from the lengthy and thorough cross-examination of both Dr. Stavrinos and Dr. Simpson".

Turning now to the question of the slit, Professor Simpson expressed the opinion that these dimensions amount to correspondence between the knife and the slit on the brassiere, and as the Professor could discern stains near the slit on the brassiere which seemed to be blood, he drew the inference that the knife actually went through the brassiere. Then the President made this statement:-

"Both Professor Koutselinis and Professor Simpson agreed that even though the slit was in the middle of the brassiere and the slit of the wound was more to the left side of the sternum, this difference would be explained by the fact that the brassiere, being a garment which would easily move, so moved for one reason or another at the time of the stabbing. However, Professor Koutselinis doubted that the knife went through the brassiere at the time of the stabbing because, as he said, the slit in the brassiere was smaller than the width of the knife and it should have been at least equal to it, and secondly because there was not much blood on the brassiere which he would have expected in such a case to have been soaked in blood".

Finally, the President had this to say:-

"Having considered the above views, we hold that the length of the slit and the width of the knife being almost exactly equal, show correspondence. Bearing in mind that from the evidence it appears that there was not great bleeding in this case we do not think that the brassiere would have been soaked in blood, had the knife gone through it. We are, therefore, satisfied that this slit in the brassiere was caused by the knife when it entered the body. Bearing in mind the medical evidence of both sides, we also find that though it is usual for suicides to move or lift up clothing but which could by no means be excluded as not happening, especially in a case involving a flimsy garment not capable of offering any resistence like the brassiere in the present case, we find that this fact is of no real significance in pointing either towards homicide or suicide".

Dealing further with the question as to the force required to fracture the sternum and whether the force used could have been self-inflicted, he had this to say:-

"Having already accepted the opinion of Professor Simpson

on this point, we have no hesitation to hold that the wound could not have been self-inflicted by a suicide, and especially by a woman, as in the present case. Even though the other factors (except the injuries on the left hand and the wrist and the situation of the wound), as we have intimated above, are not each by itself conclusive of homicide, taken all collectively they point towards homicide, and without ascribing undue weight to them we consider that their effect is to strengthen our finding that this is a case of homicide which we base on the force required to cause such a wound. Another factor that tends to have the same effect is that the wound in the present case is directed slightly from down upwards, which both Professor Simpson and Professor Koutselinis accepted as something generally found in cases of homicide and not suicide; and we cannot fail to observe that Professor Koutselinis stated that this was one of the reasons why he expressed the view that in this case this is another ground indicative of suicide, obviously basing himself on the wrong assumption that the wound in the present case did not have that upward direction".

Finally, the President said:-

"We have based our conclusion as to force on our finding that the point of the knife hit the edge of the sternum. But even if we were to find that only the edge of the knife did so (and then it would have to be the blunt edge for if it were the sharp one it would not have caused a fracture but a cut) our conclusion would still have been the same; because again, for a fracture to be caused and for bone fragments to be detached and embedded in the muscles at least the same force should have been exerted. We say 'at least the same force', for in our view, it is most probable, if not certain, that even greater force and a steadier direction of the knife by the hand ought to have been applied in such a case, for otherwise the knife would have slided off the sternum into softer tissues on its way to the heart".

The appellant did not go into the witness box himself, but elected to adopt the version he has given to the police. In support of his stand that he did not kill his wife, his statement, translated into English, reads as follows:-

"In the morning at about dawn I got up and my wife was still in bed but I noticed that she was awake and she asked me where I intended to go when she saw that I had dressed myself. I explained to her that Kouzalis would come to bring me eggs and I would take delivery of them. I left the bedroom and went into the bathroom to wash my face and when I finished washing while I was returning I heard my wife screaming and I ran towards our bedroom where I saw my wife holding a knife in her hand and leaning over and falling off the bed on the floor and blood pouring from her. When I saw her like that and when I also heard our baby crying I opened the front door and I went away because I was afraid lest they would kill me as well, for having killed my wife. While I was leaving I saw my father-in-law running towards our house, I proceeded by the blocks of flats upwards and went to the mountain. I wanted to give myself up but I was scared and I remained on the mountain all day long. At night I went and stayed in Amman's factory and today in the morning when they came and opened up the factory I saw Socratis the brother of Amman and I told him that my wife stabbed herself but I was afraid to give up myself and when Amman would come he should take me to the Police".

Then the President dealt with the second statement made by the appellant orally which was to the effect that he went into the bedroom and found his wife already stabbed, and indeed, he added, he has given the impression that he had not witnessed any part of the stabbing and that that allegedly happened while he was returning from the bathroom.

The President, dealing with the second oral statement and the written statement said that one might argue that these two versions are not inconsistent and that merely in his written statement the appellant gave a more detailed account about the stabbing; but if one pays particular attenting to the actual words used by the appellant in his oral statement and to the words "I believe she committed suicide", the inescapable conclusion is that the appellant meant that when he found his wife she had been stabbed and the appellant had witnessed no part of such stabbing and assumed that his wife committed suicide because

nobody could have killed her, otherwise he would not have said "I believe she committed suicide".

