1985 April 29

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

IN THE MATTER OF ABDULLAH RASHID,

Appellant-Applicant,

AND

IN THE MATTER OF AN APPLICATION FOR THE ISSUE OF A WRIT OF HABEAS CORPUS,

Respondents.

(Civil Appeal No. 6823).

Evidence—Opinion evidence—Not admissible, excepting matters that are common knowledge, unless the witness is an expert—Classification of a substance as a dangerous or controlled drug not a matter of common knowledge— It can only be established by the adduction of scientific evidence.

Fugitive Offenders Law, 1970 (Law 97/70)—Does not relax the rules of evidence—Extradition on charges involving exportation of narcotic drugs—Based on evidence from accomplices on the identification of the drugs—Accomplices not experts in such identification—Their evidence not admissible.

Conspiracy—Preliminary acts—Cannot be extricated or dissected from the end result and cannot find charges of conspiracy where what they aimed at is proved not to constitute a crime.

The District Court of Larnaca ordered the extradition of the appellant, a Syrian citizen, to the Federal Republic of Germany, to face charges involving the exportation of narcotic drugs from Syria to Germany with a view to distribution and use in that country. The proceedings were initiated at the request of the Federal Republic of Germany, sanctioned by the Minister of Justice and conducted under the provisions of the Fugitive Offenders

Law, 1970 (Law 97/70). The trial Judge dismissed his application for an order of habeas corpus and hence this appeal in which the sole issue for consideration was whether the evidence of the accomplices, who claimed no expertise in the identification of narcotic drugs and their properties, was admissible and, if so, sufficient to classify the articles as controlled drugs, the importation of which is prohibited.

The accomplices described the articles as "hashish"—a description nowhere encountered in the Table classifying controlled drugs for the purposes of the Narcotic Drugs Law, 1977 (Law 29/77)—*in particular*, section 3 and the tables appended thereto.

Held, that the Fugitive Offenders Law does not, expressly or by necessary implication, relax the rules of evidence, except to the extent specifically envisaged therein, namely, dispensing with the personal attendance of witnesses; that excepting matters that are common knowledge the opinion of a witness cannot be received unless he is an expert in the particular branch of knowledge; that the classification of a substance as a dangerous or controlled drug and its properties is not a matter of common knowledge and it can only be established by the adduction of scientific evidence; that nowhere in the statement of the accomplices does it appear that they proferred their evidence as experts in the identification of the nature of narcotic drugs or their properties; that in fact, there is nothing to suggest they were qualified as experts or that their evidence was adduced as the opinion of someone with authority to speak on that matter; that nor is the description they applied to the substances allegedly exported to Germany "hashish" encountered as such in the enumeration of controlled drugs in the tables to the Narcotic Drugs Law; and that, therefore, their evidence on the nature of the substances exported was inadmissible; and that accordingly the appeal must be allowed.

Held, further, that preliminary acts cannot be extricated or dissected from the end result and cannot find charges

of conspiracy where what they aimed at is proved not to constitute a crime.

Appeal allowed.

Cases referred to:

Pentoville Prison, Ex parte Kirby [1979] 2 All E.R. 1094 (D.C.);

Constantinides (Akinita) Ltd. v. *Mavrogenis* (1983) 1 C.L.R. 662;

R. v. *Childwood* [1978] 1 All E.R. 649 at p. 653;

R. v. *Goodchild* [1977] 2 All E.R. 163;

R. v. *Mitchell* [1977] 2 All E.R. 168;

R. v. *Chatwood* [1980] 1 All E.R. 467;

Bird v. *Adams* [1972] Crim. L.R. 174;

D.P.P. v. *Knock* [1978] 2 All E.R. 654.

Appeal.

Appeal by applicant against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) dated 27th October, 1984 (Civil Appl. No. 39/84)* whereby his application for an order of habeas corpus following his committal to custody awaiting extradition was dismissed.

E. Vrahimi (Mrs.), for the appellant.

E. Loizidou (Mrs.), for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS J.: The District Court of Larnaca ordered the extradition of the appellant, a Syrian citizen, to the Federal Republic of Germany, to face charges involving the exportation of narcotic drugs to Germany with a view to distribution and use in that country. The proceedings were ini-

* Reported in (1984) 1 C.L.R. 536.

tiated at the request of the Federal Republic of Germany, sanctioned by the Minister of Justice and conducted under the provisions of the Fugitive Offenders Law 1970[1]. The request related to several illicit ventures committed over a number of years, involving the export of narcotic drugs from Syria to Germany and other European countries, but always destined for Germany. The order of extradition was confined to offences committed after 1983, as offences allegedly committed prior to that year, were found to be prescribed and, as such, not a valid basis for extradition. In the description of the offences reference is made, apart from the substantive crimes, to acts that preceded it, particularly agreement to perpetrate the offences allegedly committed.

