[HALLINAN, C.J., GRIFFITH WILLIAMS, J., AND ZEKIA, J.]

(November 29, 1952)

QUEEN,

v.

HARALAMBOS ERODOTOU OF VAROSHA.

(*Q.L.R. No.* 83.)

Reserved questions under the Criminal Procedure Law, section 145—*When are English decisions on Common Law authoritative in Cyprus—Construction of Criminal Code, section* 202, *relating to provocation—Mode of retaliation—Legal sufficiency of provocation may differ in Cyprus and in England.*

(i) The Courts in applying any section of the Criminal Code, must consider whether its structure is so elaborate as to suggest that it is a complete statement of the law in which case the English decisions would not apply ; or whether it intends to reproduce the common law in which case the English decisions are authoritative, and the decisions of the Privy Council, the House of Lords, the Court of Appeal and the Court of Criminal Appeal in England must be followed.

(ii) Section 202 of the Criminal Code (relating to provocation) reproduces the Common Law. It omits the principle of the Common Law that the mode of retaliation must bear reasonable relation to the provocation if the offence is to be reduced to manslaughter. This principle is applicable in Cyprus because it is based on English decisions which the Courts in this territory must follow.

(iii) In consulting the English authorities on the legal insufficiency of provocation, the Courts in Cyprus, if the local conditions make the English authorities inapplicable, must treat the question as to whether provocation was sufficient to deprive a reasonable man of his self-control as a question of fact and not of law.

Questions of law reserved by the Assize Court of Famagusta for the opinion of the Supreme Court.

Criton Tornaritis, Q.C., Attorney-General, for the Crown.

Stelios Pavlides, Q.C., for the accused.

QUESTIONS OF LAW RESERVED FOR THE OPINION OF THE SUPREME COURT.

1. Whether in interpreting the Law of provocation as laid down in section 202 of the Cyprus Criminal Code the Cyprus Courts are bound to or may draw any guidance from English authorities on the law of provocation.

2. Whether in deciding if the evidence could support the view that the provocation was of such a nature as to deprive a reasonable person of the power of self-control and leads him to do what the accused did and whether the accused

acted under the stress of such provocation, the Court has to consider the nature of the weapon used in retort, the mode of resentment and its reasonable relation to the provocation and generally all other circumstances tending to show the state of mind of the accused.

3. Whether the Court in dealing with provocation as laid down in section 202 of the Cyprus Criminal Code is bound to apply the English Law on the subject.

4. Whether the Court in dealing with provocation and in particular with insult or aggravation mentioned in section 202 of the Cyprus Criminal Code as depriving a reasonable man of the power of self-control has to take into account the nature of the weapon used for causing the death of the victim.

5. Can insult unaccompanied by violence be held to be sufficient provocation, in a case where death has been caused by means of a deadly weapon, to reduce the crime of murder to that of manslaughter?

HALLINAN, C.J. : In this case the trial Court has before delivering judgment reserved five questions of law for the opinion of the Supreme Court. The questions concern the law of provocation, provision for which has been made in section 202 of the Criminal Code.

It is convenient to consider the first and third questions together. After hearing the able arguments of the Attorney-General for the Crown and Mr. Pavlides for the defence, we think that these questions may be stated thus: In administering the law of provocation in Cyprus, should the Courts follow the English law on the subject; or should they consult the English cases without being bound by them? It has not been seriously suggested that the English cases should not even be consulted.

The Attorney-General has argued that the Courts here are bound to follow the English Law. In our opinion he has rightly not sought to rely on section 28 (1) (*c*) of the Courts of Justice Law (Cap. 11); if the common law doctrine of provocation applies in Cyprus it does not apply by virtue of section 28 (1) (*c*) for clearly provision has been made by section 202 of the Criminal Code for the doctrine of provocation. Under section 3 of the Criminal Code the English Criminal Law can in certain circumstances be applied to determine the meaning of any expressions used in the Code; but, as Mr. Pavlides has pointed out, the occasions on which an expression in the Criminal Code requires to be elucidated by the English case-law must be infrequent.

