

1976 November 25

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

CHRISTAKIS I. FOURNARIS AND ANOTHER,

Appellants,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeals Nos. 3701, 3702*).

Criminal Law—Unlawful carrying of revolver—Credibility and reliability of witnesses—Policeman's evidence that he identified a real weapon in the hands of appellant accepted by trial Court—Version of appellant rejected—No reason to interfere with findings of trial Court.

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Evidence—Evidence by members of the police—Approach to.

Criminal Law—Unlawful carrying of revolver and ammunition—Credibility of witnesses—Policeman's evidence that he seized revolver from appellant and managed to take it away from him accepted by trial Court—Version of appellant rejected—Ample evidence in which trial Court could come to the conclusion, quite safely, that appellant was carrying a revolver.

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Reasoned Judgment—Article 30.2 of the Constitution and section 113 (1) of the Criminal Procedure Law, Cap. 155—Judgment concerned, as well as the particular circumstances of each case, have to be looked as a whole, before deciding whether or not the requirement for due reasoning has been satisfied.

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Criminal Law—Sentence—Unlawful carrying of revolver—Three and a half years' imprisonment—Seriousness of offence—Need to punish severely people who continue to carry firearms illegally—And need to protect law and order—Sentence neither manifestly excessive nor wrong in principle.

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Criminal Law—Sentence—Disparity of sentences—Escaping from lawful custody—Open to trial Court to punish appellant 2 more

severely than appellant 1 because he was found guilty of such an offence for a second time.

The appellants were arrested in a club in the execution of bench warrants for their arrest.

5 Appellant 1 managed to escape whilst he was descending the staircase of the club followed by a police constable (P.W. 6); in the course of doing so he pointed a revolver against P.W. 6 whilst the latter was chasing him. Appellant 2 managed to escape after he had been searched by a police constable (P.W. 3) and it was discovered that he was carrying a revolver on the right hand side of his waist.

10 Appellant 1 was convicted of the offence of carrying unlawfully a revolver and of escaping from lawful custody and was sentenced to three and a half years and one years' imprisonment, respectively, both sentences to run concurrently.

15 Appellant 2 was convicted of the offence of carrying unlawfully a revolver, of possessing unlawfully six rounds of ammunition and of escaping from lawful custody and was sentenced to terms of imprisonment of three and a half years, eighteen months, and again eighteen months, respectively, all three sentences to run concurrently.

20 The case for the prosecution rested mainly on the evidence of the said two police constables (P.W. 3 and P.W. 6) whose evidence was accepted by the trial Court in toto. The evidence of both appellants was rejected by the trial Court.

25 Upon appealing against conviction and sentence appellant 1 contended as follows:

30 (a) That his conviction was unsafe because the revolver which he was allegedly holding when he was chased by the police might not have been a real one, but only an imitation weapon; and that the evidence given by the policemen against him was unsafe and should not have been relied on by the trial Court.

35 (b) That the sentences passed upon him were manifestly excessive.

On the other hand appellant 2 contended as follows in support of his appeal against conviction and sentence:

- (1) That the only evidence against him was that of a single policeman, which was not corroborated by that of any civilian who happened to be present.
- (2) That the judgment of the trial Court was not duly reasoned. 5
- (3) That there existed disparity of sentences as regards the sentences imposed on him and on appellant 1 for the offence of escaping from lawful custody.

Held, (I) dismissing the appeal of appellant 1, (1) we find no merit in the contention of appellant 1 that he was not carrying a real revolver. The policeman who saw it was cross-examined and the trial Court accepted that he had safely identified a real weapon in the hands of appellant 1, from quite a close distance. Moreover his defence was not at all that he had been holding an imitation weapon. 10 15

(2) The trial Court was satisfied about the credibility and reliability of the policemen and we see no reason whatsoever to interfere with its findings which were based on their evidence. The appeal against conviction will, therefore, be dismissed.

(3) We find no merit whatsoever in the contention of this appellant that the sentences passed on him are manifestly excessive; the seriousness of the offences which he has committed and the need to punish severely people who continue to carry firearms illegally, and, at the same time, to protect law and order, leave no room for doubt that the sentences imposed on appellant 1 are neither manifestly excessive nor wrong in principle. 20 25

Held, (II) dismissing the appeal of appellant 2, (1) (after referring to a passage at p. 182 of *Volettos v. The Republic* 1961 C.L.R. 169*). We cannot read this passage as laying down, as a matter of principle, that the Courts should be, as a rule, biased against the evidence of police officers. In the present case there was ample evidence on which the trial Court could come to the conclusion, quite safely, that this appellant was carrying a revolver loaded with six rounds of ammunition, especially as, actually, the revolver and the ammunition were seized there and 30 35

* Quoted at p. 36 of the judgment *post*.

then by the policeman who chased this appellant and who managed to take such weapon away from him.

