

1976 October 22

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU, JJ.]

CHRISTAKIS IOANNOU FOURNARIS,

*Appellant,*

v.

THE REPUBLIC,

*Respondent.*

(Criminal Appeal No. 3703).

*Criminal Law—Verdict of guilty—Reached after assessing reliability of witnesses—Will be disturbed if it appears to be so unsatisfactory that there is a lurking doubt left in the mind of the Court about its correctness—Witness whose evidence constituted an essential element for the purpose of proving the guilt of the appellant beyond reasonable doubt not called or tendered as a witness—Verdict unsatisfactory—Set aside.* 5

*Findings of fact—Based on credibility of witnesses—Appeal—Verdict of guilty—Reached after assessing reliability of witnesses—Set aside because it appeared to be so unsatisfactory that there was a lurking doubt left in the mind of the Court about its correctness.* 10

Following his chase by the police the appellant was stopped and made to alight from his car; he was then seen throwing something out of the window of the car; actually, all that could be seen at that moment, as it was night-time, was the motion of his hand; and so the police could not notice what he had thrown. Later on, on the way to Limassol in a police car he allegedly told the two policemen, who were in the car with him, that he wanted to return to the place where he had been apprehended in order to show to them a revolver which he had thrown out of his car. On arrival at the said place the appellant immediately pointed out a revolver lying at the edge of the road; it was loaded with six bullets. 15 20

The police had already searched the area previously, but they did not discover the revolver, because the search which they had carried out was a superficial one. The actual spot where the revolver was eventually found, was so very much near 25

the road that it was surprising that the revolver was not found earlier, when the area was searched, irrespective of how superficial such search was. The policeman who was left to guard the place where the appellant was apprehended and remained there until the revolver was found as above was not called or tendered as a witness at the trial and no valid reason was given why this was not done.

The appellant appealed, *inter alia*, against conviction for carrying a revolver:

*Held, allowing the appeal*, (1) we very seldom, indeed, interfere with findings of fact made by a trial Court, when such findings have been based on the credibility of witnesses; but, we do not hesitate to disturb a verdict of guilty, even when it was reached by a trial Court after assessing the reliability of witnesses, if such verdict appears to us to be so unsatisfactory that there is a lurking doubt left in our minds about its correctness (see *Koutras v. The Republic* (1976) 2 J.S.C. 302); and, indeed, there does exist in our minds a lurking doubt as to whether this appellant was on that night in possession of the revolver and of the bullets which were found in it.

(2) In view, especially, of the absence of the evidence of the policeman, who was left to guard the place in question and as such evidence constituted an essential element for the purpose of proving the guilt of the appellant beyond reasonable doubt we have decided that the safer course is to set aside the relevant convictions of the appellant. (*Note*. The conviction of the appellant of the offence of possessing two grenades was upheld—see p. 24 *post*).

*Appeal partly allowed.*

Cases referred to:

*Koutras v. The Republic* (1976) 2 J.S.C. 302 (to be reported in (1976) 2 C.L.R.)

#### **Appeal against conviction.**

Appeal against conviction by Christakis Ioannou Fournaris who was convicted on the 27th February, 1976, at the Assize Court of Limassol (Criminal Case No. 475/76) on three counts of the offences of (a) carrying unlawfully a revolver contrary to sections 4 (2) (a) and 28 of the Firearms Law, 1974 (Law 38/74), (b) carrying unlawfully explosive substances contrary to section 4 (4) (d) of the Explosive Substances Law, Cap. 54 as amended

by Law 21/70 and (c) possessing unlawfully explosive substances contrary to section 4 (4) (d) (5) (a) (b) of the Explosive Substances Law, (*supra*) and was sentenced by Loris, P.D.C., Hadjitsangaris, S.D.J. and Anastassiou, D.J. to two and a half years' imprisonment on the first count and to eighteen months' imprisonment on each of the other two counts, the sentences to run concurrently. 5

Appellant appeared in person.

