1987 February 28

[A. LOIZOU, DEMETRIADES, PIKIS, JJ.]

HENRI JEAN OUEISS,

Appellant,

v.

THE REPUBLIC,

Respondents.

(Criminal Appeal No. 4679).

Criminal Procedure—Joint trial—Sentence of co-accused in case he pleads guilty and the prosecution does not intend to call him as a witness—Rule of practice, but not of Law, that such sentence should be postponed until the conclusion of the trial—Such practice cannot override the provisions of section 75 of the Criminal Procedure Law, Cap. 155, leaving the conduct of a joint trial to the trial Court—Breadth of discretion thereunder very wide.

Criminal Procedure—Joint trial—Conduct of—Discretion of trial Court—Breadth of discretion—The Criminal Procedure Law, Cap. 155 section 75

Criminal Procedure—Joint trial—Evidence admissible against the other co-accused—Whether specific warning about exclusion of the evidence against an accused necessary—Question answered in the negative.

Criminal Procedure—Joint trial—Power of Courts in England to order separate trial in case of risk that the jury will be unable to segregate and disregard inadmissible evidence against a particular accused—As the Courts of Cyprus consist of professional Judges such a risk is in this Country remote—Desirability of joint trial in case of persons accused of having committed the same offence

Constitutional Law—Dwelling house, inviolability of, Constitution Art. 16.1—A hotel room is within the protection of the said Article—The pre-requisites of a lawful entry in virtue of Article 16.2 of the Constitution in a dwelling house in deviation of the right safeguarded under Article 16.1 of the Constitution—Search warrant issued under section 29(3) of the Narcotic Drugs Law (Law 29/77 as amended by Law 69/83)—Forcible entry—Whether permissible—Answer to question depends on the exigencies of the execution of the warrant—The burden of proof as regards necessity for a forcible entry is on the police.

Search warrants—Issued under section 29(3) of the Narcotic Drugs Law (Law 29/77 as amended by Law 69/83)—Forcible entry—Circumstances making such entry permissible.

Criminal Law—Possession of prohibited substance—It imports knowledge of the content and a degree of control over such substance—Knowledge may be inferred from the circumstances of the case

The appellant and his fellow Lebanese Fehima Matta were convicted on two charges involving possession with view to marketing of a drug controlled under the Narcotics Drugs Law 29/77, namely 267 5 grams of heroin and were sentenced to 5 and 4 years' imprisonment respectively They were jointly indicted and tried

At some stage before the close of the case for the prosecution Fehima Matta obtained the leave of the Court and changed her plea from one of not guilty to one of guilty Thereupon the trial of the appellant was temporarily interrupted for the purpose of sentencing his co accused In passing sentence on the said co-accused the Court took, into consideration a voluntary statement which she had made to the police implicating the appellant as well The trial of the appellant continued after the imposition of the said sentence

The complaints made by the appellant against his conviction are the following, namely (a) Procedural irregularity prejudicial to a fair trial in that notwithstanding absence of intimidation by the prosecution that his co-accused would be called as a prosecution witness, the Court passed sentence on the co-accused before the conclusion of the trial (b) Absence of specific warning regarding exclusion of the evidence solely admissible against the co-accused, (c) Misreception of evidence, namely the suitcase containing the heroin, which in accordance with the submission of the appellant, was obtained by the Police as a result of illegal execution of a search warrant involving breach of the constitutional right safequarded by Article 16 of the Constitution and (d) Ill founded inferences drawn by the trial Court taking the case of the prosecution no further than the realm of suspicion In this respect appellant submitted that the primary facts did not establish either knowledge on his part of the contents of the suitcase or the necessary control to justify a finding of possessing

The evidence adduced may be briefly summarised as follows Fehima Matta was kept by the police under surveillance at a Hotel in Larnaca, where she stayed On the 18 7 85 the appellant went to the Hotel intending to visit Fehima Matta He tried to hide the purpose of his visit His conduct aroused the suspicion of the receptionist To forestall any attempt on the part of the suspected accomplices to dispose of or destroy the narcotics the police, who had obtained a search warrant entered the room of Fehima Matta without prior warning using a spare key and found the two accomplices locked in conversation with an open suitcase lying in front of the appellant, who hurriedly closed it The suitcase contained a substantial quantity of heroin