(2) One has to look at the judgment concerned as a whole as well as at the particular circumstances of each case, before deciding whether or not the requirement for due reasoning has been satisfied (see *Katsaronas and Others v. The Police* (1973) 2 C.L.R. 17 at p. 35 et seq.). The trial Court has mentioned specifically that it has based its findings on, among other things, its assessment of the credibility of the policemen concerned and of the two appellants. Looking at the Court's judgment as a whole, we cannot say that in the light of the particular circumstances of this case, it is not duly reasoned so as to meet the requirements of Article 30.2 of the Constitution and section 113 of the Criminal Procedure Law, Cap. 155.

(3) Appellant 2 had been very recently convicted of escaping from lawful custody on another occasion and, therefore, it was open to the trial Court to punish him more severely than appellant 1, because he was found guilty of such an offence for a second time.

Appeals dismissed.

Cases referred to:

Volettos v. The Republic, 1961 C.L.R. 169 at p. 182;

R. v. Bingham Justices, ex parte Jowitt, (1974) 118 S.J. 570;

Katsaronas and Others v. The Police (1973) 2 C.L.R. 17 (at p. 35 et seq.).

Appeals against conviction and sentence.

Appeals against conviction and sentence by Christakis I. Fournaris and Another who were convicted on the 27th February, 1976 at the Assize Court of Limassol (Criminal Case No. 474/76) on two counts each of the offences of carrying unlawfully a revolver and of escaping from lawful custody, contrary to sections 4 (2) (a) and 28 of the Firearms Law, 1974 (Law 38/74) and sections 128 (a) and 20 of the Criminal Code, Cap. 154, respectively (appellant 2 was also convicted of the offence of possessing unlawfully ammunition contrary to section 4 (4) (d) of the Explosive Substances Law, Cap. 54 as amended by Law 21/70) and were sentenced by Loris, P.D.C., Hadjitsangaris and Anastassiou D. JJ. to concurrent terms of imprisonment as follows: Appellant 1 to three and a half years on the first count and one year on the second count

and appellant 2 to three and a half years on count one and eighteen months on each of the second and third counts.

A. Eftychiou, for appellant 1 who, later on, chose to present his appeal in person.

L. Clerides, for appellant 2. 5

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

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court which was delivered by: 10

TRIANAFYLLIDES P.: Appellant 1 has appealed against his conviction, by an Assize Court in Limassol, of the offences of carrying unlawfully a revolver and of escaping from lawful custody; he was sentenced to three and a half years' imprisonment in respect of the first offence and to one year's imprisonment in respect of the second offence, both sentences to run concurrently. 15

Appellant 2 has appealed against his conviction of the offences of carrying unlawfully a revolver, at the same time and place as appellant 1, of possessing unlawfully six rounds of ammunition, which were found in such revolver, and of escaping from lawful custody. He was sentenced to terms of imprisonment of three and a half years, eighteen months, and again eighteen months, respectively, all three sentences to run concurrently. 20

The salient facts of the case, as they were proved by prosecution evidence, are set out as follows in the judgment of the trial Court (before which appellant 1 was accused 1, and appellant 2 was accused 2):- 25

“ According to the evidence of these Police Constables (P.W. 3 and P.W. 6) they entered the outer door of the ground floor, they ascended the staircase leading to the club; upon seeing Acc. 2, P.C. Anghelides remained at the entrance of the hall of the club guarding and keeping under observation the movements of Acc. 2 whilst P. C. Theodorou proceeded inside the club in search of Acc. 1; P.W. 3 proceeded from the hall of the club into the corridor leading to inner rooms of the club; in the corridor this witness met Acc. 1 who was known to him, stopped him, mentioned to him that he was under arrest stating at the same time the reason of his arrest, cautioned him and 40

thereupon Acc. 1 replied: 'Alright'. Then P.W. 3 led
Acc. 1 to the hall of the club where Acc. 2 was; Acc. 1
then started walking towards the exit of the hall of the
club and then towards the staircase followed by P.W. 6,
5 who was standing by the door of the hall of the club.
Whilst Acc. 1 and P.W. 6 were descending the staircase,
P.W. 3 heard them running and as he stated he realized
that Acc. 1 was trying to escape.