It is, therefore, clear that the accused gave three inconsistent versions of what he allegedly witnessed happening that morning. With that in mind, he finally reached the conclusion that the appellant was, in fact, lying when he was putting forward his allegation that his wife committed suicide. Had he really witnessed his wife committing suicide, we would certainly have expected the accused to have given a consistent story to all those to whom he spoke.

Reverting to the written statement made to the police by the appellant, it is obvious, he added, that this version was not supported by the real evidence in the case. It is a fact, he said that Professor Simpson explained that if the deceased fell on to the floor and got on to the bed at once before the bleeding started, one might not find any blood stains where she fell. But the allegation of the appellant is that when she fell on to the floor, bleeding had already started. In fact, as the appellant added, one would have expected to find at least some quantity of blood on the floor where she fell and not only the two drops on the flip flop which in any way was at some distance from the bed. The real evidence is that no blood at all was found at the spot. It should also be noted that the appellant's allegation is that the deceased held the knife with one hand when she fell and in his judgment it would have certainly caused a rocking of the knife in the wound if the deceased fell on to the floor with the knife on her chest, and emphatically, he said, "which is not so in the present case".

Pausing here for a moment I think it is necessary to add that when I was dealing with the duties of expert witnesses in *Kouppis* v. *The Republic* (1977) 2 C.L.R. 356 I had this to say at pp. 425, 426:–

> "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.
>
> Furthermore, the Court of Session repudiated the suggestion put forward 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 *Rex* v. *Lanfear*, [1968] 1 All E.R. 683, it was held that the evidence of a doctor giving medical testimony at a criminal trial should be treated, as regards admissibility and any 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 matter is also dealt with by Phipson on Evidence, 11th edn. p. 510, para 1286, where it is stated that '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'. And in *Aitken* v. *McMeckan*, [1895] A.C. 310, P.C., it was said at pp. 315-316: 'Indeed, where the jury accept the mere untested opinion of expert in preference to direct and positive testimony as to facts, a new trial should be granted': and in Halsbury's Laws of England, 3rd edn., at p. 278, para. 507, there is this criticism, that the evidence of expert witnesses may be of a partisan character, and, therefore, to be regarded with caution. See *Perera* v. *Perera*, [1901] A.C. 354 P.C. at p. 359".

There is no doubt that this has been a very long trial indeed, and both counsel have argued extensively on almost every point raised before the Assize Court of Limassol. The President, having analysed the evidence, and having made his findings as to the medical evidence, particularly as to the force required to inflict the wound in question, and because of the three inconsistent statements and the lies told by the appellant (as he put it), and having regard to their findings as to the blood stains on the appellant's clothing, as well as his flight, had this to say:-

"...in the light of our observations, we have no hesi-

tation in holding that the combined effect of all these grounds is that the prosecution have proved beyond reasonable doubt that it was the accused who stabbed the deceased with the knife, Exh. 22 in the bedroom of their house on the fatal morning of 21.8.1978, causing her death.

We would like here to add that we consider the other evidence so overwhelming against the accused that we would have still been satisfied beyond reasonable doubt of the fact that it was the accused who killed his wife, even without the medical experts' opinion".

As I have said earlier, on the question of premeditation the three members of the Court were not in agreement. Two of them took the view that the prosecution has established premeditation but their decision was based on different grounds. On the contrary, Judge Artemis was of the view that the prosecution has failed to establish premeditation and found the accused guilty on homicide only. I consider it, therefore, pertinent to start first with the judgment of the President of the Court, who had this to say:-

"Bearing in mind the evidence in its totality, I have reached the conclusion that there is premeditation for the following reasons:-

(1) The existence of the knife at the house. Once we have accepted that the accused killed his wife with the knife, Exh. 22, and that the knife had not been amongst the domestic utensils, then the only reasonable inference to be drawn from the facts of this case, is that the knife could not have been found there unless it had been intentionally brought to the house by the accused with the sole purpose of killing his wife. We have it in evidence that the knife in question is a domestic knife and it had not been in the house of the couple. This is apparent from the evidence of P.W.41 Fanio Georghiou, the aunt of the victim, who was living near the house of the couple and used to go every day to their house and do the washing of the dishes and cutlery. As we have already intimated, this witness impressed us as a reliable witness and we accepted her evidence. I have no doubt in my mind that the accused formed the intention to kill the deceased by the time he

furnished himself with the knife the latest on the Sunday, the 20th of August, 1978, when he returned to his house and did not leave it thereafter. It appeared from the statement of the Accused that on the fatal morning he had a calm mind because the previous night he had a good night's sleep and he got up in the morning to take delivery of the eggs. The calmness of mind of the accused had not been disturbed by any intervening cause, such as, provocation on the part of the deceased or any heated argument between the deceased and the accused, so that the accused, one might say, had killed his wife on the spur of the moment, or in the heat of any passion. This again is apparent from the statement of the accused which is exh. 30 before us. Therefore, the accused from the moment he formed the intention to kill his wife which was on the night of the Sunday 20.8.1978, up to the moment he carried out his intetion and killed his wife in the early morning of the Monday, 21.8.1978, had had sufficient time to reflect and desist from carrying out his intention and nevertheless he went on to to carry out his intention and killed his wife.

