

[O' BRIAIN, P., VASSILIADES, JOSEPHIDES, JJ. and MUNIR,
ACTING J.]

1961
Sept. 22,
Oct. 24, 26,
Nov. 29

LAZARIS DEMETRIOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 2387)

LAZARIS
DEMETRIOU
v.
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*Evidence in criminal cases—Accomplice—Who is an accomplice—
Accessory after the fact is an accomplice—Evidence—Corrobo-
ration—Accomplice cannot corroborate another accomplice.*

Criminal Procedure — Appeal — No miscarriage of justice.

*Observations as to the duties of trial courts in dealing with
cases where a prosecution witness's testimony calls for corro-
boration and as to the matters to be put on record in connection
therewith.*

The appellant was convicted at the Limassol Assizes of armed robbery and carrying a pistol without a permit. The case against the appellant was that on the night of the 7th December 1959 he went to Sanidha village with one Hittis and under the threat of a pistol he seized from the complainant a sporting gun together with a bandolier, and that on the same night he the accused went to Limassol and took the stolen articles to the house of one Economides where he left them until the following day when he took them away. The complainant could not identify any of the two persons who stole his gun. Economides stated that when the appellant handed him the stolen gun for safe custody he (appellant) informed him that he had stolen it. Economides also saw the appellant carrying a pistol.

The trial Court treated Hittis as an accomplice in the commission of the offence and in their judgment they stated:

Therefore we have approached his evidence with the required caution. Nevertheless we have believed him as being a witness of truth. We have also believed all the other witnesses for the prosecution including the complainant himself".

The main ground of appeal was that witness Economides was in law an accomplice, that his evidence was relied upon as

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corroboration of Hittis' evidence and that this vitiates the verdict that had been given by the trial court.

Held:— (1) Following the case of *Michael John Davies* (1954) 38 Cr. App. R. 11 defining the term "accomplice", an accessory after the fact comes within the definition. Therefore Economides was an accomplice.

(2) Although the Court did not direct their mind to the question whether Economides was an accomplice within the meaning of that term and was not in fact treated as such, nevertheless no substantial miscarriage of justice has occurred, as the judges, after duly warning themselves that Hittis was an accomplice and that it could be dangerous for them to act on his evidence unless corroborated, thought fit to act on his uncorroborated evidence.

Observations by the Court:

In any case where a prosecution witness's testimony calls for corroboration it is desirable that the judgment of the trial court should put on record clearly the following matters:-

(1) That the trial Court has realised that corroboration of such witness's testimony is called for.

(2) A statement whether the trial Court does or does not find corroboration of that testimony and if so what evidence it accepts as corroboration.

(3) Where a witness may or may not be regarded as an accomplice of the accused a finding by the trial Court as to its conclusion whether, in the particular circumstances, the Court does or does not hold him to be an accomplice.

(4) If the trial Court decides to act upon the evidence of such witness as is referred to at (1) above, it should indicate clearly whether it does so because of corroboration or apart altogether from corroboration.

Cases referred to:

R. v. Davies 38 Cr. App. R. 11;

R. v. Noakes 5 C. & P. 326;

R. v. Baskerville (1916) 2 K.B. 658.

Appeal against conviction.

The appellant was convicted on the 21.6.61 at the Assize

Court of Limassol (Criminal Case No. 4317/61) on 2 counts of the offences of (1) Armed robbery, contrary to sections 282 and 283 of the Cr. Code Cap. 154, (2) Carrying a pistol without a special permit, contrary to s.4(1) (2) (a) of the Firearms Law, Cap. 57, as amended by Law 11 of 1959 and was sentenced by Michaelides, P.D.C., Malachos and Demetriou D.JJ. to 7 years imprisonment.

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Lefkos Clerides for the appellant.

S. A. Georghiades for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of JOSEPHIDES, J.

O' BRIAIN, P.: I must confess to having had some difficulty during the hearing of this appeal in deciding whether or not a re-trial should be ordered. Having heard the matter fully argued at the Bar and discussed by the members of this Court I am not now prepared to dissent from the conclusion at which the other members of the Court have arrived, that the judgment of the trial Court should be read as a decision to convict on the evidence of the accomplice Hittis even though uncorroborated. I do not find any corroboration of Hittis's testimony.

The argument of Mr. Clerides that the Assize Court having failed, as we all think they did, to advert to the fact that the witness Economides was also an accomplice, appear to have used that witness's testimony as corroborating Hittis, prompts me to express the view that it is desirable in any case where a prosecution witness's testimony calls for corroboration that the judgment of the trial Court should put on record clearly the following matters.

