1985 March 5

[A. LOIZOU, DEMETRIADES AND LORIS, JJ.]

ANDREAS POLIDOROU GEORGHIADES,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4592).

Criminal Procedure—Trial in Criminal Cases—Prima facie case —Principles applicable.

Judgments—Summing up—Court of Appeal should not look at judgments of Criminal Courts minutely or microscopically but should read the judgment as a whole.

Criminal Procedure—Evidence—Evaluation of—Within the province of the trial Judge—Who is entitled to accept part only of the evidence of a witness and reject another.

Criminal Law—Assault causing actual bodily harm—Section 243 of the Criminal Code—"Superficial scratch on the face plus a redness"—Whether sufficient to justify a conviction for the above offence.

This was an appeal against the conviction of the appellant of the offence of assault causing actual bodily harm, contrary to section 243 of the Criminal Code, Cap. 154.

The trial Judge after hearing the evidence called by the prosecution overruled a submission of "no case to answer" by the defence and called upon the accused to make his defence. The accused chose to give evidence on oath and called one witness; and the trial Judge after evaluating the evidence adduced was satisfied that the prosecution had proved its case beyond reasonable doubt and found the accused guilty on the above count.

Counsel for the appellant mainly contended:

(a) That the trial Judge erred in overruling the submision of the defence and calling upon the accused to defend himself.

(b) That the findings of fact were not warranted by the evidence adduced and the inferences drawn by the trial Judge were not open to him.

(c) That the medical evidence was not consonant with the findings of the trial Court as regards the nature and extent of the blow received by the complainant.

Regarding contention (b) above counsel included a general complaint as to misdirection in respect of the burden of proof.

Held, (1) that the trial Judge did not uphold the submission of the defence of "no prima facie case to answer" as he did not find that the evidence adduced by the prosecution was so discredited as not to necessitate the calling upon of the accused to defend himself; that, on the contrary, inspite of minor discrepancies between the evidence of the complainant and that of prosecution witness Xanthou, the version of the appellant, as it transpired at that stage from cross-examination and his answer to the formal charge, was to the effect that he might have touched the face of the complainant accidentally; that in the circumstances the trial Judge ought to have been eager to hear appellant's explanation as to how the alleged accidental touch causing injury, was made; and that, therefore, the appellant was rightly called upon to make his defence (see exposition of the Law in *Azinas* v. *Republic* (1981) 2 C.L.R. 9 at pp. 51-57 and observations in *R.* v. *Mustafa Kara Mehmet,* 16 C.L.R. 46).

(2) That the Court of Appeal should not look at judgments of Criminal Courts minutely or microscopically or pick a quarrel with a single word, but should read the judgment as a whole to see the effect of it; that the trial Judge in his elaborate judgment covered every aspect of the case that was necessary in order to arrive at his findings and gave his reasons of so doing; that the fact that on occasions he was thinking aloud in his effort to arrive at the truth does not render his judgment vulnerable;

that, on the contrary, his judgment read as a whole clearly indicates that he was fully aware that the burden of proof was throughout on the prosecution to prove its case beyond reasonable doubt.

(3) That, regarding the credibility of witnesses, the task of evaluating the evidence is within the province of the trial Judge who had the opportunity of hearing and watching the demeanour of the witnesses in the witness box; that the trial Judge in this case evaluated the evidence before him and stated in clear and unambiguous words what did he accept and what did he reject; that in this respect we must say that the trial Judge was perfectly entitled to accept part only of the evidence of a witness and reject another; that on the evidence on record it was open to the trial Judge to reach the findings he did.

(4) That, in connection with the submission that the medical evidence was not consonant with the findings of the trial Judge, there is nothing in such evidence inconsistent with the evidence of the prosecution as accepted by the trial Judge.

Held, further, that the short reference by the trial Judge to the injuries, described by the medical evidence as "a superficial scratch on the face plus a redness" and his statement that such injuries may be characterised, albeit technically, as "actual bodily harm" however laconic, indicates that the trial Judge took into consideration and gave due regard to the medical evidence in order to characterize it as sufficient to justify a conviction for assault causing actual bodily harm, even technically as he put it, but nevertheless within the ambit of section 243 of the Criminal Code, Cap. 154.

Appeal dismissed.

Cases referred to:

Azinas v. *Republic* (1981) 2 C.L.R. 9 at pp. 51-57;

R. v. *Kara Mehmet*, 16 C.L.R. 46;

Charitonos v. *Republic* (1971) 2 C.L.R. 40.

Appeal against conviction.

Appeal against conviction by Andreas Polidorou Geor-

ghiades who was convicted on the 10th November, 1984 at the District Court of Larnaca (Criminal Case No. 7493/84) on one count of the offence of assault causing actual bodily harm contrary to section 243 of the Criminal Code, Cap. 154 and was sentenced by G. Nicolaou, D. J. to pay £100.- fine.

