

1987 September 11

(TRIANAFYLLIDES P LORIS STYLIANIDES JJ)

CHRISTAKIS SOLOMOU MICHAELIDES,

Appellant,

v

THE REPUBLIC,

Respondents

(Criminal Appeal No 4764)

*Evidence -- identification of appellant by a witness found to be of poor quality --
Treating other evidence as corroborating testimony in respect of such
identification -- Misdirection -- Basic issue was whether there existed other
evidence justifying a finding beyond reasonable doubt that the man seen by
5 the witness must have been the accused*

Evidence -- Identification -- Principles applicable

*Appeal -- Practice -- Retrial -- The power to order retrial is a matter of discretion
to be exercised judicially -- Review of relevant case law*

10 The appellant was convicted of the homicide of Constanta Demetriou Perleki
and was sentenced to ten years' imprisonment

15 It is undisputed that the deceased was last seen alive on the night of 17
March 1986 and then her partly burnt body was found at locality Zygos in the
area of Alassa village in the morning of 25 March 1986. Witness Palans, who
during the night of 24/3/86 was driving from Platres to Limassol testified that
he saw a fire and a car parked at the side of the road at the locality Zygos and
a person next to the car

20 According to his evidence at the Assize Court he recognized the appellant
as the person who was standing next to the car near the fire at locality Zygos
and, later on, at an identification parade, he pointed out the appellant as being
such person, and, at another identification parade, he pointed out the car of
the appellant as the car which he saw parked near the fire

25 Even though the trial Court found such identification to be of poor quality,
it proceeded to treat other evidence as amounting to corroboration of the
testimony relating to the aforesaid identification and, as a result, convicted the
appellant

Held, *allowing the appeal and ordenng a retrnal* (1) The verdict is unsafe, because the basic issue was whether or not there existed other independent evidence rendering it safe to find, beyond reasonable doubt, that the man seen by witness Palans at the locality Zygos must have been the appellant

(2) There emerges clearly from the case-law that the power to order a new trial in a crminal case is discretionary and it must be exercised judicially with the interests of justice being the predominant consideration 5

(3) In this case and in the light of all relevant considerations, it is necessary in the interests of justice to order a new trial in this case

Appeal allowed Order for retrnal 10

Cases referred to

- R v Turnbull* [1976] 3 All E R 549,
- Taylor v Chief Constable of Cheshire* [1987] 1 All E R 225,
- Anastassiades v The Republic* (1977) 2 C L R 97, 15
- Katsiamalis v The Republic* (1980) 2 C L R 107,
- Rossides v The Republic* (1983) 2 C L R 391,
- R v Keane*, 65 Cr App R 247,
- R v Weeder*, 71 Cr App R 228,
- Nestoros v The Republic*, 1961 C L R 217, 20
- Petndes v The Republic*, 1964 C L R 413,
- HjCosta (No 2) v The Republic* (1965) 2 C L R 95,
- Isaais v The Police* (1966) 2 C L R 43,
- Zanettos v The Police* (1968) 2 C L R 232,
- Lozias v. The Republic* (1969) 2 C L R 217, 25
- Piendes v The Republic* (1971) 2 C L R 263,
- Costouns v. The Republic* (1973) 2 C L R 322,
- Eftapsoumis v The Police* (1975) 2 C L R 149,
- Stylianou v The Republic* (1979) 2 C L R 109,
- Theodorou v The Police* (1980) 2 C.L R 217, 30
- Georgiades v The Police* (1981) 2 C L R 155,

2 C.L.R. Michaelides v. Republic

Ekdotiki Etera Kosmos Press Limited v The Police (1984) 2 C.L.R. 121,

Charalambous v The Republic (1985) 2 C.L.R. 97

Appeal against conviction and sentence.