Held dismissing the appeal (a) The normal judicial practice is to postpone sentence on a co-accused who pleads guilty to the end of the trial unless the

prosecution intends to call him as a witness This is not a rule of law but reflects judicial understanding that such course is, in the normal course of events, best conducive to a fair trial This practice however, cannot overrule the provisions of section 75 of Cap 155, which leaves conduct of a joint trial to the trial Court whose discretion is very wide The phrase in the section « in any way in which may appear desirable and which is not inconsistent with the provisions of this Law» and particularly the word «disirable» are suggestive of the breadth of the discretion Unless the course adopted appears to have prejudiced the fair trial of a co accused no irregularity occurs where the course followed is within the discretion of the Court Apart from s 75 the trial Court enjoys great latitute in regulating the proceedings co-extensive in breadth with its duty to ensure a fair trial

(2) In the absence of a rule of Law or of practice for a specific warning, in a joint trial, about exclusion of the evidence inadmissible against an accused, failure to make explicit reference to the matter cannot found an irregularity unless it appears from the tenor of the judgment that evidence inadmissible against him was taken into consideration as part of the case against him

Counsel drew the attention of the Court to the case of *R v Gunewardens*, 35 Cr App Rep 80 acknowledging the power of the Court in a joint trial to order separate trial whenever there is a risk that the jury will be unable to segregate and disregard inadmissible evidence against a particular defendant In view of the composition of the Courts in Cyprus, consisting of professional Judges, such a risk is remote The value of a joint trial cannot be doubted Not only it is permitted in the case of persons accused of committing the same offence (s 41 (a) of Cap 155) but it is also desirable In this case a joint trial was fully justified

(3) A hotel room occupied for temporary stay constitutes a dwelling and attracts the protection of Article 16 of the Constitution The protection of Article 16 is not confined to «domicilium» but extends to the «domus» as well In accordance with para 2 of Article 16 entry into a dwelling house, in deviation from the right safeguarded by Article 16 1, is permitted only if sanctioned by the law and then only on the strength of a judicial warrant

The search warrant in this case was issued under the provisions of s 29(3) of the Narcotic Drugs Law Section 29(3) envisages only one species of a warrant and makes forcible entry dependent on the exigencies of its execution The arbiters of the necessity for the adoption of such a course are the officers entrusted with its execution Forcible entry does not depend on prior specific authorisation by the Judge issuing the warrant but on the necessity arising for recourse to it The burden of satisfying the Court of such necessity lies with the police In this case the suspicious conduct of the appellant as well as the nature of what was suspected to be in the possession of the accomplices and the risk of its destruction or disappearance justified the course adopted

(4) Possession imports knowledge of the content and a degree of control over the prohibited substance. Direct evidence of knowledge is rarely forthcoming More often, it is inferred from the circumstances of the case, particularly the connection with and actions of the accused relevant to the prohibited article. In the circumstances of this case the inference of appellant's guilt was virtually unavoidable.

Appeal dismissed.

Cases referred to:

R. v. Wallace, 23 Crim. App. Rep. 32;

R. v. Gunewardens, 35 Crim. App. Rep. 80;

Demetriou v. The Republic, 1961 C.L.R. 309;

Swales v. Cox [1981] 1 All E.R. 1115;

Police v. Ekdotiki Eteria (1982) 2 C.L.R. 63,

Police v. Georghiades (1983) 2 C.L.R. 33.

R. v. Sang [1979] 2 All E.R. 1222;

Fournides v. The Republic (1986) 2 C.L.R. 73;

Appeal against conviction and sentence.

Appeal against conviction and sentence by Henri Jean Oueiss who was convicted on the 5th October, 1985 at the Assize Court of Larnaca (Criminal Case No.8557/85) on one count of the offence of possessing controlled drug contrary to sections 2,3,6(1)(2), 30 and 31 of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law No.29/77) and on one count of the offence of possessing controlled drugs with intent to supply them to others contrary to sections 2,3,6(1)(3), 30 and 31 of the above Law and was sentenced by Papadopoulos, P.D.C., Constantinides, S.D.J. and Arestis, D.J. to five years' imprisonment on the second count with no sentence being passed on the first count.

L. Clerides with N. Clerides, for the appellant.

A. M. Angelides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS J.: The appellant, Henri Jean Oueiss, and his fellow Lebanese Fehima Matta, were convicted by the Assize Court of Larnaca on two charges involving possession with a view to marketing a drug controlled under the Narcotic Drugs Law*, namely 267.5 grams of heroin; and were sentenced to 5 and 4 years imprisonment, respectively. They were jointly indicted and tried. On arraignment they pleaded not guilty, but before the close of the case for the prosecution, Fehima Matta changed, with the leave of the Court, her plea to one of guilty. Thereupon, the hearing of the case against appellant was temporarily interrupted for the purpose ot sentencing his co-accused.