(2) Motive.

The accused had a motive to get rid of the deceased; the motive being that the accused wanted to divorce his wife and his wife was not willing to give him a divorce. In addition it is obvious that the accused considered his life to have been made unbearable by the continuous nagging of his wife on the question of his having a mistress, a fact evidenced by the accused's conversation with P.W. 23 P.C. Petros Stylianou on the night of the Sunday, 20.8.1978".

Then he deals with the submission of the prosecution that the situation of the wound and the flight of the accused are factors which disclose premeditation on the part of the appellant, and having reached the conclusion that the submission had no merit, he said:-

"As regards the situation of the wound which is at a part of the body vital to life I find that this does not go beyond the fact that it is evidence of intent to kill. And even though intent to kill and premeditation may overlap evidence of intent to kill, does not necessarily amount to

evidence of premeditation. As regards the flight of the accused although it can be argued that this factor is evidence that the accused was the culprit, it certainly does not afford evidence that he committed the act with premeditation.

Finally as regards the reaction of the accused to the accusation of a previous homicidal attempt by poisoning, I would not be prepared to find that his reaction was such as to amount to an admission that the contents of the allegation were correct, and, therefore, I would not be prepared to say that this is a ground from which premeditation can be inferred. The reply of the accused might have shown sarcasm and irony.

Having in mind the above grounds 1 and 2 which I find have been proved beyond any doubt by the evidence before us, I have no hesitation in arriving at the conclusion, beyond reasonable doubt, that the accused killed the deceased with premeditation and I find him guilty as charged.

Even without motive for the reasons I have set out in ground 1, I would still have been prepared to find that the accused killed his wife with premeditation".

Judge Pitsillides who had agreed with the other members of the Court on the facts, conclusions and inferences as set out in the judgment of the Court, made the following statement:-

"I wish also to make it clear that I am in agreement with the learned President of this Court, A. Kourris, P.D.C., that premeditation has been established, but on different grounds.

As regards the knife, in my view, the facts as proved before us do not warrant the inference that the accused intentionally brought to the house the knife with which he killed his wife with the sole purpose of killing her for the following reasons:-

(a) Although we have accepted as correct the evidence of Phanio Georghiou (P.W. 4), who stated that she used to wash the dishes and cutlery of accused's house and that she had not seen the knife in question before Alecca was stabbed, it cannot be said with absolute

certainty as the only irresistible reasonable inference that the knife was not in the house or that the accused brought it. For all we know, it is equally possible that the knife may have been in the house months or even years earlier, stocked with other belongings of the couple in some place, such as in a cupboard, to which place witness Phanio had no access and she did not see it because it was not used as there was another knife used for similar services. Another possibility which may be mentioned is that the deceased may have purchased and brought it to the house for household purposes two or three days before the stabbing and witness Phanio did not see it because it was washed by the deceased or because it needed no washing before Phanio washed the cutlery. In this connection it should be mentioned that Phanio did not say that she always washed the cutlery; what she stated is that she used to wash the dishes and cutlery of the deceased and on many occasions she did so and tidied them up. Also it should be mentioned that, according to witness Phanio, after Ploussiou and his wife left she did not go frequently, meaning every few minutes, to accused's house and we have it in evidence that Ploussiou and his wife were at accused's house on Thursday the 17.8.1978.

(b) Even if there were grounds for inferring that the Accused brought this knife, it cannot thereby be inferred that his intention was to stab his wife and to exclude altogether the possibility that his intention was for the knife to be used for peaceful household purposes as a kitchen utensil or to be used at his farm or that it was not in the house but in his car to be used when going to his farm.

(c) In view of the evidence, coming from Phanio that there was in the house another kitchen knife which was bigger than the ordinary meal knives, the shape and the other characteristics of which are unknown to the Court, it cannot be concluded that the knife used for the stabbing is more suitable for this purpose than the other one so as to lead us from such conclusion to

the inference that the accused brought this knife to the house in order to stab with it his wife.

Then having expressed the view that he was not intending to go over to the authorities regarding premeditation, he enumerated the reasons in finding the appellant guilty of premeditation, and had this to say:-

"*The time which passed from the time he formed the intention to kill and reach for the knife up to the time of the stabbing.* In this respect, I repeat our finding of fact that the victim was stabbed in the bedroom where the knife is not expected to be. Of course, had it been there, the only inescapable inference would be that the accused placed it there much earlier with the intention of killing his wife; but this would be much worse for the accused regarding premeditation and I take the possibility which is more favourable to him, that is to say, that the knife was not in the bedroom of the couple and that it was in some other part of the house, most probably in the kitchen which is very near the bedroom and which is the most probable and natural place for the knife to be in. Starting from this assumption and with the settled belief that this assumption is not less favourable to the Accused then saying that the knife was in his car which was parked outside his house or in any other part of the house and not in the bedroom, I proceed to say that the accused, if he did not have a pre-conceived plan to kill his wife made before that tragic morning, at some time in that morning formed the intention to kill her. After he formed this intention, the next thought which crossed his mind was to fetch the knife. At that time I place the accused to be in the bedroom because, if he was not there and was in another part of the house, then I would infer that he executed a pre-conceived plan to kill her which would be worse for him for purposes of premeditation. From the bedroom the accused proceeded to fetch the knife from the kitchen which he fetched by coming back to the bedroom and he stabbed his victim on the region which he had selected. For this chain of events to take place, a short period of time is, of course, sufficient; but for premeditation to be established, no measure is set for the length of time needed by the 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".