P.W. 3 remained in the hall of the club, went near Acc.
10 2, informed the latter that he was under arrest, explaining
at the same time to him the reason for his arrest, cautioned
him and thereupon Acc. 2 replied, 'Kala re Nico'. Then
P.W. 3 seized Acc. 2 by the left arm and they both des-
cended the staircase, walked together along Zenonos Str.
15 and then into Andreas Droushiotis Str. where the police
car was parked outside the Kit-Kat cafe. When by the
police car, P.W. 3 stated to Acc. 2 that he wanted to search
him, Acc. 2 did not object and raised his hands up, with
a view to being searched by P.W.3. During the search
20 the aforesaid police constable realized that the accused had
a revolver on the right hand side of his waist; in the process
of pulling out the revolver from the waist of the accused,
the witness was struck on the hand holding the revealed
revolver by a sudden movement of the hands of the accused,
25 and as a result the revolver was flung onto the asphalt,
4-5 meters away. P.W. 3 ran towards the revolver in
order to pick it up; Acc. 2 attempted to do the same but
as soon as he realized that the constable reached the re-
volver first, he ran away and disappeared. P.W. 3 got
30 hold of the revolver and noticed that same was loaded
with 6 live rounds of ammunition."

The versions of the two appellants, who denied any guilt,
were summarized as follows in the judgment of the trial Court:-

35 "The version of both accused given viva voce before us
is to the effect that they were both at the club of Pitikis in
the early hours of the morning of 7.11.75; they both heard
a bell at the club, where gambling was taking place, sounding
the alarm that policemen were entering the club. They
saw the two police constables entering the club premises

but,—according to their version—none of the constables approached or placed them under arrest.

Acc. 1 stated *inter alia* that in the early hours of the morning of 7.11.75 he was watching at the said club people gambling at zari, when he heard the alarm bell; upon that he stepped into the hall of the club by the side of the door, when he noticed the two policemen by-passing him without seeing him; upon that, he said, he walked at normal pace, descended the staircase, left the club premises and within a minute or so he was joined on the pavement outside the club by Acc. 2 and they both left. Acc. 1 denied that any one of the policemen talked to him or arrested him; he also denied vehemently that he was carrying a revolver or that he did threaten P.W. 6 by pointing at him a revolver. Acc. 1 insisted that he was neither chased by P.W. 6, nor did he turn back and threaten the aforesaid witness by pointing a revolver at him.

Acc. 2 stated on oath that he was at the club when the two policemen arrived; both constables, he added, by-passed him and entered into inner rooms of the club; he himself sat in the hall of the club for a while and when he saw other people in the club leaving the premises, including Acc. 1, he (Acc. 2) got up and hastily descended the staircase following them. He joined Acc. 1 at the exit and they both went away. Acc. 2 denied that he was arrested by anyone of the police constables and also denied that he was carrying a revolver with him. Acc. 2 further denied the whole incident which took place outside the club as described by P.W. 3."

The trial Court made, eventually, the following findings:—

"The case for the Prosecution mainly rests on the evidence of the two police constables *i.e.* Nicos Theodorou and Loizos Anghelides.

We have considered carefully the evidence of these two witnesses; we have listened carefully to their evidence in chief and their lengthy cross-examination and we have had the opportunity of watching their demeanour in the witness box. We must say that they both impressed us favourably and we accept their evidence in toto.

The evidence of both accused impressed us unfavourably and we reject it.

5 We are satisfied beyond reasonable doubt that both accused were arrested in the club premises in the execution of a bench warrant for their arrest, and that both accused, who were carrying revolvers with them, managed to escape from such a lawful custody. We are satisfied beyond reasonable doubt that Acc. 1 was carrying a revolver of unknown make, which he pointed against P.W. 6, whilst 10 the latter was chasing him. P.W. 6 had ample opportunity of seeing this revolver from a distance of only 2-2½ meters in the amply lit by electric light room of the staircase and his experience in arms during his service in the Police Force for the last 5 years, leaves no room for doubt 15 that the revolver pointed at him and by means of which he was threatened, was a real one."

It has been argued before us, by counsel for appellant 1, that his conviction is unsafe because the revolver which he was allegedly holding when he was being chased by the police, 20 prior to his succeeding to escape, might not have been a real one, but only an imitation weapon.

The policeman who saw it was cross-examined as regards this aspect and the trial Court accepted that he had safely identified a real weapon in the hands of appellant 1, from 25 quite a close distance. Moreover, it is to be noted that the defence which was put forward by appellant 1 was not at all that he had been holding an imitation weapon. He denied completely having been either asked to stop or having been chased by the policeman.

30 We find no merit in the above contention of appellant 1, namely that he was not carrying a real revolver.

Furthermore, we find no merit whatsoever in the other arguments, which were advanced by him after he chose to 35 dispense with the services of his counsel and to conduct his appeal on his own; they were all arguments to the effect that the evidence given by the policemen against him was unsafe and should not have been relied on by the trial Court. The trial Court was, however, satisfied about the credibility and

reliability of the policemen and we see no reason whatsoever to interfere with its findings which were based on their evidence.

