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MICHAEL LAZAROU SAVA
v.
THE POLICE.

[JACKSON, C.J., AND GRIFFITH WILLIAMS, J.]

(February 25, 1949)

MICHAEL LAZAROU SAVA, *Appellant,*

v.

THE POLICE, *Respondents.*

(*Criminal Appeal No.* 1865.)

Criminal Procedure—Judgment—Contents of judgment—Criminal Procedure Law, 1948, section 110 (1) and 143 (a)—Failure of trial Court to comply with section 110 (1)—Consequences.

Section 110 (1) of the Criminal Procedure Law, 1948, requires that in all cases in which an appeal lies the judgment of the trial Court shall state in writing the point or points for determination, the decision thereon, and the reasons for the decision.

The judgment of the trial Court in this case simply stated that "the accused is found guilty on the first count and not guilty on the second count." The appellant was convicted of receiving property belonging to His Majesty, and sentenced to four months' imprisonment.

Held: (i) that failure to comply with the provisions of section 110 (1) did not necessarily entail the quashing of the conviction. Nor was such an omission necessarily a sufficient reason for the grant of leave to appeal. That question must depend on the circumstances of each case and it may be that the correctness of a conviction would be obvious from the record.

(ii) In general, a judge's omission to comply with that section could be cured by returning the case to the trial Court, under section 143 (*a*) of the same Law, for further information. But the question whether or not it would be expedient to do so must depend on the circumstances of each case.

Conviction affirmed.

Appeal from conviction by the District Court of Nicosia (Case No. 18407/48).

A. Indianos for the appellant.

C. Severis for the respondents.

The facts of the case appear sufficiently from the judgment of the Court which was delivered by :

JACKSON, C.J. : This is an appeal from a decision of the District Court of Nicosia by which the appellant was convicted of unlawfully taking upon himself the control of 12 gallons of petrol and 3 jerry cans, being the property of His Majesty, and sentenced to four months' imprisonment. The grounds on which leave has been given to

appeal raise the question of the consequences of failure on the part of a trial Court to comply with section 110 (1) of the new Criminal Procedure Law, 1948, which came into operation on the 15th of December in that year. The section requires that in all cases in which an appeal lies the judgment of the trial Court shall state in writing the point or points for determination, the decision thereon, and the reasons for the decision. The judgment in this case simply states that " the accused is found guilty on the first count and not guilty on the second count." It is, therefore, very clearly a complete failure to observe the mandatory direction which the section 110 of the Criminal Procedure Law contains.

Mr. Indianos argued for the appellant that failure to comply with the provisions of that section must necessarily entail the quashing of the conviction. We are not in agreement with that argument. Nor are we prepared to say that omission to comply with that section must necessarily be a sufficient reason for the grant of leave to appeal. In our view that question must depend on the circumstances of each case and it may be that the correctness of a conviction will be obvious from the record. In general, a judge's omission to comply with that section could be cured by returning the case to the trial Court, under section 143 (*a*) of the new Law, for further information. But here again it appears to us that the question whether or not it would be expedient to do so must depend on the circumstances of each case.

In this case the question was whether the trial Court had or had not borne in mind the risks of relying on the evidence of an accomplice. We leave aside the question of whether or not there was corroboration of the evidence of that witness since the terms upon which leave to appeal was given in our view exclude the argument on that question.

Mr. Indianos referred to the Cyprus case of *Rex* v. *Pouri* (C.L.R. Vol. 14, p. 121) in which it was held that a court in Cyprus, combining the functions of judge and jury, must be presumed to be aware of the danger of convicting on an accomplice's evidence. Mr. Indianos argued that this presumption was removed by section 110 of the new Criminal Procedure Law but we see no justification for that argument. The clear reason for the new provision is that everyone concerned in a possible appeal against a conviction, namely, the defendant and the Court of appeal, and now, under the new Law, the Crown itself, should know the grounds upon which the trial Court rested its decision.

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In our view, the only question for us is whether or not we should return this case to the trial Court under section 143 for a statement of the reasons upon which the Court came to its conclusion. But here again it seems to us that the question whether or not we should do so must depend on the circumstances of the particular case, for we are unwilling to make any statement in this Court which might seem to lay down that in every case of failure to comply with section 110 of the new Law the case must be referred back in order to secure compliance with it. Compliance with that section can be secured by other means, and these means we propose to take.

In this particular case the question, as we have said, was whether or not the Court had borne in mind the risk of acting upon the evidence of an accomplice. It might possibly have been less obvious than it was that the particular witness concerned was an accomplice, and if this had been so we might have thought it necessary to refer the case back in order that we might be sure that the judge had so regarded him. In this particular case it was perfectly obvious that he was an accomplice and no Court could possibly have ignored the fact. Acting therefore on the principle laid down in the Cyprus case to which we have referred, we feel that we are bound to presume that the trial judge, in convicting the defendant, had in mind the fact that the principal witness on whose evidence he relied was an accomplice.

That being so, it seems to us unnecessary that we should refer the case back to the trial Court and we feel unable to say that the Court was unreasonable in accepting the evidence of that particular witness. If the Court did accept it it was perfectly clear that the defendant was guilty of the offence of which he was charged.

In these circumstances we think that the appeal must be dismissed, but since we agree that the appellant and everyone else concerned was left in difficulty by the failure of the trial Court to comply with the provision of the new Law, we think it right to say that his sentence of four months' imprisonment should run from the date of conviction in that Court and not from the dismissal of his appeal in this Court.

Appeal dismissed.