In accordance with the printed record counsel for the prosecution referred to the facts founding the guilt of Matta and a social inquiry report was made available to the Court shedding light on her personal circumstances and background.

The material considered by the Court in passing sentence included a voluntary statement of Matta where she implicated the appellant as well. After a short recess to consider and impose sentence on the co-accused (4 years imprisonment) the hearing of the case against the accused was resumed.

Reference to the trial process has been made because it is the subject of complaint by the appellant. Consideration of the case against the co-accused for the purpose of sentence before the end of the trial constituted, in the submission of the appellant, in the absence of cogent reasons justifying that course, an irregularity prejudicial to the fair trial of the appellant. The likelihood of prejudice became greater, as argued, in the absence of a direction reminding of the need to exclude incriminating evidence on record solely admissible against the co-accused of appellant.

Beside the procedural irregularities allegedly leading to a miscarriage of justice, the conviction is also challenged on two other counts, an evidential involving the misreception of evidence and a substantive one the inferences drawn by the trial Court. They are:-

(a) Misreception of the suitcase containing the heroin inadmissible because of the illegal execution of the

* Law 29/77 (as amended by Law 69/83)

judicial search warrant involving breach of the constitutional right safeguarded by article 16 of the Constitution; and

(b) the ill-founded inferences drawn by the trial Court taking the case for the prosecution no further than the realm of suspicion*.

The appeal against the sentence of 5 years imprisonment was abandoned, no doubt on sound legal advice considering the gravity of the offence and the danger to Cyprus and international community from the use and distribution of narcotics. The appeal against sentence was dismissed.

Counsel for the prosecution supported the conviction as procedurally and evidentially well founded, properly warranted by the primary findings of the trial Court. He argued it was open to the Assize Court to dispose, in the exercise of its discretionary powers, the case against the co-accused before the conclusion of the proceedings, denying any prejudice was occasioned to the appellant on that account. The unwarned entry by the police into the room of Matta on the other hand, was properly made in exercise of the authority conferred on the police by the judicial warrant authorising the search of the premises.

We shall deal with the grounds of appeal elicited above, in the sequence indicated below, dictated by the logic of their implications:-

(A) Procedure at trial.

(B) Absence of specific warning regarding exclusion of the evidence solely admissible against the co-accused.

(C) Legality of the action of the police in entering the room where the narcotics were found. And

(D) The inferences drawn by the trial Court.

(A) Procedure at trial:

In the absence of any intimation from the prosecution that the co-accused would be called as prosecution witness, it was

* *See. R v. Wallace, 23 Cnm. App Rep., p 32. p.35.*

improper, counsel submitted, to heed and dispose of the case against the co-accused before the conclusion of the trial Premature reflection upon and consideration of the case against her could not but have damaging effects on the outcome of the case against the appellant, thereby prejudicing his right to a fair trial Though counsel is right in saying that the normal judicial practice is to postpone passing sentence upon a co-accused who pleads guilty to the end of the trial, unless the prosecution intends to call him as a witness, the practice does not derive from any rule of law It reflects judicial understanding that such course is, in the normal course of events, best conducive to a fair trial Nevertheless, the practice, irrespective of its merits, does not override or modify the provisions of s 75 of the Criminal Procedure Law - Cap 155, that explicitly leaves conduct of a joint trial to the discretion of the trial Court The wording of s 75 clearly establishes that the discretion residing with the trial Court in this regard is very wide, verging on absolute discretion The pertinent provisions of s 75 « in any way in which may appear desirable and which is not inconsistent with the provisions of this Law» are suggestive of the breadth of the discretion of the trial Court, particularly the word «desirable» Unless it is made to appear that the course adopted prejudiced in point of fact the fair trial of a co-accused, no irregularity occurs where the course followed is within the undoubted discretion of the trial Court The provisions of s 75 apart, great latitude lies with the trial Court to regulate proceedings before it co-extensive in breadth with the duty of the Court to ensure a fair trial in the interest of justice

The course adopted by the trial Court in this case was perfectly open to it though not one we would encourage Ordinarily, it is best to adjourn consideration of the case and passing sentence on a co-accused until the end of the day, in the interest of the unity of the sentencing process Was the accused in any way prejudiced as a result of the course followed? In the submission of the appellant he was, especially in the absence of any record indicating that evidence solely admissible against the co-accused was disregarded in the ponderation of the case for the prosecution against the appellant And this brings us to examination of the second ground of appeal