Having stated that the quotation was a dictum taken from the majority judgment in *Anastassiades* v. *The Republic*, (1977) 5 J.S.C. 516–582, he continued in these terms:–

"I have considered very carefully the circumstances in that tragic morning which existed before the stabbing up to the stabbing and it is obvious from the statement of the accused and from other real evidence that the accused got up from bed having slept during the night, that the night had been calm for him without discussion with his wife, that he calmly, after getting up from bed, got dressed and washed and that there was no fight or squabble with his wife or any provocation by her. The accused did not allege that any of these took place and if there was any fight or squabble, the bedroom would not remain as tidy as it looks in photographs "Γ", "Δ" and "Ζ" of exhibit 3 and as it has been described by evidence in Court.....

Yet the thought of depriving his children of their natural mother, of the problem which would be created to his children indefinitely that their mother was stabbed by their father or even committed suicide, if his story of suicide were to be believed, the sorrow to be caused to his children for the stabbing and the death of their mother or even the violent awakening and shock from the news of the tragic event or the most probable sight by them of their mother being stabbed, bleeding to death and dying, did not avert him, and none of these considerations played sufficient rule in his mind to avert him from carrying out his intention to get rid of his wife by killing her".

The learned Judge, having referred to the knife and having stressed the fact that the appellant selected the particular place to inflict the stab wound and the great force exerted by him for the stabbing in the region of the heart, said:–

"The Accused had a motive to get rid of his wife because he was afraid of his life on account of his having a mistress.

His wife persistently refused to consent to a divorce after he repeatedly proposed this to her. The desire of the accused for divorce shows that he already had conceived in his mind further steps to take together with his mistress, which steps might avert the danger to his life which he feared. That he had in mind to replace his wife with his mistress is obvious from what the accused said to Alecca in the presence of Phanio that, if he got a divorce, he had a woman to look after the children and Alecca could go to her mother. The replacement of his wife with his mistress would obviously take the form of marriage with her after she would also get a divorce, which marriage he considered a safe value for his life; but to do so he had first to divorce his wife, and, after he became convinced that she would not consent to a divorce, it became a matter of life or death for him and he made up his mind to get rid of his wife by killing her. To the desire of the accused to get rid of his wife, it may be added that it is obvious that the accused considered his life to have been made unbearable in view of the atmosphere created in the house in that period and the continuous nagging of his wife on account of his having a mistress and spending money on her, a fact evidenced by Accused's conversation with P C Petros Stylianou (P.W 23) in the night of Sunday the 20 8.1978".

There is a further reference by the learned Judge regarding the conduct of the appellant immediately after the killing, his three different versions regarding the suicide and to his flight to the hills and having pointed out that there was no fear for his life once he left his house and was out of the reach of his wife's relatives, he added that he ought to seek refuge with the police at any police station. With those observations in mind, he said-that the appellant felt that he needed all this time to work up in his mind the details of his story of suicide which would sound believable, and he showed himself to the persons working at Amman's factory after he thought that he made up such believable story. Then the Judge, having in mind everything said, and also the conduct of the appellant, he reached the conclusion that "in all the circumstances in which this stabbing took place, despite the shortness of time from the intention to its execution, there was sufficient opportunity to desist from carry-

ing out his intention to kill his wife, which intention was formed before the stabbing and existed at the time of the stabbing as is required for premeditation to be established by evidence under section 204 of the Criminal Code, Cap. 154, as amended".

Finally, in finding the appellant guilty of premeditated murder, he said:-

> "No doubt the accused at some point of time formed in his mind the intention to kill; this point of time has not been proved to be very long before the killing; but, as stated above, such intention need not for premeditation to be established be accompanied by a long pre-conceived plan; it is sufficient that he had sufficient opportunity to desist from carrying out his intention in view of all the then existing circumstances, including the state of mind of the accused and the other consideration involved and he had not relinquished his intention".

Turning now to the third member of the Assize Court, Judge Artemis, who also found himself in full agreement with his brother Judges on the fact that it had been proved beyond reasonable doubt that it was the appellant who killed his wife for the reasons stated therein. With those observations, he also said that he was in full agreement with the law and authorities on the issue of premeditation as set out in the judgments, but he added that applying the legal principles flowing therefrom to the facts of this case, he was of the view that the prosecution have failed to establish premeditation.