Consequently, we find no difficulty whatsoever in dismissing the appeal of appellant 1.

Concerning appellant 2 there were raised mainly two issues: 5
First, that this is a case where the only evidence against him was that of a single policeman, which was not corroborated by that of any civilian who happened to be present; and we were referred, in this connection, to the often cited dictum, by Vassiliades J.—as he then was—in *Volettos v. The Republic*, 1961 10
C.L.R. 169 (at p. 182), that:—

“When Mr. Justice Thomas, nearly thirty years ago, after citing a passage from the 11th Edition of Taylor, on evidence, went on to say in *Rex v. Mentesh* (14 C.L.R. 232, at p. 244) that— 15

‘the Courts here should exercise the greatest caution before acting upon the evidence of members of the Police Force, where it is unsupported by independent testimony, and particularly in cases of serious crime’.

he was sounding a very wise warning to the Courts; a 20
warning the wisdom of which, my 37 years of experience at the Bar and Bench of almost every Court in Cyprus, has constantly confirmed, time after time.”

We cannot read this passage as laying down, as a matter of principle, that the Courts should be, as a rule, biased against 25
the evidence of police officers; and, in this respect, it is perhaps useful to note, by way of analogy, that it has been held in *R v. Bingham Justices, ex parte Jowitt*, [1974] 118 S.J. 570, that to lean always, on principle, in favour of the evidence of police officers amounts to bias. 30

It is one thing to say that a Court ought to, in any particular case, guard against the possibility of the evidence of an over-zealous police officer being unreliable or exaggerated and a totally different thing to contend that, as a rule, a policeman should not be believed when his evidence is not corroborated 35
by another witness who is not a policeman himself.

In the present case there was ample evidence on which the trial Court could come to the conclusion, quite safely, that

appellant 2 was carrying a revolver, loaded with the rounds of ammunition in question, especially as, actually, the revolver and the ammunition were seized there and then by the policeman who chased appellant 2 and who managed to take such
5 weapon away from him.

The second issue raised by counsel for appellant 2 is that the judgment of the trial Court is not duly reasoned in that no specific reasons are given in it as to why the version of his client was not accepted by the trial Court as being true.

10 The need for due reasoning of a judgment has been dealt with at length in *Katsaronas and others v. The Police*, (1973) 2 C.L.R. 17 (at p. 35 et seq.) and it is clear from the case-law referred to on that occasion that one has to look at the judgment concerned as a whole, as well as at the particular
15 circumstances of each case, before deciding whether or not the requirement for due reasoning has been satisfied.

In the present case the trial Court has mentioned specifically that it has based its findings on, among other things, its assessment of the credibility of the policemen concerned and of the
20 two appellants, having had the opportunity to watch their demeanour while giving evidence, and, looking at the Court's judgment as a whole, we cannot say that, in the light of the particular circumstances of this case, it is not duly reasoned so as to meet both the requirements of Article 30.2 of the
25 Constitution and section 113 of the Criminal Procedure Law, Cap. 155.

The convictions of the appellants on the charge of escaping from lawful custody were not seriously challenged by either of them. So, we do not have to deal, at any length, with this
30 aspect of the present case.

Appellant 1 has contended, also, that the sentences passed upon him are manifestly excessive. We need say nothing more, in this respect, than that we find no merit whatsoever in this contention; the seriousness of the offences which he has committed, and the need to punish severely people who continue to
35 carry firearms illegally, in spite of all the repeated efforts of the State to eradicate this evil and, at the same time, to protect law and order, leave no room for doubt that the sentences

imposed on appellant 1 are neither manifestly excessive nor wrong in principle.

In relation to appellant 2 it was argued that there exists disparity of sentences as regards the sentences imposed on him and on appellant 1 for the offence of escaping from lawful custody, because appellant 1 was sentenced to only one year's imprisonment while appellant 2 was sentenced to eighteen months' imprisonment for such offence. 5

It is true that both appellants were, at the material time, being wanted by the police, on the strength of judicial warrants which were issued when they failed to turn up for trial on other charges, and, so, in effect, the offence of escaping from lawful custody, which each one committed, at the same time and place, by running away from the policeman who tried to arrest him, was, essentially, of the same nature and was committed in very similar circumstances as the same offence which was committed by the other one; but, appellant 2 had been very recently convicted of escaping from lawful custody on another occasion and, therefore, it was open to the trial Court to punish him more severely than appellant 1, because he was being found guilty of such an offence for a second time. 10
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For all the above reasons the appeals of both appellants against both conviction and sentence are dismissed.

Appeals dismissed.