The offences in respect of which extradition was ordered, are not identified, except in general terms. However, it seems to us they are accurately described in the judgment of the trial Court that took cognizance of an application for the issue of an order of habeas corpus, namely, "charges connected with the unlawful import and distribution of cannabis and cannabis resin in that State", meaning the Federal Republic of Germany. In the proceedings for habeas corpus the applicant challenged his extradition as unwarranted in the light of the evidence before the Court and principles of Law governing extradition. In particular, the order of extradition was mainly questioned as ill-founded for two reasons:-

(a) The nature of the evidence upon which the charges were founded, consisting of the testimony of three German self-confessed accomplices and,

(b) lack of evidence as to the ingredients of the offences, notably, the nature of the articles or substance exported. Evidence in this as well as every other area stemmed from the accomplices and was confined to the description of the substance traded as "hashish".

The learned trial Judge rightly held that a Court concerned with an application for extradition, is not charged to weigh the effect of the evidence, its task being con-

[1] Law 97/70.

fined to ascertaining its sufficiency. Evidence should be deemed as sufficient to warrant extradition if it would have been adequate to warrant the committal of the accused for trial had the crime been committed in Cyprus. The relevant test for the adequacy of evidence to justify committal for trial, is laid down in s. 94 of the Criminal Procedure Law[1]. The approach of the trial Judge to the subject is consonant with Cyprus and English authority and cannot be faulted. No criticism was voiced of it either. The only aspect of the judgment of the Supreme Court dismissing the application for an order of habeas corpus challenged on appeal as erroneous, is that part concerning the admissibility of the evidence of the accomplices as to the nature of the substance allegedly exported to Germany and, its implications in Law. Notwithstanding the submission as to the need for expert testimony to establish the nature of the substance, the learned trial Judge held the evidence of the accomplices was admissible and properly laid the foundations of the charges. Counsel for the appellant argued this is a misdirection that renders the judgment liable to be set aside. For, if the evidence of the accomplices is inadmissible in this regard, there is no evidence whatever to indicate the nature of the substance or articles exported to Germany. We had to stop an attempt by counsel to challenge aspects of the judgment of the District Court of Larnaca that were not questioned in the proceedings for habeas corpus, reminding her that an appeal from the dismissal of an application for habeas corpus must be confined to the review of the judgment of the trial Court. It is not an appellate process for the review of the judgment of the Court ordering extradition.

In the end, there is only one question to be answered, whether the evidence of the accomplices, claiming no expertise in the identification of narcotic drugs and their properties, was admissible and, if so, sufficient to classify the articles as controlled drugs, the importation of which is prohibited. They merely described it as "hashish"—a description nowhere encountered in the Table classifying controlled drugs for the purposes of the Narcotic Drugs Law[1] —in particular, s. 3 and tables appended thereto. The

[1] Cap. 155.
[1] Law 29/77.

foremost question, we repeat, is whether the evidence of the accomplices on the nature of the substance allegedly exported was admissible. The Fugitive Offenders Law does not expressly or by necessary implication, relax the rules of evidence, except to the extent specifically envisaged therein, namely, dispensing with the personal attendance of witnesses. The point was emphatically made in *R.* v. *Governor of Pentonville Prison, ex parte Kirby*[1], deciding the enabling provisions of the corresponding English legislation [2] solely designed to dispense with personal attendance of witnessses but in no way intended to relax or reduce the effect of rules of evidence as to the admissibility of witnesses' testimony. If the testimony of the accomplices on the nature of the substance was inadmissible, no other evidence was forthcoming to bridge the gap and fill the lacuna in the case for extradition. Without such evidence, no extradition could be ordered for there was nothing to show that what was allegedly exported to Germany, was a controlled drug prohibited by German and Cyprus Law.