Dealing with the submission of the prosecuting counsel that premeditation should be inferred in the present case, he narrated these reasons which were put forward:-

(a) the fact that the accused had a motive;

(b) the fact that the accused inflicted the wound in the region of the heart, a most vital part of the body for life;

(c) the reaction of the accused when he was confronted by P.W.41, Fanio Georghiou, with the allegation that he had given rat poison to the deceased which, it was submitted, amounted to an admission of a previous homicidal attempt on his part;

(d) the general behaviour of the accused and in particular his flight after the stabbing, and;

(e) the evidence pertaining to the presence of the knife at his house".

Dealing with the wound inflicted on the deceased, he said "It is a fact that the wound was inflicted in an area most vital to life. This, in my view, while indicating the existence of intent to kill, cannot be considered as a factor showing premeditation. Although intent to kill and premeditation may overlap in the crime of premeditated homicide, nevertheless, the presence of intent to kill does not necessarily mean that there is premeditation". (See *Georghios Aristidou* v. *The Republic*. (1967) 2 C.L.R. 43 at p. 74 per Vassiliades, P.).

Having accepted also the evidence of Phanou Georghiou as to the accusation she made against the appellant in the presence of his wife and as to his reaction, he remarked: "But though I would have expected some denial on the part of the appellant in the circumstances, nevertheless, bearing in mind his reaction to this, I would not be prepared to consider such reaction as an unqualified admission on his part of the contents of the accusation, amounting to evidence that he admitted the correctness of its contents".

Dealing further with the flight of the appellant, the learned Judge intimated that he would have expected him to have contacted the nearest police station after he was out of reach of the deceased's relatives, something he did not do. But this, in his judgment, amounts to evidence showing that the appellant was the perpetrator of the deed and not that the killing was the result of premeditation, for any killer, either with or without premeditation could have tried to evade detection and arrest. Therefore, the fact that the appellant fled in this case cannot be considered as evidence of premeditation.

There is no doubt that this is one of the few cases which came before the Court of Appeal and which, with respect, the judges found themselves in approaching the question of the murder of the deceased, with so many disagreements between them on important points. Be that as it may, the Judge dealt also with the weapon which, according to the prosecution, was used by the appellant to kill his wife, and had this to say:-

"Having accepted that the knife was not one of the domestic utensils used by the family of the accused and that it was first seen by witnesses at his house after the stabbing, I am not satisfied that the only inference that can be drawn from this is that the accused brought it to the house, let alone that he brought it with the purpose of killing his wife. The knife could have been lying somewhere, where it could not have been observed by the witnesses or could have been brought to the house a few days before by anybody, including the accused, for any purpose unconnected with the crime. Not knowing the circumstances under which the stabbing took place, I consider it very unsafe to infer that the accused in order to use it had to go from the bedroom and get it from somewhere and that this would have amounted to premeditation as it would have given the accused ample time to reflect and relinquish his decision to kill the victim, especially as I do not know what his state of mind was at the time".

Finally, the Judge said:-

"For all the above reasons and as I have no evidence as to the circumstances surrounding the crime and as to what took place between the accused and the victim on the fatal morning, I am not satisfied that the prosecution have established beyond reasonable doubt that the accused killed his wife with premeditation. In the result, in my judgment, the accused ought to be convicted only of homicide contrary to section 205 of the Criminal Code, Cap. 154".

On the conclusion of the reading of the three judgments, counsel appearing for the appellant invited the Court to hear him, and said that before the allocutus he intended to make a statement which should become part of the record and had this to say:-

"...The second point which is of much greater importance is what you said that the matter might have been otherwise as regards the prejudice of the Defence by calling Dr. Simpson at this late stage, had Dr. Stavrinos not given evidence at the Preliminary Inquiry. I must make it clear that the only opinion that Dr. Stavrinos expressed at the Preliminary Inquiry is contained in the following two lines:

'The wound found below the left nipple could not be the result of a suicide. I exclude suicide.' ".

The learned counsel went on the add that no more grounds were given at the preliminary inquiry at all as to how he arrived at that conclusion. "I am saying this", counsel added, "and I want it to be part of the record, because I was a little bit dubious whether to raise it in my address as it was not clear whether this part of the evidence of Dr. Stavrinos was at the time part of the evidence in this case".

Finally, learned counsel concluded as follows:-

"Since, however, by your judgment you have introduced it as part of the evidence in the case I would like this to be in the record".

Having quoted passages from the three judgments, I think it is necessary to deal once again with the expert witnesses. In view of the fact that the trial Court has made an attack on Dr. Stavrinos, who I repeat was considered as being the main witness, and having regard to the totality of the evidence and the disagreements between the experts, I have reached the conclusion that it is not safe to rely on the views expressed by the experts, and I shall now proceed to deal with the rest of the positive evidence. It is only fair to add before doing so that the trial Court was fully aware that the Judge or jury are not bound to adopt the views of the experts even if they should be uncontradicted, once the parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by experts. In support of this statement, the trial Court, indeed went as far as to state under the heading "conclusion" at p. 759, this part of their conclusion.

