

1961
March 13, 18,
May 5, 23

MAROULLA
XENOPHONTOS
v.
PANAYIOTA
CHARALAMBOUS

[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

MAROULLA XENOPHONTOS,

Appellant,

v.

PANAYIOTA CHARALAMBOUS,

Respondent

(Criminal Appeal No. 2335).

Criminal procedure—Appeal—Acquittal—Appeal from an acquittal—The Courts of Justice Law, 1960, section 25(2)—The Criminal Procedure Law, Cap. 155, sections 131(2) and 137(1)(a)—No appeal lies from an acquittal except at the instance or with the written sanction of the Attorney-General—The principle is that the clearest terminology is required to give an appeal against an acquittal.

In this case the appellant preferred a charge in the District Court of Nicosia against the respondent charging the latter with insult, contrary to section 99 of the Criminal Code, Cap. 154. By reason of the absence of the appellant's (complainant's) advocate when the case was called for hearing, it was dismissed for want of prosecution and the respondent was discharged in accordance with the provisions of section 89(2) of the Criminal Procedure Law, Cap. 155. The complainant appealed from that acquittal. A preliminary objection was raised on behalf of the respondent that the order of the trial judge amounted to an acquittal and that, accordingly, no appeal lay to the High Court save with the written sanction of the Attorney-General which had not been given, as required by sections 131 (2) and 137 (1)(a) of the Criminal Procedure Law, Cap. 155. It was contended on behalf of the appellant that no sanction is any longer required as section 25(2) of the Courts of Justice Law, 1960, gives an unqualified right of appeal from any decision of a Court exercising criminal jurisdiction. By section 25(2) of the Courts of Justice Law, 1960, it is provided: "Subject to the provisions of the Criminal Procedure Law but save as otherwise in this sub-section provided every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court. Any such appeal may be made as of right against conviction or sentence on any ground". Section 131(2) of the Criminal Procedure Law, Cap. 155, reads: "There shall be no appeal from an acquittal except at the

instance or with the written sanction of the Attorney-General as in this Law provided". And section 137(1) of Cap. 155 (*supra*) provides: "The Attorney-General may — (a) appeal or sanction an appeal from any judgment of acquittal by a District Court on any of the following grounds.". Counsel for the appellant submitted that section 25(2) of the Courts of Justice Law, 1960, (*supra*) confers a right of appeal from the new courts established by that law to the High Court of Justice, established by Part X of the Constitution, and that only the procedural matters laid down by Cap. 155 (*supra*) are applied to the new courts, by virtue of the opening words "subject to the provisions of the Criminal Procedure Law " of sub-section 2 of section 25 of the Courts of Justice Law, 1960, (*supra*).

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Held: (1) The written sanction of the Attorney-General is required under section 131(2) of the Criminal Procedure Law, Cap. 155 in cases of appeals from an acquittal.

(2) In section 25(2) of the Courts of Justice Law, 1960, the right of appeal, though clearly given, is no less clearly qualified by the opening words of the sub-section. Furthermore, the concluding sentence of the sub-section "any such appeal may be made as of right against conviction or sentence on any grounds" with its significant omission of any reference to acquittal, is a point rather against the submission on behalf of the appellant.

(3) A still more important consideration is that on the argument put on behalf of the appellant, the right of appeal against acquittals, formerly strictly limited both as regards categories of persons who may appeal and grounds of appeal, would be widened so as to include every case however grave or trivial. But the Criminal Code of Cyprus, in its general features and historical growth stems from the Common Law. It shares with the Law of England, Ireland, United States and most countries of the Commonwealth, a common root and origin. That law, in recent centuries at any rate, has leaned strongly against an accused person having to stand a second trial in respect of a charge on which he has been tried and acquitted by a Court of competent jurisdiction. It is an extremely important and universally accepted principle that the clearest terminology is required to give an appeal against an acquittal.

Principles laid down by Lord Chief Baron Palles in *Reg.*

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v. Tyrone JJ. 40 Ir. L.T. 181 quoted with approval by Viscount Simon, L.C. in *Benson v. Northern Ireland Road Transport Board* (1942) A.C. 520, *adopted*. Principles to the same effect laid down, in *Reg. v. London County Justices* (1890) 25 Q.B.D. 357, at p. 360, per Lord Coleridge, C.J. and in *Cox v. Hakes* (1890) 15 App. Cas. 506, at p. 522, per Lord Halsbury L.C., *adopted*.

