

1964
Oct. 9

[VASSILIADES, MUNIR AND JOSEPHIDES, JJ.]

MODESTOS
SAVVA
PITSILLOS
v.
THE POLICE

MODESTOS SAVVA PITSILLOS,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No.2728)

*Criminal Procedure—Amendment of charge—Mistake in the charge—
No steps to correct mistake before trial—Amendment of the
charge during trial objected to by accused—Request for ad-
journment refused—Procedure in section 84 of the Criminal
Procedure Law, Cap. 155, ought to have been followed by the
trial Court.*

The appellant in the present case is one of the two accused convicted on the 16.7.64 by the District Court of Nicosia, for taking part in a fight in a public place, contrary to section 89 of the Criminal Code, Cap. 154 and was bound over, in the sum of £15 for one year to be of good behaviour.

The appeal is based on the ground that the conviction was made on an amended charge, irregularly amended on the date of the trial.

Through some mistake or other, in the hands of the Police, the charge alleged the offences as having occurred on the 24th March, 1964, instead of the 29th February, 1964. On the date of hearing, the police officer conducting the prosecution applied that "the date 24th March, appearing on the charge-sheet be amended to read 29th February, as the date was erroneously written to read 24th March instead of 29th February. The appellant objected to the proposed amendment of the charge. The trial Court allowed the amendment, proceeded with the trial and convicted both accused on the charge of affray and discharged them on the count of disturbance. The record does not give the grounds of his objection. In his notice of appeal, the appellant complains for injustice resulting from the Court's refusal to grant him an adjournment on that occasion.

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Counsel for the Police conceded that the matter is covered by section 83 of the Criminal Procedure Law, Cap. 155, and agreed that the procedure in section 84 was not strictly followed but he submitted that as the appellant knew all along of the error in the charge, he suffered no injustice.

Held, (1) we take the view that in making the provisions in section 84, to follow those in section 83 of the Criminal Procedure Law, the legislature intended that in the circumstances of the present case, the procedure in section 84 should have been followed. Relaxation of the statutory requirements in this connection, we think, should be discouraged. (*Vide Kyriacou v. The Police* 22 C.L.R., 213).

(2) The appeal before us will be allowed. And appellant's conviction and sentence thereon, be set aside.

Appeal allowed. Conviction and sentence of appellant set aside.

Cases referred to :

Kyriacou v. The Police 22 C.L.R. 213.

Appeal.

The appellant was convicted on the 16.7.64 at the District Court of Nicosia (Criminal Case No. 985/64) on one count of the offence of affray contrary to section 89 of the Criminal Code, Cap. 154 and was bound over, by Pierides D.J. in the sum of £15 for one year to be of good behaviour.

Appellant, in person.

K. C. Talarides, Counsel of the Republic, for the respondents.

The Judgment in the present case was delivered by :

VASSILIADES, J. : The appellant is one of the two accused convicted in the District Court of Nicosia on the 16th July, last, on a charge brought by Nicosia Police, for taking part in a fight in a public place, the Municipal Market of Ayios Antonios, on the 29th February, 1964, contrary to section 89 of the Criminal Code (Cap. 154).

The appeal is based on the ground that the conviction was made on an amended charge, irregularly amended on the date of the trial.

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Apparently there was an incident in the Municipal Market between the appellant and the second accused in the case, on the 29th February, in the course of which the appellant was injured. The police investigated into the matter ; and eventually charged both persons involved, for affray and public disturbance.

Through some mistake or other, in the hands of the police, the charge alleged the offences as having occurred on the 24th March, 1964. And apparently the summons were issued accordingly.

On the 15th May, 1964 both accused were charged before the Court with the offences stated in the charge ; and both pleaded not guilty. The case was then adjourned to the 19th June, for hearing ; and on that date the case was adjourned for want of time to the 16th July, in the presence of both accused and the advocate appearing for one of them.

During the period between the 15th May, when the accused were first charged, and the 16th of July, the appellant repeatedly attempted to point out to the police the mistake in the charge. No steps were taken to correct the position before trial.

On the 16th of July, the police officer conducting the prosecution applied that " the date 24th March, appearing on the charge-sheet be amended to read 29th February, as the date was erroneously written to read 24 instead of 29th February "

The other accused raised no objection. But the appellant objected to the proposed amendment of the charge. The record does not give the grounds of his objection. In his notice of appeal, the appellant complains for injustice resulting from the court's refusal to grant him an adjournment on that occasion. The amendment was allowed ; and the court proceeded with the trial.

After hearing three witnesses for the prosecution, the appellant from the dock and the five witnesses he called, (the other accused making no statement, and calling no witnesses) the court convicted both accused on the charge for affray and discharged them on the count for disturbance.

Learned Counsel for the Police, concedes (as indeed he should) that the matter is covered by section 83 of the Criminal Procedure Law (Cap. 155) ; and agrees that the procedure in section 84 was not strictly followed but submits

that as the appellant knew all along of the error in the charge, he suffered no injustice. And this Court exercising its discretion under section 145 (1) (b) should consider that no substantial miscarriage of justice has actually occurred ; and dismiss the appeal.

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We take the view that in making the provisions in section 84, to follow those in section 83 of the Criminal Procedure Law, the legislature intended that in the circumstances of the present case, the procedure in section 84 should have been followed. Relaxation of the statutory requirements in this connection, we think, should be discouraged. (Vide *Kyriakou v. The Police*—22, C.L.R., 213).

The appeal before us will be allowed. And appellant's conviction and sentence thereon, be set aside.

Judgment and order accordingly.

Appeal allowed.