

PANAYIS STYLIANOU CHRONIAS.

Appellant.

v.
THE POLICE,

Respondents.

(*Criminal Appeal No. 2569*).

Criminal Law—Possessing firearms without a certificate of registration, contrary to sections 7(1) (a), (4) and 27 of the Firearms Law, Cap.57—Possession—Joint possession—Mere knowledge not sufficient to establish possession either joint or sole—The words “has in his possession” occurring in section 7 of Cap.57 (supra) have the same meaning as the same words are defined in section 4(5) (a) of the Explosive Substances Law, Cap. 54.

The appellant was convicted by the District Court of Famagusta on October 1962, of possessing a firearm without a certificate of registration contrary to section 7(1) (a), (4) and 27 of the Firearms Law, Cap. 57, and was sentenced to one year's imprisonment. Against this conviction the appellant appealed on the ground that he was innocent and that the trial Judge, misdirected himself as to the onus of proof in that he was convicted upon the sole fact that he had knowledge of the possession of the firearm by his co-accused.

The evidence as accepted by the trial Judge, indicated that the premises, the firearm and cartridges found, were all the property of another co-accused and that the appellant had no more than mere knowledge of the firearm and cartridges in question being in the premises, and that the firearm was under his bed. The High Court, following *Mixis v. The Republic*, reported in this Volume, on p. 111, *ante*, and allowing the appeal,—

Held : (1) From the evidence it is clear that the appellant had no more than mere knowledge of the gun and cartridges being in the room and that the gun was under his bed.

(2) The evidence indicates that the premises, the gun and the ammunition found, were all the property of other co-accused and that if the evidence of the latter and that of the appellant is rejected, what is left is that the appellant must have known only that the gun was under his bed, but without evi-

dence of surrounding circumstances which could prove he was either in sole or joint possession of the gun and/or the explosive substances.

(3) The words "has in his possession" occurring in section 7 of Cap.57 (*supra*) have the same meaning as the same words are defined in section 4(5) (a) of the Explosive Substances Law, Cap. 54.

(4) Therefore, applying the interpretation of the word "possession" adopted in *Mixis v. The Republic*, reported in this Volume on p. 111, *ante*, the appellant cannot be said to have possessed the firearm in question.

*Appeal allowed. Conviction
and sentence quashed.*

Cases referred to :

Mixis v. The Republic, reported in this volume at p. 111, (*ante*), followed.

Appeal against conviction.

The appellant was convicted on the 15/10/62 at the District Court of Famagusta (Cr. Case No. 1762/62) on one count of the offence of possessing a firearm without a certificate of registration contrary to ss. 7(1) (a), (4) and 27 of the Firearms Law-Cap. 57 and s. 20 of the Criminal Code, Cap 154 and was sentenced by Kourris D.J. to one year's imprisonment.

N. M. Hji Gavriel for the appellant.

V. Aziz for the respondent.

The judgment of the Court was delivered by:

WILSON, P. : This is an appeal from the conviction of the accused by the District Court of Famagusta on October 15, 1962, of the offence of possessing a firearm without a certificate of registration contrary to sections 7(1) (a), (4) and 27 of the Firearms Law, Cap.57, and section 20 of the Criminal Code, Cap.154.

Upon conviction he was sentenced to one year's imprisonment.

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The appeal is upon the ground stated in the notice of appeal that the appellant is innocent and a further ground advanced by his counsel at the trial that the learned trial Judge misdirected himself as to the onus of proof, in that he convicted the accused upon the fact of the accused having knowledge only of the possession of the firearm by his co-accused.

At the opening of the appeal and with the consent of counsel for the Republic, the accused was given the leave to appeal against sentence as well as against conviction.

The learned trial Judge held, on conflicting evidence, that an unregistered locally made single barrel shot-gun and cartridges were found in a one-room house owned by another accused, called accused No. 1. On the occasion in question, namely February 14, 1962, accused No. 1, together with the appellant, known as accused No. 3, and a third person known as accused No. 2, were found jointly in the house which had no windows and to which access could be gained only through one door. On the occasion in question the accused No.2 apparently had the key of it and he unlocked the door and obtained access for himself and the other two accused.

During the course of the proceedings the charge against accused No. 2 was withdrawn because he had left this country, and the trial proceeded against accused No. 1 and accused No.3.

In giving judgment the Court found accused No. 1 and No.3 guilty of the offence charged after rejecting their evidence on the grounds that from their demeanour on the witness stand he did not believe them and that their stories were improbable.

Without reviewing all the evidence it is quite clear that accused No.3 had no more than mere knowledge of the gun and cartridges being in the room, and that the gun was under his bed. The evidence indicates the premises, the gun and the ammunition found, were all the property of accused No.1. If the evidence of the two accused is rejected, what is left is that the accused must have known that the gun was under his bed, but without evidence of surrounding circumstances which could prove he was either in sole or joint possession of the gun and/or the explosive substances.

In arriving at our decision we follow the interpretation

of the word "possession" adopted in *Mixis v. The Republic*, Criminal Appeal 2495 (June 20, 1962), where it was held that the words "has in his possession" as defined in the Explosive Substances Law, Cap 54, section 4(5) (a) have the same meaning in the Firearms Law, Cap 57, section 7

The appeal must be allowed and the conviction and sentence set aside

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*Appeal allowed Conviction
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