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

GEORGHIOS YIANNOU HJI LOUCA

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 2309).

*Evidence in criminal cases—Indecent assault—Evidence of the complainant—Corroboration of—First complaint sufficient corroboration—Law of Cyprus different from law of England—Evidence Law, Cap.*9, *section* 10.

Wrongful admission of evidence—Circumstances in which the High Court will not quash the conviction.

Advocates—Appeals in criminal cases—Duties of advocates not proposing to appear at the hearing of the appeal.

Statement by the President of the High Court to the effect that an advocate who appears in a criminal case and does not propose to appear at the hearing of the appeal should inform directly his client of his intention in good time and also, out of courtesy, he may communicate that fact in advance to the Registrar of the High Court.

The appellant was convicted, *inter alia*, on a count for indecent assault on a female, upon the evidence of the complainant and upon the evidence of her mother-in-law as to a first complaint that was made to her by the former immediately upon the happening of the alleged assault. A considerable amount of hearsay evidence was improperly put before the trial court.

Held: (1) A first complaint by the complainant is sufficient corroboration of her (or his) testimony. The law of Cyprus regarding first complaints is different from the law of England in view of section 10 of the Evidence Law, Cap. 9. *Sutton* v. *The King* 14 C.L.R. 160 and *Reg.* v. *Votsis* 19 C.L.R. 306, *followed.*

(2) Wrongful admission of evidence will not necessarily entail the quashing of the conviction where the evidence so admitted cannot reasonably be said to have affected the

mind of the trial court in arriving at its verdict and the trial court would, or must inevitably have, arrived at the same verdict if the evidence had not been admitted.

Appeal dismissed.
Conviction affirmed.

Cases referred to :

Sutton v. *The King* 14 C.L.R. 160.

The Queen v. *Christodoulos Georghiou Votsis* 19 C.L.R. 306.

Appeal against conviction.

The appellant was convicted on the 12th January, 1961, at the Assize Court of Famagusta (Criminal Case No. 6081/60) on 2 counts of the offences of (1) criminal trespass, contrary to section 280 of the Criminal Code, Cap. 154. (2) Indecent assault, contrary to section 152 of the Criminal Code, Cap. 154, and was sentenced by Attalides, Ag. P.D.C., Kourris and Kakathymis, Acting D.JJ., to one year's imprisonment on each count, the sentences to run concurrently.

R. Denktash for the appellant

E. Munir for the respondent.

The judgment of the Court was delivered by :—

O' BRIAIN, P. : This is an appeal by the accused against conviction on two counts substituted by the trial court in lieu of the original charges of the information : The one is for trespass and the other for indecent assault on a female.

Mr. Denktash very ably argued this case and based his appeal on two grounds : Firstly, that it was unreasonable to believe the story of this girl and, secondly, that there was no corroboration of her evidence as required by the law and, therefore, that it was incumbent upon the trial court to consider that fact and, before convicting the accused, to put on record the fact that the trial court accepted the uncorroborated evidence of the complainant and convicted the accused notwithstanding the inherent danger.

To deal first with point No.2, *i.e.* that in law there was no corroboration of this girl's evidence. Mr. Denktash is

correct up to the point that if we were dealing with the law of England only, we could say that there was no corroboration. But as has been pointed out the decision in *Sutton* v. *The King* 14 C.L.R. 160, and later the decision of the Assize Court presided over by the Chief Justice in the case of *Reg.* v. *Votsis* 19 C.L.R. 306, makes it clear that the law of Cyprus has its own standard and is different from the law of England in this respect.

This Court, having considered the matter has come to the conclusion that there is corroboration of the girl's story in this case to be found in the evidence of the mother in law as to a first complaint that was made to her by the girl immediately upon the happening of the alleged attack.

That leaves the other point to be dealt with, that no court could reasonably come to the conclusion that the girl's story was true having regard to the evidence. Evidence must mean evidence properly admitted at the trial and quite a considerable amount of hearsay evidence was improperly put before the trial court during the course of the trial, but the position would appear to be as set out in Archbold, 34th Edition, paragraph 923. Where it is established that evidence has been wrongfully admitted, the court will quash the conviction unless it holds that the evidence so admitted cannot reasonably be said to have affected the minds of the jury in arriving at their verdict, and that they would, or must inevitably have, arrived at the same verdict if the evidence had not been admitted. In considering this question, the nature of the evidence so admitted and the direction with regard to it in the summing up are the most material matters. That statement is warranted by a long line of authorities.

This Court has considered the position, abstracting from the wrongfully admitted evidence, and has come to the conclusion, that we have evidence here that would, or should, have inevitably convinced the trial court that the guilt of this man had been established.

In the circumstances, notwithstanding the fact that we take the view that there was wrongful admission of evidence, we affirm the conviction and dismiss this appeal.

Appeal dismissed.
Conviction affirmed.

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Note : This appeal was fixed for hearing on the 14th March, 1961, the appellant appearing, then, in person. On the application of the appellant for an adjournment of this appeal on the ground that his advocate did not attend Court to-day, the President of the High Court made the following statement :

O' BRIAIN, P. : Having regard to what has been stated to the Court here and the possibility of there having been some misunderstanding about the representation of the accused here to-day, on what is quite a serious matter, the Court thinks that it is better to accede to the application to adjourn the appeal until a date to be fixed later.

Having regard to what has transpired this morning the Court takes the view that, in future, in any case in which an advocate appears in a criminal matter for an accused person and does not propose to represent him at the hearing of his appeal the advocate should communicate that decision of his in good time direct to his client, the accused person, and furthermore, as a matter of courtesy to the Court, he might conveniently communicate that fact in advance to the Registrar of the Court. We do not know what exactly happened in this case as we heard the one side only, but we will adjourn the case to be listed later on.