(1) That the trial Court has realised that corroboration of such witness's testimony is called for.

(2) A statement whether the trial Court does or does not find corroboration of that testimony and if so what evidence it accepts as corroboration.

(3) Where a witness may or may not be regarded as an accomplice of the accused a finding by the trial Court as to its conclusion whether, in the particular circumstances, the Court does or does not hold him to be an accomplice.

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(4) If the trial Court decides to act upon the evidence of such witness as is referred to at (1) above, it should indicate clearly whether it does so because of corroboration or apart altogether from corroboration.

The law and practice in England with respect to such matters have evolved down the years in Courts where the verdict is given by Juries composed of laymen not versed in the law. There, the Court of Criminal Appeal has to be satisfied that the Jury were properly instructed as to the law applicable in each particular case, a matter which is to be gathered from the terms of the Judge's charge or directions appearing upon the record. In applying this part of English Criminal Law to Cyprus, where the Court delivering the verdict consists of one or more professional lawyers recognition must be given to the difference of circumstances. In my opinion, this Court, in such cases, should impute to the trial Court a full and accurate knowledge of the law, unless the contrary appears upon record. Nevertheless, this Court must, in all cases without exception, be satisfied that the trial Court adverted to the law applicable and applied its knowledge in the course of the trial and, in particular, to its judgment and verdict. The imperfections of the human memory are many and diverse and an Appellate Court should not assume that in every case the law has been recollected and applied even by trained lawyers unless the record affirmatively shows this to be the case.

In conclusion I may say that if trial Judges would, in cases such as I am dealing with here, set out in their judgments the terms of the "warning" which has to be borne in mind, that would assist both themselves and the members of the Court to ensure that the requirements of the law are strictly applied in the case of every accused person.

VASSILIADES, J.: I have had the advantage of reading the judgment of the President of the Court and that of Mr. Justice Josephides, and all I need say is that I fully agree with the observations of the President regarding the desirability of making it clear on the record how the trial Court had approached the different points touched by the President.

As regards the substance of the appeal I agree with the judgment which is about to be delivered by my learned brother Mr. Justice Josephides.

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JOSEPHIDES, J.: The appellant was convicted at the Limassol Assizes of armed robbery and carrying a pistol without a permit. The case against the appellant was that on the night of the 7th December, 1959, he went to Sanidha village with one Demetrakis Arghyri Hittis, and under the threat of a pistol he seized from the complainant a sporting gun together with a bandolier, and that on the same night he went to Limassol and took them to the house of one Andreas Economides where he left them until the following day when he took them away.

The prosecution case was mainly based on the evidence of the complainant himself, D.A. Hittis, A. Economides and S. Antoniadès. The complainant in his evidence described how the offence was committed, but he could not identify any of the two persons who stole his gun on the night in question under the threat of a pistol. Hittis, who is a self-confessed accomplice, stated that on the night of the 7th December, 1959, he took the appellant in his car to Sanidha village, and there the two of them committed the robbery. According to this witness, the appellant was armed with a pistol while the offence was being committed, and after the commission of the offence he (Hittis) drove the appellant back to Limassol and dropped him near the ETKO factory where the appellant told him that he (appellant) was going to take the stolen gun to the house of witness Economides.

Economides stated that the appellant on the night in question visited his house in Limassol and handed to him a gun for safe custody, informing him at the same time that he had stolen the gun from a man in Sanidha village. He further stated that while the appellant was in his house, he (the appellant) drew a pistol from his waist which he placed on the bed and recovered it later before leaving Economides's house.

Antoniades stated in evidence that in the beginning of December, 1959, he met the appellant and one Andonis Zaharia in the latter's club, where he (the appellant) offered to sell to Antoniades a gun which the appellant said he had stolen from Sanidha village. There was also evidence that the said Andonis Zaharia was at that time the employer and friend of the appellant, and that, in fact, the complainant's sporting gun was on the 13th September, 1960, delivered to the Police by Andonis Zaharia in compliance with an appeal made by the President of the Republic for the delivery of illegally possessed arms.

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The appellant in his evidence denied taking any part in the commission of the offence.

The trial Court treated Hittis as an accomplice in the commission of the offence and in their judgment they stated: "Therefore we have approached his evidence with the required caution. Nevertheless, we have believed him as being a witness of truth. We have also believed all the other witnesses for the prosecution including the complainant himself".