5 Appeal against conviction and sentence by Christakis Solomou
Michaelides who was convicted on the 7th July, 1986 at the Assize
Court of Limassol (Criminal Case No. 13974/86) on one count of
the offence of homicide contrary to section 205 of the Criminal
Code, Cap. 154 and was sentenced by Hadjitsangaris, P.D.C.
Artemis, S.D.J. and Hadjihambis, D.J. to ten years' imprisonment.

10 *Chr. Pourgourides with G. Tsikkos*, for the appellant.

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

Cur. adv. vult.

15 TRIANTAFYLLIDES P. read the following judgment of the
Court. The appellant was convicted on 7 July 1986, by an Assize
Court in Limassol, of the homicide, between the 17 and 18 March
1986, of Constantia Demetri Perlaki, late of Limassol, contrary to
section 205 of the Criminal Code, Cap. 154, as amended by the
Criminal Code (Amendment) Law, 1962 (Law 3/62). He was
20 sentenced to ten years' imprisonment as from 25 March 1986,
when he had been arrested and placed in custody prior to his trial.

It is undisputed that the deceased was last seen alive on the night
of 17 March 1986 and then her partly burnt body was found at
locality Zygos in the area of Alassa village in the morning of 25
25 March 1986. During the night of 24 March 1986 a prosecution
witness, Demetris Palaris, was driving from Platres to Limassol and
at locality Zygos he saw a fire and a car parked at the side of the
road and a person next to the car.

30 According to his evidence at the Assize Court he recognized the
appellant as the person who was standing next to the car near the
fire at locality Zygos and, later on, at an identification parade, he
pointed out the appellant as being such person; and, at another
identification parade, he pointed out the car of the appellant as the
car which he saw parked near the fire.

35 Counsel for the appellant has strenuously challenged as unsafe
and unreliable the identification of the appellant as the person
who was seen by witness Palaris standing next to a car near a fire
at locality Zygos during the night of 24 March 1986.

Having carefully examined everything that has been submitted by counsel for the appellant and by counsel for the respondent we have reached the conclusion that it is our duty in this case to order a new trial, in the exercise of our powers under section 145(1)(d) of the Criminal Procedure Law, Cap. 155, as well as under section 25(3) of the Courts of Justice Law, 1960 (Law 14/60). 5

In giving our reasons in this judgment for having reached the decision to order a new trial we shall abstain as far as possible from saying anything which may, in any way, affect the outcome of the new trial; and, for this reason, we would like to stress that nothing in this judgment should be taken as indicating, in the least, an expression of opinion on our part regarding the guilt or innocence of the appellant in relation to the homicide of the deceased. 10

In our view it suffices to say that the trial Court, in a manner rendering its verdict unsafe, appears to have proceeded to treat other evidence adduced at the trial as amounting to corroboration of the credibility of the evidence of witness Palaris regarding his identification of the appellant at locality Zygos, even though such identification had been found, by the trial Court, to be, in the circumstances in which it was made, an identification of poor quality, whereas, in our opinion, the basic issue was whether or not there existed other independent evidence rendering it safe to find, beyond reasonable doubt, that the man seen by witness Palaris at the locality Zygos must have been the appellant. 15 20

Regarding the legal principles applicable to the matter of an identification such as the one with which we are dealing in the present case the trial Court quite correctly relied, inter alia, on *R. v. Turnbull*, [1976] 3 All E.R. 549, which has been referred to recently with approval in *Taylor v. Chief Constable of Cheshire*, [1987] 1 All E.R. 225. The *Turnbull* case was referred to and followed by our Supreme Court in, inter alia, *Anastassiades v. The Republic*, (1977) 2 C.L.R. 97, 281, *Katsiamalis v. The Republic*, (1980) 2 C.L.R. 107, 116 and *Rossides v. The Republic*, (1983) 2 C.L.R. 391, 401. 25 30

It is useful to bear, also, in mind the cases of *R. v. Keane*, 65 Cr. App. R. 247, and *R. v. Weeder*, 71 Cr. App. R. 228, which have been referred to in its judgment by the trial Court. 35