"We would like here to add that we consider the other evidence so overwhelming against the accused that we would have still been satisfied beyond reasonable doubt of the fact that it was the accused who killed his wife, *even without the medical experts opinion*".

With respect, I find myself in this predicament, that for the second time I have to make observations that the trial Court, until the end was not sure about the strength or the quality of the medical evidence which was before it.

For the reasons I have given at length, I have no alternative but to reject the medical evidence as not being a safe guide for me in these circumstances.

The next question is whether this Court is entitled, having regard to the particular circumstances of this case, to interfere with the judgment of the trial Court and order a re-trial. This question has been dealt with by the House of Lords, and in *Au Pui Kuen* v. *Attorney-General of Hong Kong*, [1979] 1 All E.R. 769, H.L., Lord Diplock had this to say at pp. 771-772:-

> "The power to order a retrial when a conviction is quashed owes its origin not to the common law of England but to the Indian Code of Criminal Procedure more than a 100 years ago. A similar power, not always conferred by identical words, has subsequently been incorporated in the criminal procedure codes of many other Commonwealth jurisdiction. In some, as was the case in Hong Kong before 1972, the power to order a new trial is unqualified by any explicit reference to the requirements of justice; in some 'shall order' is substituted for 'may order', which appears in the Hong Kong Ordinance. In their Lordships' view these minor verbal differences are of no significance. The power to order a new trial must always be exercised judicially. Any criminal trial is to some degree an ordeal for the accused; it goes without saying that no judge exercising his discretion judicially would require a person who has undergone this ordeal once to endure it for a second time unless the interests of justice required it. So the amendment to the Hong Kong Criminal Procedure Ordinance which inserted the express reference to the interests of justice did no more than state what had always been implicit in the judicial character of the unqualified power to order a new trial conferred by the Indian Criminal Procedure Code and the pre-amendment terms of the Hong Kong Criminal Procedure Ordinance. The pre-amendment terms of the Hong Kong Ordinance were, in their Lordships' view rightly construed in *Ng Yuk Kin* v. *R.* (1955) 39 Hong Kong LR 49, as authorizing the ordering of a new trial only in cases where the interests of justice so required.
>
> The discretion whether or not to exercise the power to

order a new trial in any particular case is confided to the Court of Appeal of Hong Kong and not to their Lordships' Board".

In Cyprus, the powers of the Supreme Court to interfere with the judgment of the trial Court are embodied mainly in the provisions of s.145 of the Criminal Procedure Law, Cap. 155. These powers are now read and applied in conjunction with s.25(3) of the Courts of Justice Law, 1960, 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. Section 145(1)(b) says:-

"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 a question of law or on the ground that there was a substantial miscarriage of justice".

There is no doubt that the powers vested now in the Supreme Court by the Criminal Procedure Law, to interfere with a judgment of the trial Court are now increased by virtue of the provisions I have quoted, though it is true that the Court does not always intervene. Furthermore, it is interesting to state that in England by virtue of the provisions of s.2(1)(a) of the English Criminal Appeal Act. 1966, additional powers are vested in the English Court of Appeal to interfere with judgments of the trial Courts in circumstances where it is of the opinion that the verdict is unsafe or unsatisfactory. It is indeed, in my view, that those powers of the Appeal Court in England are not dissimilar to those vested in our own Supreme Court by virtue of the provisions of s.25(3). In *Rex* v. *Cooper* [1969] 1 All E.R. 32, the test was said to be "whether there is a lurking doubt in the Court's mind which makes it wonder where an injustice has been done; it is a reaction which may not be based strictly on the evidence as such but can be produced by the general feel of the case as the Court specifies it". This test was applied and followed by me in *Koutras* v. *The Republic* (1976) 2 C.L.R. 30, at pp. 43-46. See also *Fournaris* v. *The Republic*, (1978) 2 C.L.R. 20 at p. 23; and *Ktimatias* v. *The Republic*, (1978) 2 C.L.R. 82 at pp. 96, 97.

Having gone very carefull and anxiously into the fact and circumstances of the present case, and fully aware of the difficult task of the trial Court in trying a very long case indeed, it seems to me that if a new trial is to be ordered, it is often the case that in the interest of justice, at the fresh trial, the less said by the Court of Appeal the better.

I am aware, of course, that under the adversary system of criminal procedure which is followed in common law jurisdictions, it would be contrary to the interests of justice to allow a new trial so as to give the prosecution a second chance to get its tackle in order, by adducing additional evidence, but in the light of the facts and circumstances of this case, and once I have a lurking doubt, I have no alternative but to annul the verdict as being unsafe or unsatisfactory and to order a new trial. I am further aware that in the United States of America where new trials in criminal cases are a common place, a similar principle has recently been held by the Supreme Court of the United States to be applicable in both Federal and State Courts: See *Burks* v. *the United States*, (1978) 90 S. Ct. 2141, and *Greene* v. *Massey*, 98 S. Ct. 2151. See also *Au Pui Kuen* v. *the Attorney -General of Hong Kong* (supra) at p. 773.

