

1962
Apr. 13, 16
STAVROS
GEORGHIOU
KOUSOULIDES
v.
THE REPUBLIC

[WILSON, P., ZEKIA, VASSILIADIS and JOSEPHIDES, JJ.]
STAVROS GEORGHIOU KOUSOULIDES (No. 1),
Appellant,
v.
THE REPUBLIC,
(*Criminal Appeal No. 2444*).

Appeal—Evidence—Re-hearing of—Powers under the Courts of Justice Law, 1960 (Law of the Republic No. 14/60), section 25(3)—Practice—Proper application for such re-hearing must be made under the rules of procedure.

The appellant and another were convicted and sentenced to terms of imprisonment on a charge of wilfully and unlawfully setting fire to a building. The appellant applied to the High Court asking it to exercise the power vested in it by section 25(3) of Law No. 14 of 1960, to re-hear the evidence of accused No. 2. But the appellant had failed to make a proper application under the rules of procedure so that the prosecution might have an opportunity to meet and answer such new evidence. The High Court in dismissing the application :

Held : (1) If the High Court's power is invoked under Law 14 of 1960, section 25(3), to hear new evidence, such application must follow the rules of procedure. This would enable counsel for the prosecution to have an opportunity to meet and answer that new evidence.

(2) The absence of such an opportunity prevents a proper presentation of an appeal.

(3) For these reasons the application is dismissed.

Application dismissed.

Cases referred to :

Simadhiakos v. The Police, 1961 C.L.R. 64.

Application to re-hear evidence.

Application to re-hear the evidence of an accomplice and co-accused given in the course of the trial of the accomplice and the appellant on a charge of wilfully and unlawfully set-

ting fire to a building contrary to ss.315 (a) and 20 of the Cr. Code Cap. 154.

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Lefcos N. Clerides for the appellant.

K. C. Talarides for the respondent.

The judgment of the Court was read by :

WILSON, P. : This is an application to re-hear the evidence of an accomplice and co-accused given during the course of the trial of the accomplice and the appellant on a charge of wilfully and unlawfully setting fire to a building.

Both the accused were convicted and sentenced to terms of imprisonment. Only one, the appellant appeals to this Court on a number of grounds, to only one of which need reference be made, namely No. 6.

“The Hon. Court will be asked to exercise the power vested in it under section 25 of Law No. 14 of 1960 to re-hear the evidence of accused No. 2 Andreas Superman”.

In framing his grounds of appeal counsel for the appellant, apparently, had in mind the judgment of this Court in *Simadhiakos v. The Police*, 1961 C.L.R. 64 during which the President said :

“I will add that my only hesitation in coming to this conclusion was due to the fact that counsel for the appellant appeared to refrain deliberately from asking this Court to re-hear any witnesses. He contended himself with directing the attention of the Court to the fact that it had the powers which are set out in section 25(3) of the Courts of Justice Law. I think that in future it would be desirable that the Notice of Appeal should, in all cases where a rehearing of witnesses is sought, set this out together with the names of witnesses whom it is sought to recall. At the hearing of the appeal counsel, if he desires the Court to take that course, should expressly apply to have the named witnesses re-heard, and state to the Court a satisfactory reason for his application”.

In this case the appellant's counsel seeks to read a letter written on March 18, almost a month ago by accused No.2, Superman, to the appellant's wife, although he has not made

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a proper application under the rules of procedure in order to permit this to be done. It will be appreciated by counsel, I am sure, that such a procedure deprives the prosecution of an opportunity to meet and answer that evidence and prevents a proper presentation of an appeal.

For this reason the application is dismissed.

Application dismissed.