(4) For all the above reasons, no appeal lay in this case, in default of the written sanction of the Attorney-General provided by section 131 (2) of Cap. 155.

Cases referred to :

Reg. v. Tyrone JJ. 40 Ir. L.T. 181;

Benson v. Northern Ireland Road Transport Board (1942) A.C.520 ;

Reg. v. London County Justices (1890) 25 Q.B.D. 357;

Cox v. Hakes (1890) 15 App. Cas. 506.

Appeal against acquittal.

The respondent was acquitted on the 1st March, 1961, at the District Court of Nicosia (sitting at Morphou) (Criminal Case No. 77/61) of a charge for the offence of insult contrary to section 99 of the Criminal Code, Cap. 154, by Hji Prodromou, Ag. District Judge, who discharged and acquitted the respondent and ordered appellant to pay £4.000 mils costs to the respondent.

Andis Pantelides for the appellant.

Andis Triantafyllides for the respondent.

Criton G. Tornaritis, Attorney - General of the Republic with *E. Munir*, for the Republic.

Cur. adv. vult.

The judgment of the Court was delivered by :

O' BRIAIN, P. : In this case the appellant preferred a charge in the District Court of Nicosia, sitting at Morphou, against the respondent charging the latter with insult, contrary to s.99 of the Criminal Code, (Cap. 154).

The case was listed before a District Judge sitting at Morphou on the 1st March last. By reason of the absence of the appellant's advocate when the case was called for hearing, it was dismissed for want of prosecution and the respondent was discharged in accordance with the provisions of s.89 sub-section (2) of the Criminal Procedure Law, (Cap.155).

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When the appeal came before this Court on the 13th April, Mr. Triantafyllides, on behalf of the respondent, raised a preliminary objection that the order of the learned District Judge amounted to an acquittal and that accordingly no appeal to the High Court lay save with the written sanction of the Attorney-General which had not been given, as required by sections 131 and 137 of the Criminal Procedure Law.

Mr. Pantelides in reply argued that the provisions of section 25 of the Courts of Justice Law, 1960, give an unqualified appeal to this Court from every decision of every Court exercising criminal jurisdiction, including a decision to acquit. He contended that since the enactment of that section the written sanction of the Attorney-General referred to in the Criminal Procedure Law, was no longer required, in cases of appeals from judgments of acquittal.

As it appeared to the Court that the rights and privileges of the Attorney-General were directly involved in this argument, the Court, with the consent of the parties, gave notice to the Attorney-General of the point raised by the parties and indicated to the Attorney-General that it would be prepared to hear arguments, on his behalf, on this point if he desired to be heard. Accordingly, the appeal was adjourned and when it again came before this Court on the 5th day of May, 1961, the Attorney-General appeared, in person, to argue the matter.

The Attorney-General submitted that section 25, sub-section (2) of the Courts of Justice Law, 1960, provides that every decision of a Court exercising criminal jurisdiction is appealable to the High Court, but "subject to the provisions of the Criminal Procedure Law". He submitted that the provisions of section 131(2) of Cap. 155 are applicable to this case that section being one of the provisions of the Criminal Procedure Law relating to acquittals. The effect of his argument was that there is, in a case such as this no appeal except with the written sanction of the Attorney-General as

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provided in that Law. Section 137, sub-section (1) provides that the Attorney-General may "(a) appeal or sanction an appeal from any judgment of acquittal by a District Court on any of the following grounds" ; and four specific grounds are set out in the sub-section. Mr. Pantelides contended that section 25 of the Courts of Justice Law, 1960, is a section conferring a right of appeal from the new courts established by that Law to the High Court of Justice established by Part X of the Constitution, and that only the procedural matters laid down by Cap 155 are applied to the new courts, by virtue of the words "subject to the provisions of the Criminal Procedure Law" in section 25(2). The right to appeal and the jurisdiction to hear appeals are to be found, quoad criminal cases, he contended in the words "every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court".