Having reached the conclusion that the verdict is unsafe or unsatisfactory, I would add also that there is a further reason which is incumbent upon me to intervene with the verdict of the trial Court, being an inconsistent verdict. In Cyprus, as it has been said in a number of cases, the Court combines the functions of a Judge and jury. In *Michael Lazarou Savva* v. *The Police*, 18 C.L.R. 192, Jackson, C.J. had this to say at pp. 193—194:

> "The clear reason for the new provision is that everyone concerned in a possible appeal against a conviction, namely, the defendant and the Court of appeal, and now, under the new Law, the Crown itself, should know the grounds upon which the trial Court rested its decision.
>
> In our view, the only question for us is whether or not we should return this case to the trial Court under section 143 for a statement of the reasons upon which the Court came to its conclusion. But here again it seems to us that the question whether or not we should do so must depend

on the circumstances of the particular case, for we are unwilling to make any statement in this Court which might seem to lay down that in every case of failure to comply with section 110 of the new Law the case must be referred back in order to secure compliance with it. Compliance with that section can be secured by other means, and these means we propose to take".

In *Andreas Antoniou and* 2 *Others* v. *The Republic*, 1964 C.L.R. 116, Triantafyllides, J. had this to say, delivering his separate judgment, at p. 129:-

"Now the fundamental difference between the general verdict of a lay-jury after the judge's summing up, under the English system, on one hand, and the verdict of a trial Court in Cyprus, reached as a result of the reasoning contained in the judgment as required by section 113(1) of our Criminal Procedure Law (Cap. 155) on the other, needs no elaboration here. The position was discussed in *Stelios Simadhiakos* v. *The Police* (supra)[1] one of the first cases decided on appeal, after the enactment of the Courts of Justice Law of the new Republic, (No. 14 of 1960) with its unequivocal provisions in section 25 regarding appeals, The object and effect of sub-section (3), so wide in its terms. have been fully considered in that case; and its provisions have been interpreted and applied in numerous cases, both civil and criminal ever since".

In *Andreas Georghiou Katsaronas and Others* v. *The Police*, (1973) 2 C.L.R. 17, Triantafyllides, J., dealing with the requirements under s.113(1) of the Criminal Procedure Law, Cap. 155, and Article 32 of the Constitution, said at pp. 35-36:-

"During the hearing before us the question was raised as to whether the contents of the judgment of the trial Judge are such as to satisfy duly the requirement under Article 30.2 of the Constitution, that a 'judgment shall be reasoned', as well as the requirement under section 113(1) of the Criminal Procedure Law, Cap. 155, that every judgment in a criminal case where an appeal lies shall 'contain the point

1. 1961 C.L.R. 64.

or points for determination, the decision thereon and the reasons for the decision' ".

Then, after referring to a number of cases, he had this to say at pp. 36–37:–

"In *Ioannidou* v. *Dideos* (1969) 1 C.L.R. 235, reference was made to the aforementioned cases of *Sava, Constanti, Frixou and Panayi*, as well as, in addition to Article 30.2 of the Constitution, to Article 35 of the Constitution, which lays down, inter alia, that the judicial authorities of the Republic 'shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions' of Part II of the Constitution, in which Article 30.2 is to be found. In the *Ioannidou* case it was held on appeal that the judgment of the trial Court was not 'reasoned', in the sense of Article 30.2, because, as pronounced, it did not amount to a sufficient judicial determination of the dispute between the parties, and, consequently, a new trial was ordered.

In the present case, the trial Court has given its reasons, for finding the appellants guilty from the factual point of view, in a very summary manner and, therefore, it is with some difficulty that we have, eventually, come to the conclusion that its judgment has to be treated as complying with the requirements of Article 30.2 and section 113(1) of Cap. 155 to an extent just sufficient to enable us to say that it should not be set aside as a whole for lack of reasoning; we shall, however, have more to say on this subject when dealing with the conviction of one particular Appellant".

Finally, dealing with appellant 12, he said at p. 43:–

"The trial Judge disposed of his case by stating, generally, that he believed the evidence for the prosecution and disbelieved the evidence of the Appellant. The Judge did not give any reasons at all for his decision and he did not refer at all to the alibi of the Appellant and to the evidence called in support of it. In the circumstances, we find that, in this connection, there exists such a serious lack of reasoning in the judgment of the trial Court that we are bound to set aside, for this reason, the conviction of

the Appellant. We have considered the possibility of ordering a new trial but, bearing in mind that the Appellant has already served one out of the two months of his prison sentence, we think that it would be contrary to the interests of justice, in this particular instance, to order a new trial and, therefore, we discharge the Appellant".

The next question is whether there is a majority verdict of the Assize Court on the charge of premeditated murder. As I have said earlier, I have quoted the two majority judgments and I must confess when reading the separate judgments of the President and Judge Pitsillides one can easily with respect reach the conclusion that there is no majority verdict because in some ways one finds that each Judge approached the facts which were leading to show whether there was premeditation, but each Judge has arrived at that result by giving different reasons and/or by evaluating facts with a different approach.