In our view where an enactment in this Colony is so elaborately drafted as, in the words of Viscount Caldacote, L.C., in *Wallace-Johnson* v. *R.* (1940) (All E.R. 1941 at p. 244), " to suggest that it was intended to contain as far

as possible a full and complete statement of the law ", then (again in the words of the Lord Chancellor), " It must be construed in its application to the facts of this case free from any glosses or interpolation derived from any expositions, however authoritative, of the law of England or of Scotland ". Moreover, even where the enactment does not contain a full statement of the law, but it is clear that the Legislative Authority intended to depart from the corresponding provisions of English law, then English law is excluded.

However, in our opinion, the Courts of the Colony are bound to follow the decisions of the Privy Council, the House of Lords and the Court of Appeal and the Court of Criminal Appeal in England when deciding matters in which the law of Cyprus and the law of England are the same ; and the Courts of unlimited jurisdiction in the Colony should in such matters give to the decisions of the Hight Court of Justice in England the same comity as is given to Courts of concurrent jurisdiction. This has long been the practice of the Courts in the colonial territories. When cases are heard in the Privy Council on appeal from colonial courts and relate to a matter upon which the Law of England and the Law of the Colony is in all material respects the same, the English authorities are cited and relied upon. Two such cases have been referred to by the Attorney-General, *Kwaku Mensah* v. *The King* (1946) A.C. 83 ; and *Akerele* v. *Rex* (1943) 111–112 L.J. P.C.26. These cases came from the Gold Coast and Nigeria respectively ; they were criminal cases and the Criminal Code of each colony expressly provides that no person shall be punished except in accordance with the Code and not under the common law. Each appellant was convicted of an offence under the criminal code of his colony but, since the offence charged under the code was the same in all material respects with the English law, the English cases were treated as authoritative.

Mr. Pavlides, on the analogy of the rule of interpretation that statutes may be construed by referring to decisions in other statutes " *in pari materia* ", has argued that before English common law decisions can be authoritative the local statutory provision and the common law of England must be identical. We are unable to accept this submission. The English decisions on the common law become authoritative in Cyprus if (to use the words of Lord Goddard before he applied English decisions in the Kwaku Mensah case at p. 93) " in all material respects the Code reproduces the common law of England on the subject."

This phrase required some amplification. The common law has taken centuries to formulate and it needs considerable erudition and elaborate drafting to capture its many sided wisdom. Few sections in the Criminal Codes of colonial territories aim at such completeness.

A section, so far as it goes, may reproduce the common law, but it may omit some material element in the law which is being reproduced. Reading the section it is obviously the intention of the legislative authority to enact a certain part of the common law, but the enactment is not complete. In such circumstances the English decisions on this part of the common law are authoritative in Cyprus. It must always be a matter for a Court, in applying any section of the Criminal Code, to consider whether its structure is so elaborate as to suggest that it is a full and complete statement of law, in which case the English decisions will not apply ; or whether it intends to reproduce the common law, in which case the English decisions are authoritative and the Courts of this Colony are bound to follow such decisions in the manner stated earlier in this opinion.

We accept the submission of the Attorney-General that it was clearly the intention of the Legislative Authority when enacting section 202 to reproduce the common law of provocation. It is not however a complete statement of that law; for example, it omits a very material principle of the common law, namely, that the mode of retaliation must bear reasonable relation to the provocation if the offence is to be reduced to manslaughter. A reasonable man may upon receiving certain provocation lose some but not all self-control ; as a result he may hit some one with a stick, but yet not use a deadly weapon. In such circumstances to lose all self-control would be unreasonable. On the other hand he might receive such provocation as would cause him as a reasonable man to lose all self-control so that he uses a deadly weapon. This principle was laid down clearly in the judgment of the House of Lords in *Mancini* v. *The Director of Public Prosecutions*, 28 Criminal Appeal Reports, 65. In our view that decision is binding on the Courts in this Colony.