(B) Absence of specific warning regarding exclusion of the evidence solely admissible against the co-accused:

For the appellant it was argued the absence of a specific warning reminding the Court of the need to disregard evidence admitted against Matta but inadmissible against him, made the verdict unsafe; not least because the risk of such inadmissible evidence affecting the deliberations of the Court. Counsel drew our attention to the case of *R. v. Gunewardens**, acknowledging that one of the courses open to a trial Court in a joint trial is to order separate trial whenever there is a real risk of the jury being unable to segregate and disregard evidence inadmissible against a particular defendant. The likelihood of prejudice resulting on that account in Cyprus is remote in view of the composition of the Court consisting of professional judges expected by training and experience to appreciate the case against each co-accused in its true evidential perspective. The differences between the composition of English and Cyprus courts, and their implications, were noted by the High Court in the case of *Lazaris Demetriou v. Republic***. The following passage from the judgment of *O'Brian, P.*, is suggestive of the differences and indicative of what can be expected of a Court consisting of professional Judges:

> «In my opinion, this Court, in such cases, should impute to the trial Court a full and accurate knowledge of the law. Unless the contrary appeared upon record.»

The above statement reflects an accurate appreciation of the implications of trial before a court of professional judges. The presumption that the judges ignored evidence inadmissible against the appellant is, in this case, reinforced by the summing up of the evidence upon which they rested the conviction of the appellant, confined to evidence solely admissible against the appellant.

Counsel did acknowledge there is no rule of law or practice as such for a specific warning, in a joint trial, about exclusion of the evidence inadmissible against a particular defendant. In the absence of such rule, failure to make explicit reference to the fact of exclusion cannot found an irregularity unless it appears from the tenor of the judgment that evidence inadmissible against the accused was taken into consideration as part of the case against him.

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* *35 Crim App Rep . p 80*
* *1961 C.L.R 309 312.*

On the other hand, the value of a joint trial in the administration of justice cannot be doubted. Not only it is permitted in the case of persons accused of committing the same offence (s.41(a) - Cap.155) but it is desirable too; for it enables the Court to resolve the case in its proper perspective as well as avoids unnecessary expense and waste of judicial time. In this case, the nature of the offences and the facts giving rise thereto, fully justified the decision to try them together. We find no merit in this ground of appeal.

Before examining the remaining two grounds of appeal, it is opportune to survey material evidence and the findings of the Court in order to understand and appreciate the background to the execution of the search warrant that led to the discovery of the heroin and test the soundness of the inferences drawn by the trial Court.

The Evidence and the Findings of the Trial Court:

The police, acting on information, kept Fehima Matta under surveillance at Cactus Hotel, Larnaca, where she stayed (Room 317 on the third floor). At about noon (18/7/85) the appellant made his appearance at the hotel intending to visit Fehima. A telephone call from Fehima to his hotel preceded the visit. On arrival appellant made every effort to hide the purpose of his visit and positively tried to mislead the receptionist about the object of his presence therein. His conduct aroused the suspicion of the receptionist who followed him to discover he emerged on the third floor, heading towards Room 317 whereas he told her his purpose was to visit a friend on the second floor. When she accosted him with the discrepancy between the professed and actual purpose of his presence in the hotel he pretended he made a mistake and headed for the staircase leading to the second floor, albeit to re-emerge on the third floor as soon as he felt he was unobserved. He proceeded towards Room 317 wherein he was admitted by Fehima Matta. The surreptitious movements of the appellant in the hotel added to the suspicions of the police. To forestall any attempt on the part of the suspected accomplices to dispose of or destroy the narcotics, they entered the room without prior warning using, for the purpose, a spare key furnished by the hotelier. In the judgment of the Assize Court the entry was lawful in view of the authorisation inherent in the search warrant authorising the search of the room occupied by Fehima Matta; and the risk of the search becoming abortive by any action on the part of the occupants. The

events that followed confirmed both the suspicions of the police and the prudence of the action taken.

The occupants were locked in conversation with an open suitcase lying in front of the appellant, seemingly the subject of their conversation. As soon as appellant noticed the entrance of the police he hurriedly closed the suitcase, evidently to divert attention from it. The police seized the suitcase and tore its lining to discover the suitcase contained a substantial quantity of a substance they suspected, and later was confirmed (by laboratory examination) to be heroin. At first appellant remained speechless and appeared to be in a state of agony. Later, when he recovered his poise, he denied knowledge or awareness of the content of the suitcase.

