

1963  
Feb. 21

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ].

1. SHEFKET  
SALIH  
2. ADIL  
OSMAN  
*alias* TSAKKOS  
v.  
THE  
REPUBLIC

1. SHEFKET SALIH,  
2. ADIL OSMAN *alias* TSAKKOS,

*Appellants,*

v.

THE REPUBLIC,

*Respondent.*

(*Criminal Appeals Nos. 2594 & 2595*)

*Appeal—Credibility of witnesses—An Appellate Court will not interfere with findings of credibility made by trial Courts unless there are good reasons to do so.*

The argument for the appellants was in substance to the effect that the trial Court erroneously believed certain witnesses for the prosecution.

*Held* : (1) As is well known, an appellate Court will not interfere with the findings of credibility made by a trial Court unless there is a very good reason to do so.

(2) In this case we have not found any such basis to differ from the careful Judges who have tried this case.

*Appeals dismissed.*

#### **Appeal against conviction.**

The appellants were convicted on the 12th December, 1962, at the Assize Court of Paphos (Cr. Case No. 1114/62) on one count of the offence of rape contrary to ss. 144, 145 and 20 of the Criminal Code, Cap. 154, and were sentenced by Dervish, P.D.C., Izzet and Malyali, D.JJ., to five years' imprisonment each.

*H. Ali Riza* for the appellants.

*O. Beha* for the respondent.

The judgment of the Court was delivered by :

WILSON, P. : This is an appeal by the two accused from their conviction by the Turkish Assize Court at Paphos of the crime of rape. They were convicted on December 12, 1962 and sentenced each to 5 years' imprisonment commencing from that date.

There is no appeal from the sentence.

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The grounds of appeal were that the conviction was not supported by the relevant evidence ; that the Court did not take material evidence into consideration but accepted and believed incredible evidence by the Prosecution witnesses on relevant points ; that the Court believed witnesses of the Prosecution and dismissed evidence for the defence without any reasonable ground ; and, lastly, that justice was prejudiced.

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I shall comment on the last ground briefly : by saying that, there is no evidence to support it, and if it is to be construed as a reflection on the judges who presided at the trial it must be more clearly supported.

*Mr. Riza* : May I say that there was no reflection on the judges.

WILSON, P : I thought so but your language for purposes of appeal was not clear, and, of course, if a Court acts improperly we must do our duty but in this case there was no question of any improper handling of the trial and I accept your statement, *Mr. Riza*, that no reflection on the Court was intended.

On the argument before us counsel for the accused stressed mainly two points : 1. The question of identification of the accused, and 2. That the attack complained of, on a proper construction of the evidence, could not have possibly taken place within the time that the Prosecution alleges.

It is very obvious that Counsel for the appellants has not only argued his case very fully and very ably but he must have spent a great deal of time preparing for this appeal to present it as thoroughly and exhaustively as he has done. We cannot think of any other grounds which might have been urged on behalf of the appellants, indeed nothing appears to have been overlooked that could have been said on their behalf. But, having said this, it must now be pointed out that the judges of the trial Court considered all the matters which have been raised on behalf of the appellants, and they have come to the conclusions concerning them and we are unable to find any ground on which they have erred.

This case really falls to be determined upon the legal point of the credibility of the witnesses. As is well known,

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an appellate Court will not interfere with the findings of credibility made by a trial Court unless there is a very good ground to do so. In this case we have not found any such basis to differ from the careful Judges who have tried this case.

The appeals, therefore, will have to be dismissed.

With respect to the sentence we just desire to say this : the accused were very fortunate indeed that a much heavier term was not imposed upon them. The Republic might well have considered lodging an appeal with respect to sentence. If a term, twice as much as the present term, had been imposed, it is very unlikely we would have interfered with it.

*Appeals dismissed.*