It is, I think, correct that a right of appeal clearly given in unqualified terms in a statute cannot be cut down by provisions of another procedural statute or statutory order. The difficulty arises, from the point of view of the appellant that in section 25 the right of appeal, though clearly given, is no less clearly qualified by the opening words of the sub-section. Furthermore, the concluding sentence of sub-section (2) "any such appeal may be made as of right against conviction or sentence on any grounds" with its significant omission of any reference to acquittal is, in my opinion, a point rather against Mr. Pantelides's argument.

As still more important consideration is that on Mr Pantelides's argument, the right of appeal against acquittals formerly strictly limited both as regards categories of persons who may appeal and grounds of appeal, would be widened so as to include every case however grave or trivial. In its general features and historical growth, the present Criminal Code of Cyprus stems from the Common Law. It shares with the Law of England, Ireland, United States and most countries of the Commonwealth, a common root and origin. That law, in recent centuries at any rate, has leaned strongly against an accused person having to stand a second trial in respect of a charge on which he has been tried and acquitted by a Court of competent jurisdiction. It is an extremely important and universally accepted principle that the clearest terminology is required to give an appeal against an acquittal. Lord Chief Baron Palles, probably the most eminent Judge

that Ireland had produced in the last century and one of the greatest authorities on the Common Law, spoke in *Reg. v. Tyrone JJ* (40 Ir. L.T.181) of the "elementary" principle that -

"an acquittal made by a court of competent jurisdiction and made within its jurisdiction, although erroneous in point of fact, cannot as a rule be questioned and brought before any other court".

I pause to observe that the present proceedings are not by way of certiorari seeking to have the Order of the District Judge quashed for want of jurisdiction or for disregard of the essentials of justice. If they were, quite different considerations would arise. Pales C.B. continues —

"I, therefore, first rest my view on settled principles, that, before you can appeal against an acquittal, the words must be clear, express, and free from any ambiguity".

That passage from the judgment of the Lord Chief Baron was quoted with approval by the Lord Chancellor, Viscount Simon, delivering the unanimous opinion of the House of Lords in a comparatively recent case, *Benson v. Northern Ireland Road Transport Board* (1942) A. C. 520. Lord Coleridge, C.J., in *Reg. v. London County Justices* had stated the same principle in these words (1890) 25 Q.B.D. 357 at p. 360 :—

"The general principle of law is that, if acquitted, he (an accused person) is not to be a second time vexed".

More recently, Lord Halsbury L.C. in *Cox v. Hakes* (1890) 15 App. Cas. 506 at p. 522 has put the matter thus —

"Your Lordships are here determining a question which goes very far indeed beyond the merits of any particular case. It is the right of personal freedom in this country which is in debate ; and I for one should be very slow to believe, except it was done by express legislation, that the policy of centuries has been suddenly reversed and that the right of personal freedom is no longer to be determined summarily and finally, but is to be subject to the delay and uncertainty of ordinary litigation so that the final determination upon that question may only be arrived at by the last court of appeal".

It is true that, in Cyprus, a limited right to appeal against acquittal has existed for years past, but, in my view, the prin-

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ciples referred to by the distinguished Judges I have quoted apply here with regard to any extension of that right. In this case, both the appellant and the Attorney-General contend for an extension of the right of appeal against acquittal because I observed that the Attorney-General, in the course of his argument, stated that the right of appeal conferred upon the Attorney-General by section 137 of the Criminal Procedure Law now extends to acquittals by Assize Courts. However, in this case, the Court is concerned with an acquittal by the District Court only and no question, therefore, arises regarding a decision by an Assize Court, and I express no opinion upon that point. It is sufficient in order to determine the preliminary point, to say that I do not find in section 25(2) of the Courts of Justice Law, 1960, any words "clear, express and free from any ambiguity", giving a general right of appeal against acquittals as Mr. Pantelides has contended. We accept the contention of Mr. Triantafyllides and also that of the Attorney-General, to this extent, that we hold that no appeal from an acquittal by a District Court can be brought without the written sanction of the Attorney-General as in Criminal Procedure Law, provided. As this sanction has not been given in this case, I hold with Mr. Triantafyllides upon his preliminary point that this appeal does not lie.

Appeal dismissed.