The trial Court properly directing itself on the ingredients of possession requiring knowledge and a degree of control, found the appellant guilty of possession of the prohibited drug with a view to disposing of it to third parties.

(C) Legality of the action of the police in entering the room where the narcotics were found:

The legality of the forcible entry into the hotel room where Matta dwelt at the time has been questioned. Being illegal, nothing recovered after entry into the room could be admitted in evidence. Reciting a well-known dictum of the Supreme Court of the United States of America* and by analogy thereto, counsel argued that the fruit of a poisonous tree must necessarily fall with the tree itself.

That the entry was forcible cannot be doubted. It is not the degree of force used that qualifies the entry as forcible but the intention and consequential action to remove every obstacle, small or big, in the way of entry. The English case of *Swales v. Cox*** puts, with respect, the matter in perspective. The application of any energy to remove obstacles in the way renders the entry forcible.

Further, a hotel room occupied for temporary stay constitutes a dwelling house and attracts the protection of article 16

* *'Landmarks in the Law', by Lord Denning, pp.17 and 18*

** *[1981] 1 All E R 1115, at 1119.*

safeguarding the inviolability of one's dwelling as a fundamental human right *. *Professor Manesis* explains ** the protection is not confined to the «domicilium» but extends to the «domus» as well. The extension of the protection to the domus is consistent with the treatment of the right safeguarded by article 16 as a fundamental liberty and not an aspect of the law of tort or property law. It aims to ensure that in his private preserve the citizen is free from outside authority save as provided in the Constitution and then subject to conditions specified therein. The case for the appellant is that force was used contrary to the terms of the search warrant that permitted forcible entry only after a prior request for admission was refused. As such, the entry was outside the ambit of para.2 of article 16 that defines and regulates the circumstances under which the sanctity of the dwelling may be breached ***. In accordance with para.2 of article 16 entry into a dwelling house, in deviation from the rights safeguarded by para.1, is permitted only if sanctioned by the law and then only on the strength of a duly reasoned judicial warrant. In this case the entry was made, according to counsel, in breach of the authorisation of the search warrant and on that account the provisions of para.2 could not be invoked as justification for the action of the police.

Relying on the decision of the Supreme Court in *Police v. Georghiades***** counsel submitted that evidence recovered in consequence or as a result of a violation of a fundamental human right is inadmissible, the Court having no discretion, as under English law*****, to admit it.

The trial Court rejected the submission that the forcible entry was unauthorised by the search warrant. They ruled that the warrant having been issued under the provisions of s.29(3) of the Narcotic Drugs Law imported authorisation to effect a forcible entry without prior warning or request for admission, provided necessity arose for the adoption of such a measure in the execution of the search warrant. Counsel submitted the above interpretation of s.29(3) is erroneous and irreconcilable with its provisions. Although he acknowledged that the search warrant

*See, 'Πολιτικόν Δίκαιον' Τορναρίτη, pp 291, 292 Σαρίπολος, p.19.

** 'Συνταγματικα Δικαιώματα', p 223

*** See, Police v Ekdotiki Etena (1982) 2 C L R. 63

**** (1983) 2 C.L.R. 33

***** See, R v Sang [1979] 2 All E R 1222 (HL) The principle test of admissibility is relevant

was issued for the purposes of s.29 to enable the police recover narcotics suspected of being hidden in the room in the occupation of Fehima Matta, amenity to effect entry without a prior request for admission in the premises, as provided in s.30 of the Criminal Procedure Law, could only be sanctioned by specific judicial authorisation recorded in the warrant itself. The fact that the search warrant was given in accordance with the format of s.30 reinforces the position that the power of the police in executing the warrant was limited by and was subject to the provisions of the Criminal Procedure Law.