A. M. Angelides, Counsel of the Republic, for the respondent. 10

*Cur. adv. vult.*

The judgment of the Court was delivered by:-

TRIANFAYLLIDES P.: In this case the appellant was convicted of the offences of carrying a revolver without a permit, of carrying unlawfully explosive substances, that is six bullets which fitted such revolver, and of possessing unlawfully explosive substances, namely two grenades. In respect of the first two offences he was sentenced to two and a half years' and eighteen months' imprisonment, respectively, and in respect of the other offence he was sentenced to eighteen months' imprisonment; all sentences to run concurrently. 15 20

He was tried together with another person, who was convicted of another offence altogether, namely carrying a knife, and who was acquitted in respect of the offence of possession of the grenades; this other person is referred to by us as the co-accused. 25

The salient facts of this case are briefly as follows:-

On November 22, 1975, the appellant and his co-accused were chased by the police while they were proceeding in a car from Limassol towards Nicosia; at the outskirts of Limassol they were stopped and made to alight from their car; according to evidence which the trial Court accepted, the appellant was seen throwing something out of the window of the car; actually, all that could be seen at that moment as it was night-time, was the motion of his hand; and so the police could not notice what he had thrown. 30 35

Later on he was placed in a police car in order to be taken to Limassol and, according to the version of the prosecution,

he told the two policemen, who were in the car with him, that he wanted to return to the place where he had been apprehended in order to show to them a revolver which he had thrown out of his car. The police car turned back and, on arrival at the  
5 said place, the appellant immediately pointed out a revolver lying there, at the edge of the road; it was loaded with six bullets.

The police had already searched the area previously, but they did not discover the revolver, because, as they said, the search which they had carried out was a superficial one. The  
10 actual spot, however, where the revolver was eventually found, when it was pointed out to the police by the appellant, is so very much near the road that it is surprising, to say the least, that the revolver was not found earlier, when the area was searched, irrespective of how superficial such search was.

15 It has been all along the version of the appellant, which was rejected by the trial Court, that he never threw out that revolver at the time when his car was stopped by the police, and that he never offered, while being driven to Limassol, to go back and show the revolver to the police; he did not deny that the  
20 revolver was found there in his presence, after he had been driven back to that place, allegedly on the initiative of the police, but he insisted that it must have been left, or put, there by the police or somebody else.

We very seldom, indeed, interfere with findings of fact made  
25 by a trial Court, when such findings have been based on the credibility of witnesses; but, we do not hesitate to disturb a verdict of guilty, even when it was reached by a trial Court after assessing the reliability of witnesses, if such verdict appears to us to be so unsatisfactory that there is a lurking doubt left  
30 in our minds about its correctness (see, in this respect, *inter alia*, *Koutras v. The Republic*, (1976) 2 J.S.C. 302\*); and, indeed, there does exist in our minds a lurking doubt as to whether this appellant was on that night in possession of the revolver and of the bullets which were found in it. It is very unfortunate, in  
35 this connection, that though a policeman was left to guard the place where the appellant was apprehended, and though such policeman remained there all the time until the appellant was brought back and the revolver was found lying at the edge of

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\* To be reported in (1976) 2 C.L.R.

the road, this policeman, who could have removed any reasonable doubt as regards the possibility of the revolver having been placed there otherwise than by, and after the apprehension of, the appellant, was not called, or tendered, as a witness at the trial, and no valid reason was given to us why this was not done. 5

It is not up to us to speculate as to how the revolver was placed at the spot where it was found; nor need we go so far as to accept the allegation of the appellant that he was framed by the police and that the revolver was planted by the police; all that we are concerned with is whether the verdict is satisfactory; in view, especially, of the absence of the evidence of the policeman who was left to guard the place in question and as such evidence constituted an essential element for the purpose of proving the guilt of the appellant beyond reasonable doubt in respect of the offences of possessing the revolver and the ammunition with which it was loaded, we have decided that the safer course is to set aside the relevant convictions of the appellant. 10 15

At the same trial he was convicted, as already stated, of the offence of possessing two grenades; they were found in a hide-out shown to the police by the appellant himself, soon after his arrest. At the time he was accompanied by three policemen, to one of whom he was handcuffed. We see, really, no reason at all to disturb his conviction in this respect. 20 25

Therefore, his appeal is allowed partly, as aforesaid, and it is otherwise dismissed.

*Appeal partly allowed.*