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

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

A. Loizou J.: The judgment of the Court will be delivered by Mr. Justice Loris.

Loris J.: The present appeal is directed against the conviction of the appellant by a Judge of the District Court of Larnaca (G. Nicolaou D. J.) on count one in Criminal Case No. 7483/84, for assaulting and causing actual bodily harm on 6.5.84 at Larnaca to a certain Nicos Taramides contrary to the provisions of s. 243 of our Criminal Code Cap. 154.

A second count in the aforesaid criminal case referring to conduct of the appellant likely to cause a breach of the peace contrary to the provisions of s. 188(d) of the Criminal Code Cap. 154 was dismissed by the trial Court and the appellant was acquitted and discharged accordingly.

The salient facts of the present case are very briefly as follows:

In the morning of 6.5.84 at Larnaca Airport, Nicos Taramides, Assistant Director of the office of Amathus Co., Ltd. at the airport, the complainant in this case, was behind the checking counter, arranging matters in connection with the departure of passengers with the aeroplane which was about to leave for Athens.

The appellant, who was unknown to the complainant at the time, approached him at the counter and asked him to arrange that an acquaintance of his, namely Charalambos Erotokritou (D. W.1), who was holding an air-ticket for Athens booked for next day, be given a seat on the plane which was about to leave.

The complainant politely stated that he would see to the matter and if there was a vacant seat on that flight, on account of a passenger not turning up, he would arrange that the appellant's acquaintance would be given that seat.

Some time later and when all passengers came, the complainant realised that there was no vacant seat for that flight and informed the appellant accordingly. Upon that, it was the version of the complainant, that the appellant all of a sudden attacked him on the face and injured him. The version of the appellant however was to the effect that he never assaulted the complainant. He maintained that when he was informed that his acquaintance could not fly with that flight, he exclaimed "injustice" or words to the like effect, accompanying his said exclamation by an upward movement of his hands as a result of which the outer part of his hand might have touched slightly the face of the complainant, but such touch was quite unintentional.

During the trial in the Court below four prosecution witnesses were called: (a) The complainant namely Nicos Taramides (b) A Police constable namely Xanthos Xanthou who had allegedly witnessed the incident, (c) Dr. Maria Kontou a Government Pathologist who examined the complainant at noon of the same day at Larnaca Hospital and (d) another Police Constable who had formally charged the appellant.

The trial Judge after hearing the evidence called by the prosecution overruled a submission of "no case to answer" by the defence and called upon the accused to make his defence. The accused chose to give evidence on oath and called one witness namely Charalambos Erotokritou, the acquaintance he had been trying to assist at the airport on that day.

The trial Judge after evaluating the evidence adduced, was satisfied that the prosecution had proved its case beyond reasonable doubt and found the accused guilty on count one.

The appellant has attacked his conviction relying on six grounds appearing on the notice of appeal; these grounds, in the light of the able submission of learned counsel appearing for the appellant, may be conveniently grouped under three heads:

1. The trial Judge erred in overruling the submission of the defence and calling upon the accused to defend himself.

2. The findings of fact are not warranted by the evidence adduced and the inferences drawn by the trial Judge were not open to him. Under this head, a general complaint as to misdirection in respect of the burden of proof may be included.

3. A particular complaint to the effect that the medical evidence is not consonant with the findings of the trial Court as regards the nature and extent of the blow received by the complainant.

In connection with the complaints under group 1 above, the principles governing the position when a person is being called upon to make his defence pursuant to the provisions of s. 74(c) of the Criminal Procedure Law, Cap. 155, were recently expounded at length in the case of *Azinas* v. *The Republic* (1981) 2 C.L.R. 9- at pages 51-57 inclusive, and we feel that we should not repeat them again, confining ourselves in drawing the attention of trial Judges to the exposition of the Law therein made on this point, reiterating at the same time our agreement to the observations in respect of *R.* v. *Mustafa Kara Mehmet,* 16 C.L.R. 46.

In the present case it is obvious that the trial Judge did not uphold the submission of the defence of "no prima facie case to answer" as he did not find that the evidence adduced by the prosecution was so discredited as not to necessitate the calling upon of the accused to defend himself. On the contrary inspite of minor discrepancies between the evidence of the complainant and that of prosecution witness Xanthou, to which extensive reference was made by the trial Judge in his final judgment, the version of the appellant, as it transpired at that stage from cross-examination and his answer to the formal charge, was to the effect that he might have touched the face of the complainant accidentally; in the circumstances the learned trial Judge ought to have been eager to hear appellant's explanation as to how the alleged accidental touch, causing injury, was made.