In support of the appeal, counsel for the appellant took many points; but we found no substance in the majority of the submissions, and we do not propose to deal further with them. The main ground of appeal was that witness Economides was in law an accomplice, that his evidence was relied upon as corroboration of Hittis's evidence, and that this vitiates the verdict that has been given by the trial Court. Witness Economides admitted in evidence that the appellant, when handing to him the gun for safe custody, informed him that he had stolen it at Sanidha village on that night. The question which arises for consideration is whether on that admission Economides is an accomplice.

In the case of *Michael John Davies* (1954) 38 Cr. App. R. 11, the House of Lords held that -

"The term "accomplice" includes (i) persons who are *participes criminis* in respect of the actual crime charged, whether as principals or accessories before or after the fact (in felonies) or persons committing, procuring or aiding and abetting (in the case of misdemeanours); (ii) on a trial for larceny, receivers as regards the thieves from whom they receive the goods; (iii) where a person is charged with a specific offence on a particular occasion, and evidence is admissible and has been admitted of his having committed crimes of the identical type on other occasions, as proving system or intent or negating accident, parties to such other similar offences. No further extension of the term "accomplice" should be accepted".

From this definition of the term "accomplice" it appears that accessories after the fact come within that definition. Under section 23 of our Criminal Code, a person who receives or assists another who is to his knowledge guilty of an offence in order to enable him to escape punishment is said to become

an accessory after the fact to the offence. On the evidence before the trial Court Economides was an accessory after the fact and, consequently, an accomplice. It is well settled that the evidence of one accomplice cannot be corroborated by the evidence of another accomplice ; *R. v. Noakes*, 5 C. & P. 326; approved in *R. v. Baskerville* (1916) 2 K.B. 658.

There is no doubt that the trial Court did not direct their mind to the question whether Economides was an accomplice within the meaning of that term, and, in fact, he was not treated as such ; and if they relied for corroboration of Hittis's evidence on the evidence of Economides, then this would be a wrong decision on a question of law within the provisions of section 145(1) (b) of the Criminal Procedure Law, sufficient to justify the quashing of the conviction. But this would be so if the Court, after a proper warning regarding the evidence of the accomplice Hittis, had decided to look for corroboration of his evidence. As already stated, the trial Court, after stating that they considered Hittis to be an accomplice, said : "Therefore, we have approached Hittis's evidence with the required caution. Nevertheless we have believed him as being a witness of truth. We have also believed all the other witnesses for the prosecution including the complainant himself." We think that it is safe to assume that, when the trial Judges say that they approached Hittis's evidence with the required caution, they warned themselves that although they may convict on his evidence, it is dangerous to do so unless it is corroborated, but that they can convict upon it if they choose; and that, having considered that warning, they decided to act on the uncorroborated evidence of the accomplice Hittis.

The law applicable to corroboration of the evidence of accomplices was recently reviewed and restated by the House of Lords in the *Davies case* (quoted above) in which it was held that (at page 11) -

"In a criminal trial, where a person who is an accomplice gives evidence on behalf of the prosecution, it is the duty of the judge to warn the jury that, although they may convict on his evidence, it is dangerous to do so unless it is corroborated. This rule, although a rule of practice, has now the force of a rule of law. Where the judge fails to warn the jury in accordance with this rule, the conviction will be quashed, even if in fact there be ample

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corroborative evidence, unless the court can apply the proviso to section 4(1) of the Criminal Appeal Act, 1907".

As we read the judgment of the trial Court, the judges after duly warning themselves that Hittis was an accomplice and that it would be dangerous for them to act on his evidence unless corroborated, they thought fit to act on his uncorroborated evidence, and consequently they did not look for any corroboration in the evidence of the other prosecution witnesses. Although they failed to warn themselves that Economides was an accomplice, nevertheless we consider that no substantial miscarriage of justice has occurred as, even if corroboration of Hittis's evidence was required and looked for, it could be found in the evidence of the other prosecution witnesses including Antoniades (who was conceded *not* to be an accomplice), and that evidence was of such a nature that if the Court had properly warned itself must inevitably have come to the same conclusion. For these reasons I would dismiss the appeal.

I would like to add that I fully endorse the observations made by the learned President of this Court with regard to the course to be followed by a trial Court in any case where the evidence of a prosecution witness calls for corroboration.

Appeal dismissed. Sentence to run from the date of conviction.

MUNIR, ACTING, J.: I have had the advantage of reading the judgment which my learned brother Josephides J. has just delivered and I fully concur with that judgment and the reasons for it.

I would also state that I concur with the observations made by the learned President of this Court regarding the practice to be followed by trial Courts with regard to the corroboration of witnesses whose testimonies require corroboration.

Appeal dismissed.