After we had reserved our judgment in this appeal we reopened its hearing on 14 April 1987 because counsel appearing for the

respondent, acting very fairly indeed had placed before us a letter addressed on 26 March 1987 by the aforesaid witness Palanis to the Attorney-General, as well as a statement obtained from him by the Police on 4 April 1987, by means of which the said witness
5 was, in effect, stating that he was not at all sure that the man whom he had seen during the night of 24/3/86 at locality Zygos was the appellant

Then, on 18 May 1987 counsel for the respondent drew our attention to an earlier statement given to the Police by witness
10 Palanis on 17 November 1986 by which he had complained that his life had been threatened by an anonymous telephone call in an effort to persuade him to change his testimony about the identification of Michaelides on 24 March 1986

Finally, on 16 June 1987 counsel for the respondent placed
15 before us a further statement to the Police by witness Palanis, given on 29 May 1987 by means of which he explained that after the trial, as a result of threats against him and members of his family, by means of anonymous telephone calls he had written to the Attorney-General of the Republic throwing doubt on his
20 identification of the appellant at locality Zygos on 24 March 1986, and he concluded his said statement by affirming as correct the evidence which he had given against the appellant at the trial before the Assize Court of Limassol

Eventually, though we reopened the hearing of this appeal,
25 neither counsel for the appellant nor counsel for the respondent applied for leave to call before us for further evidence with witness Palanis or for leave to adduce any other evidence

The aforementioned letter of Palanis to the Attorney-General of the Republic and his statements to the Police, to which we have
30 already referred, are not in themselves evidence for the purposes of the determination of the present appeal, but they constitute developments which have strengthened our view that we should order a new trial in the present case

It is useful, at this stage to refer regarding the making of an order
35 for a new trial in a criminal appeal, to, inter alia, the following cases *Nestoros v The Republic*, 1961 C.L.R. 217, *Petrides v The Republic*, 1964 C.L.R. 413, *Hji Costa (No 2) v The Republic*, (1965) 2 C.L.R. 95, *Isaias v The Police*, (1966) 2 C.L.R. 43, *Zanettos v The Police*, (1968) 2 C.L.R. 232, *Loizias v The Republic*, (1969) 2 C.L.R. 217, *Piendes v. The Republic*, (1971) 2
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C.L.R. 263, *Costouris v. The Republic*, (1973) 2 C.L.R. 322, *Eftapsourmis v. The Police*, (1975) 2 C.L.R. 149, *Stylianou v. The Republic*, (1979) 2 C.L.R. 109, *Theodorou v. The Police*, (1980) 2 C.L.R. 217, *Georghiadis v. The Police*, (1981) 2 C.L.R. 155, *Ekdotiki Eteria Kosmos Press Limited v. The Police*, (1984) 2 C.L.R. 121 and *Charalambous v. The Republic* (1985) 2 C.L.R. 97. 5

There emerges clearly from the above case-law that the power to order a new trial in a criminal case is discretionary and it must be exercised judicially with the interests of justice being the predominant consideration. 10

In the present instance we have duly considered, among other things, the seriousness of the offence of which the appellant was convicted, the complexity of this case, the time that has elapsed since the commission of the crime and the conviction of the appellant, the period during which the appellant has been in prison, the fact that the appellant will have to go through a second trial, the expense involved and, particularly, the expense with which the appellant is to be burdened, and, in the light of all relevant considerations, we have reached the conclusion that it is necessary in the interests of justice to order a new trial in this case. 15 20

We, therefore, in the exercise of our powers under section 145(1)(d) of Cap. 155 and section 25(3) of Law 14/60, set aside the conviction of the appellant against which this appeal has been made, as well as the sentence which was imposed on him as a result of such conviction, and we order that there should be a new trial of this case before, necessarily, a differently constituted Assize Court. In the meantime, the appellant is to remain in custody. 25

Appeal allowed.

New trial ordered.

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