Having said so, and having listened very carefully to the long and able argument of counsel for the appellant, I have reached the conclusion that in this particular case there was no majority verdict for these reasons also:-

(1) Because the two judges were in disagreement between themselves as to the grounds on which they based their reasoning in order to arrive at their conclusions;

(2) the two Judges have arrived at their verdict by self-conflicting reasoning as to their findings regarding pre-meditation and regarding the knife by which it was alleged that the appellant killed his wife;

(3) that their reasoning in their separate judgments is tainted due to the fact that their verdicts are inconsistent or contradictory to each other; and

(4) that the two judgments as a result are in effect contrary to s.113 of the Criminal Procedure Law, Cap. 155, and Article 30.2.

With this in mind, and because the two judgments, I repeat are found to be so inconsistent as to call for interference by an appellate Court, and fully aware that the burden remains on the defence, I think by way of analogy that it is necessary to turn to English authorities in similar circumstances, and particularly

where the words of a verdict are not clear or confused or inconsistent and as a result are unsafe and unsatisfactory.

In *Ian Drury*, [1972] Criminal Appeal Reports, Vol. 56. 104, Edmund Davies L.J., dealing with the inconsistency of a verdict said at p. 105:-

> "This is a most puzzling case. It gives rise once more to the question of how the inconsistent verdicts of juries are to be regarded in this Court. We reject as too bold the proposition that the simple fact that a jury has returned inconsistent verdicts, acquitting on some count or counts and convicting on others, means that in every such case this Court is obliged ex necessitate to quash the convictions. There are cases which, in our view, can arise when it would be proper for this Court to say that, notwithstanding the inconsistency, the conviction or convictions must stand. It all depends upon the facts of the case. Those of the present case are indeed puzzling, and we are totally at a loss to understand how the jury could have arrived at what we must be permitted to describe as their wholly incomprehensible verdicts".

Later on, having referred to the particular facts of this case, and having in mind that Mr. Hitchen for the Crown has sought to justify or explain away the apparent inconsistencies by submitting that there were matters bearing upon the second and third counts which justify the convictions thereon, had this to say at pp. 113-114:-

> "We are unable to accede to that submission, and for these reasons. The act which constituted, as the Crown opened, the act of theft which was the subject-matter of count No. 1, was the appropriation by the appellant of the oranges by, in the words of section 3(1), an assemption of the rights of an owner. That act of selling to Sisson and to McNay was also the act which (as the Crown claimed) constituted obtaining moneys from them by deception. Dishonesty was an ingredient common to all these offences. If the explanation of the acquittal on the theft count was that the jury were not satisfied that the appellant was not told by Craven what he alleged, or were not satisfied that (if he was told by Craven what he alleged) he nevertheless

knew perfectly well that Craven was talking a lot of nonsense, the same must hold good for the obtaining offences, which were the subject-matter of the second and third counts.

This is one of those cases where the verdicts of the jury on different counts, depending as they do upon the same basic ingredients, are so violently at odds that we see no alternative but to hold that the convictions on the second and third counts, notwithstanding the cogency of the evidence to which we have referred, must in the light of the acquittal on the first count be regarded as unsafe and unsatisfactory. For those reasons, we allow this appeal and quash the convictions on counts 2 and 3".

In *R.* v. *Segall*, reported in the Criminal Law Review, 1976, at p. 324, when the case was concluded regarding inconsistent verdicts, at the end of p. 324, there is this commentary:-

"The Court has frequently quashed convictions on the ground of inconsistent verdicts. In *Drury* the convictions were quashed because the verdicts were 'so violently at odds' that the Court felt that the convictions must be regarded as unsafe and unsatisfactory, notwithstanding the existence of cogent evidence of guilt. In the present case the Court was prepared to form a view as to the reasons for the jury's inconsistency whereas it often declares itself unwilling to 'speculate' as to the reasons for verdicts".

As I said earlier, once I have decided to order a new trial, in my view, in the interest of justice, at the fresh trial, the less said by me the better. But I think that I ought not to conclude this judgment without saying how much I owe to all counsel appearing in this appeal in the preparation of it. I would, therefore, allow this appeal and quash the conviction of premeditated murder once the conviction was unsafe and unsatisfactory.

For the reasons I have given at length, I would finally order a new trial.

TRIANTAFYLLIDES P.: The appeal is allowed by majority and the conviction of the appellant for premeditated murder is

set aside; in the exercise, however, of the powers of this Court under section 145(1)(c) of the Criminal Procedure Law, Cap. 155, the appellant is found, by majority, guilty of homicide, under section 205 of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1962 (Law 3/62).

Mr. Cacoyiannis is heard in mitigation of sentence.

Mr. Frangos states that he does not wish to say anything in relation to sentence.

TRIANTAFYLLIDES P.: This is a homicide of a most serious nature. We, unanimously, impose on the appellant a sentence of fourteen years' imprisonment as from the date of his conviction by the trial Court.

Appeal allowed by majority.