Ultimately, the question turns on the interpretation of s.29(3) of the Narcotic Drugs Law that reproduces without noticeable differences the corresponding provisions of the *Misuse of Drugs Act 1971* (s. 23(3)). Read in English, it provides:

> «*Section 23(3):* If a justice of the peace (or in Scotland a justice of the peace, a magistrate or a sheriff) is satisfied by information on oath that there is reasonable ground for suspecting - (a) that any controlled drugs are, in contravention of this Act or of any regulations made thereunder, in the possession of a person on any premises; or (b) that a document directly or indirectly relating to, or connected with, a transaction or dealing which was, or an intended transaction or dealing which would if carried out be, an offence under this Act, or in the case of a transaction or dealing carried out or intended to be carried out in a place outside the United Kingdom, an offence against the provisions of a corresponding law in force in that place, is in the possession of a person on any premises, he may grant a warrant authorising any constable acting for the police area in which the premises are situated' at any time or times within one month from the date of the warrant, to enter, if need be by force, the premises named in the warrant, and to search the premises and any persons found therein and, if there is reasonable ground for suspecting that an offence under this Act has been committed in relation to any controlled drugs found on the premises or in the possession of any such persons, or that a document so found is such a document as is mentioned in paragraph (b) above, to seize and detain those drugs or that document, as the case may be.»

First, s.29(3) envisages only one species of warrant investing the police on issuance with the powers vested therein.

Second, forcible entry is made dependent on the exigencies of the execution of a search warrant, particularly necessity arising for the adoption of such extraordinary course. The arbiters of the necessity according to the tenor of the legislation, are the officers entrusted with the execution of the warrant. The law does not in terms make forcible entry dependent on specific prior authorisation by the Judge issuing the warrant but on necessity arising for recourse to such means of entry. We agree with the Assize Court that the issue of a warrant under s.29(3) imports power to make forcible entry provided the course is justified by the facts as a necessary measure. The burden of satisfying the Court that need arose to effect forcible entry lies with the police. The information in the hands of the police, coupled with the surreptitious behaviour of the appellant in the hotel, as well as the nature of what was suspected to be in the possession of the accomplices, and the risk of its destruction or disappearance, justified in this case the forcible and unannounced entry of the police. While the findings made in the room confirmed their suspicions and offered further justification for their action.

In conclusion, we find that the forcible entry into the dwelling (Room 317) was justified by the search warrant that in turn conformed to the provisions of the law providing for its issue, notably s.29(3) of the Narcotic Drugs Law. Therefore, entry into the room did not involve any violation of the right safeguarded by article 16.1, as it was authorised, in accordance with para.2 of article 16, by a search warrant issued in accordance with the provisions of a law enacted in conformity to the Constitution. In view of our decision it becomes unnecessary to debate further the ambit of article 16.1 and the range of persons in a dwelling house in whom the right vests.

(D) The inferences drawn by the trial court:

We were invited to quash the conviction on the ground that the primary facts were inconclusive of the guilt of the appellant. It was submitted they did not conclusively establish either knowledge, on the part of the appellant, of the content of the suitcase, or the necessary control to justify a finding of possession. Possession imports, as the trial Court correctly directed itself, knowledge of the content and a degree of control over the prohibited substance. Direct evidence of knowledge is rarely forthcoming. More often it is inferred from the circumstances of the case, particularly the

connection with and actions of the accused relevant to the prohibited article. The value and significance of circumstantial evidence were debated at length in *Foumides v. Republic**. The following passage is definitive of its value in the judicial process and indicative of its implications.

> «... There is, indeed, no judicial predisposition against circumstantial evidence. The feature that distinguishes it from direct evidence is that though individual parts of it are not in themselves conclusive of the guilt of the accused, this may be the cumulative effect of pieces of circumstantial evidence strung together; provided always its causative effect is incompatible with any basis other than that of guilt of the accused.»

Far from agreeing with the submission that the primary facts did not warrant the inferences drawn by the trial Court, we incline that the inference of guilt was virtually inescapable. The conduct of the appellant on arrival betrayed a desire to hide the fact that he intended to visit Matta. Of itself this piece of evidence is certainly inconclusive. On the other hand, it cannot be extricated from what followed after his arrival that throws light on the motives accompanying his strange conduct on entering the hotel. The suitcase lied open in front of the appellant; the position of the suitcase between the interlocutors very much suggested that its content was the subject of their conversation. The hurried closure of the suitcase by the appellant was indicative of the control he exercised over it. More significantly, it suggests that he wanted to keep its content out of focus and divert, if at all possible attention from the suitcase and its content. The evidence could properly lead to an inference of knowledge on the part of the accused of the content of the suitcase and control over it. In our judgment, the inferences drawn by the trial Court were perfectly warranted by the evidence before it and findings made thereupon. As such we uphold them.

In the end, we remain wholly unpersuaded that there is any room for interference with the verdict of the Assize Court on any account.

The Appeal is dismissed

**(1986) 2 C.L.R. 73*