Having carefully gone through the record we have come

to the conclusion that the appellant was rightly called upon to make his defence; this ground, therefore, fails.

The rest of the grounds are indeed interwoven and we intend to take them together.

The Learned counsel appearing for the appellant in a very able address attempted to persuade us that the trial Judge erred in accepting the evidence as he did; she forcefully argued pointing out, what she alleged serious contradictions between the evidence of the complainant and that of prosecution witness Xanthou who had witnessed the incident; she emphasized that the medical evidence was not consonant with the assault as described by the prosecution witnesses and went as far as maintaining that the trial Judge misdirected himself on the burden of proof. Furthermore she challenged the way the trial Judge reached at his conclusions, a complaint which in our view is rather reflecting on the scheme of the drafting of the judgment by the learned trial Judge.

We have considered very carefully the evidence as it emerges from the record in the light of the arguments advanced in support of the appeal and we feel that we should repeat at the outset what was stated in the case of *Charitonos and others* v. *The Republic* (1971) 2 C.L.R. 40 that:-

> "The Court of Appeal should not look at judgments of Criminal Courts minutely or microscopically or pick a quarrel with a single word, but should read the judgment as a whole to see the effect of it".

The trial Judge in his elaborate judgment which covers twelve typed pages covered every aspect of the case that was necessary in order to arrive at his findings and gave his reasons for so doing. The fact that on occasions he was thinking allowed in his effort to arrive at the truth does not render his judgment vulnerable; nor does he give the impression, as it is suggested in the 6th ground of appeal, that he "introduces his subjective thoughts as if he were present at the incident."

On the contrary his judgment read as a whole clearly indicates that he was fully aware that the burden of proof was throughout on the prosecution to prove its case beyond reasonable doubt.

In connection with the credibility of witnesses we may repeat again that the task of evaluating the evidence in within the province, of the trial Judge who had the opportunity of hearing and watching the demeanour of the witnesses in the witness box.

The trial Judge in this case evaluated the evidence before him and stated in clear and unambiguous words what did he accept and what did he reject. In this respect we must say that the trial Judge was perfectly entitled to accept part only of the evidence of witness and reject another.

Perusal of the record shows that it is true that the complainant could not say positively whether the blow of the appellant directed against his face was a punch or a blow with the outside of the hand of the appellant; in this connection it should always be borne in mind that the assault was unprovoked and unexpected and that the complainant was at the time very busy arranging the departure of passengers by aeroplane.

The complainant was positive, however, that the appellant struck him on the face with his hand and he was equally positive that the blow he received was quite strong and painful.

If the complainant has fallen on the ground or not is not that important as it cannot denote the extent of the exertion of force against the complainant; as stated by the Medical Officer in cross-examination: "the complainant might have not fallen down owing to the punch; simply he lost control of his feet and fell..." The trial Judge on this point accepted the evidence of P. C. Xanthou who stated that the complainant fell on the ground after the blow whilst it did not accept the relevant part of the evidence of the complainant who stated that he did not fall on the ground as a result of that blow.

We have considered the record on this point and we are of the view that it was open to the trial Judge to reach such a finding; the evidence on record states with unique clarity that the complainant was dizzy and confused after the unexpected assault against him and one cannot expect a dizzy and confused person to remember all the details

that ensued after an unexpected, unprovoked attack on his face.

In connection with the submission that the medical evidence is not consonant with the findings of the trial Judge we are satisfied that there is nothing in such evidence inconsistent with that evidence of the prosecution as accepted by the trial Judge.

The medical officer who examined the complainant about three hours after the assault found "a superficial scratch on the face plus a redness."

On being cross-examined this Doctor stated that these injuries could be caused by a violent touch as well as by a simple touch with a blunt instrument. When cross-examined further on the line of the defence, whether the aforesaid injuries could be caused by a mere raising of the hand upwards, the Doctor replied "the scratch yes, but the redness no" and she went on to add that "in order to have the redness it means that the fingers of a person should have touched the face of the complainant."

An ancillary complaint of the appellant to the effect that the trial Judge failed to examine the medical evidence at all, receives no support from the record. In his judgment the learned trial Judge makes short reference to the injuries described by the medical evidence and proceeds to state that such injuries may be characterised, albeit technically, as "actual bodily harm."

The aforementioned paragraph of the judgment, however laconic, indicates that the trial Judge took into consideration and gave due regard to the medical evidence in order to characterize it as sufficient to justify a conviction for assault causing actual bodily harm, even technically as he put it, but nevertheless within the ambit of section 243 of the Criminal Code, Cap. 154.

In the result, the present appeal fails and it is accordingly dismissed.

Appeal dismissed.