There is however a line of authority in the English decisions on the law of provocation which, in our view, should be consulted with caution and which in certain circumstances need not be followed. These decisions lay down that, as a matter of law, certain particular acts or words of provocation do not in themselves constitute sufficient provocation to reduce murder to manslaughter. These decisions endeavour to apply the common law principles of provocation to the character and conditions of society in England. These statements of the law are usually qualified by such phrases as " save in circumstances of a most extreme and exceptional character " or " as a general rule ". One such rule is stated in the judgment of Viscount Simon L.C. in *Holmes* v. *The Director of Public Prosecutions* (1946 A.C. 558 at p. 600) " a sudden confession of adultery without more is never sufficient to reduce an offence which otherwise be murder to manslaughter and

in no case could words alone, save in circumstances of a most extreme and exceptional character, so reduce the crime ".

But the Lord Chancellor follows this statement with a most significant passage :—

> " There are two observations which I desire to make in conclusion. The first is that the application of common law principles in matters such as this must to some extent be controlled by the evolution of society. For example, the instance given by Blackstone (*Commentaries Book IV, p. 191, citing an illustration in* Kelyng, p. 135), that if a man's nose was pulled and he thereupon struck his aggressor so as to kill him, this was only manslaughter, may very well represent the natural feelings of a past time, but I should doubt very much whether such a view should necessarily be taken nowadays. The injury done to a man's sense of honour by minor physical assaults may well be differently estimated in differing ages. And, in the same way, one can imagine in these days at any rate, words of a vile character which might be calculated to deprive a reasonable man of his customary self-control even more than would an act of physical violence. But, on the other hand, as society advances, it ought to call for a higher measure of self-control in all cases."

Just as the reactions of a reasonable man to provocation may differ from age to age in England, so the reactions of such a man in England may differ from his contemporary in Cyprus. A " reasonable man " in Cyprus, in given circumstances, may not act in the same way as a " reasonable man " in England ; his degree of resentment may be greater or may be less. In consulting the English authorities on the legal insufficiency of provocation, the Courts in Cyprus must bear this in mind and should, if the local conditions make these authorities inapplicable, treat the question as to whether the provocation was sufficient to deprive a reasonable man of his self-control as a question of fact not of law. Although a Court in Cyprus may decide not to follow the English authorities on this aspect of the law of provocation, they must strive to preserve that just balance in matters of felonious homicide which Lord Simon in Holmes' case summed up in these words :—

> " The Law has to reconcile respect for the sanctity of human life with recognition of the effect of provocation on human frailty."

What has been said, answers the 1st and 3rd questions submitted to the Court. The 2nd and 4th questions can be answered quite briefly as follows : In considering the question of provocation the Court has to consider all circumstances tending to show the state of mind of the

accused and also to consider whether the mode of retaliation bore a reasonable relation to the provocation; in doing so, the Court must take into account the nature of the weapon used by the accused person.

As regards the last question, the Court is not prepared to say that, in the circumstances stated in the question, the provocation is, as a matter of law, insufficient to reduce murder to manslaughter. The question therefore remains one of fact, namely, would the provocation which this accused received have deprived a reasonable man of his self-control so as to kill as the accused killed?

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

(December 1, 1952)

PANAYIOTIS METOCHIS, *Appellant*,

v.

YIANNIS CH. SCHIZA OF LIMASSOL, *Respondent.*

(*Civil Appeal No.* 3933.)

Contract of guarantee—Rent of contractual tenancy guaranteed—Contract not applicable to statutory tenancy.

In a contract of lease made between the landlord and his tenant, the appellant guaranteed the payment of rent by the tenant. After the contractual tenancy expired the tenant continued in occupation as a statutory tenant and failed to pay the rent. The landlord sued the tenant and also the appellant as guarantor. The trial Court gave judgment for the landlord against both the defendants. The guarantor appealed.

Held: The guarantor was not liable under the contract of guarantee for the tenant's failure to pay rent during the statutory tenancy which is not a continuation of the contractual tenancy but merely gives a statutory right of occupation.

Appeal allowed.

Appeal by the plaintiff from the judgment of the District Court of Limassol (Action No. 892/49) in favour of the defendant.

J. Eliades for the appellant.

Chr. P. Mitsides with *G. J. Pelaghias* for the respondent.