Subject to well defined exceptions that need not concern us here, opinion evidence is inadmissible unless it comes from an expert in that field of knowledge. The rule is equally applicable to criminal as well as civil proceedings.[3] An expert is one qualified, on account of knowledge and experience, to express an opinion on a given subject. The dividing line between fact and opinion is not always easy to draw. For many factual statements contain, as a matter of logical analysis, matters of opinion. The principle appears to be that excepting matters that are common knowledge the opinion of a witness cannot be received unless he is an expert in the particular branch of knowledge. The classification of a substance as a dangerous or controlled drug and its properties is not a matter of common knowledge. It can only be established by the adduction of scientific evidence. If any support is needed for this proposition the observations of Widgery, C.J., in *R.* v. *Childwood* (No. 2)[4], amply reinforces the above assessment of the relevant rules of evidence: "I would like to say, lest I gave

[1] [1979] 2 All E R 1094 (D.C.).
[2] See, Fugitive Offenders Act 1967.
[3] Constantinides (Akinita) Ltd. v. Mavrogenis (1983) 1 C L.R. 662.
[4] [1978] 1 All E R. 649, 653, letters d-e

any different impression yesterday, that there can be no question that in this type of case the Court does require expert evidence to understand the structure of the plant, the nature of the plant, and indeed to understand the language which is peculiar to the expertise of the particular expert subject". It is significant to note the learned Judge referred not only to the ingredients of narcotic drugs but to their description as well for as may be gathered from the tables to the Narcotic Drugs Law, controlled drugs are referred to by their scientific names.

A number of English decisions shed light on the nature of scientific evidence necessary to establish that a particular substance comes within the definition of cannabis furnished by s. 37(1) of the Misuse of Drugs Act 1971. (See, inter alia, *R.* v. *Goodchild* [1977] 2 All E.R. 163; *R.* v. *Mitchell* [1977] 2 All E.R. 168). Nowhere in the statements of the accomplices does it appear that they proffered their evidence as experts in the identification of the nature of narcotic drugs or their properties. In fact, there is nothing to suggest they were qualified as experts or that their evidence was adduced as the opinion of someone with authority to speak on that matter. Nor is the description they applied to the substances allegedly exported to Germany "hashish" encountered as such in the enumeration of controlled drugs in the tables to the Narcotic Drugs Law. In the light of this appreciation of their evidence we cannot but conclude that their evidence on the nature of the substances exported was inadmissible.

Counsel for the respondents tried to persuade us on the authority of *R.* v. *Chatwood*(1) that the involvement of the accomplices in the illicit ventures was of itself suggestive of possession on their part of knowledege of narcotic substances to an extent obviating the need for the protection of expert testimony. We are unable to agree that the above case bears out the submission of counsel. All it establishes is that admission of possession of a particular prohibited substance by an experienced drug user provides prima facie evidence of the nature of the substance. To that extent an accused's incriminating statement may provide evidence against him. The case turned, as its prede-

(1) [1980] 1 All E.R. 467.

cessor *Bird* v. *Adams*[1], on the sufficiency of the knowledge of the circumstances of an accused's conduct to make his admission at least prima facie evidence of the truth of matters set out therein. Neither of the above cases or any other case so far as we are aware, purports to relax the rule that only an expert witness can opine on the nature and properties of a narcotic drug. The cases of *Shatwood* and *Bird* are wholly distinguishable from the case in hand and in no way reduce the burden cast on those seeking extradition to establish by evidence, to the extent earlier indicated, the commission of the offences.

At the end of the day counsel for the respondents pressed before us one other point in support of extradition, that is, that the charges involve a case of conspiracy as well that is not affected by the same evidential gap. In the first place, as we noted at the outset of the judgment, the charges, as they ultimately emerged, turned on the export of prohibited drugs; acts preliminary thereto were interwoven with the substantive charges preparatory to their commission. We may remind that as the House of Lords decided in *D.P.P.* v. *Knock*[2], in a situation like this, preliminary acts cannot be extricated or dissected from the end result and cannot find charges of conspiracy where what they aimed at is proved not to constitute a crime.

We do not hide our apprehension at the outcome of the appeal and the release of the appellant on what may appear to be techinical grounds. On the other hand, we are comforted by the fact that we are doing no less than our duty in a matter of liberty. The standard of proof cannot be relaxed no matter what the magnitude of the alleged offences may be.

In the result the appeal is allowed. We direct that the appellant be set free.

Appeal allowed.

[1] [1972] Crim. L.R. 174.
[2] [1978] 2 All E.R. 654.