

COSTAS PANAYIOTOU,

Appellant,

v.

COSTAS
PANAYIOTOU
v.
THE POLICE

THE POLICE,

Respondents.

(*Criminal Appeal No. 2997*)

Criminal Law—Contradictory statements by witness contrary to section 113 (2) of the Criminal Code, Cap. 154—Where a person incriminates a third party in a statement made to a police officer investigating into the commission of an offence and the incriminator is subsequently called as a witness at the trial of such person and makes in his evidence a statement inconsistent with, or contradictory to, his first statement, it is immaterial for the purposes of section 113 (2) that, when making such statement to the investigating officer, he was under caution, suspicion or arrest—Cf. The Criminal Procedure Law, Cap. 155, sections 4 et seq. regarding investigation into the commission of offences.

Contradictory statements—Contrary to section 113 (2) of the Criminal Code, Cap. 154—Ingredients of the offence—See also above.

The appellant was convicted and sentenced to £50 fine by the District Court of Famagusta on a charge under section 113 (2) of the Criminal Code, Cap. 154 for making in connection with a criminal investigation, contradictory statements tending to prove the guilt or innocence of another person. This appeal is taken by the appellant against his conviction. In February, 1967, a police sergeant investigating under the provisions of the Criminal Procedure Law, Cap. 155, sections 4 *et seq.*, into the commission of bribery involving another policeman and the appellant, obtained a statement after caution from the latter, in which, *inter alia*, the appellant said that he received from a leather-merchant £100 in the presence of the policeman in question, out of which the appellant retained £50 and gave the other £50 to the policeman. The appellant moreover said to the investigating sergeant that the £100 were received on the suggestion of the policeman with whom he shared the money.

1968
June 21
—
COSTAS
PANAYIOTOU
v.
THE POLICE

Sometime later, at the trial of the policeman before a District Court, in August, 1967, for the bribery in question, the appellant giving evidence contradicted the contents of his statement to the sergeant, he told the Court that he never received £100 from the leather-merchant, that he never gave £50 to the policeman, and that he never had such a conversation with him.

The main point in issue in this case is whether a statement made under caution by a person under suspicion can constitute a statement within the meaning of section 113 (2) of the Criminal Code, Cap 154 (The material parts of this section are quoted in the judgment, post). The learned trial Judge convicted the appellant holding that "where a third party is incriminated in a statement, and the incriminator is subsequently called as a witness at the trial of such person, it is immaterial for the purposes of section 113 (2) that he (the incriminator) when making the statement was under suspicion or arrest."

In affirming the conviction and dismissing the appeal, the Court

Held, the particulars of the offence charged have been established beyond any doubt. And far from being persuaded that the conviction was wrong, we think that the trial Judge was right both on the facts and the law. The proper application of the section under which the appellant was charged, leads directly—upon his own statements—to one result only, that of his conviction.

Appeal dismissed

Appeal against conviction.

Appeal against conviction by Costas Panayiotou who was convicted on the 9th April, 1968 at the District Court of Famagusta (Criminal Case No. 8370/67) on one count of the offence of contradictory statement contrary to section 113 (2) of the Criminal Code Cap. 154 and was sentenced by Pikiis, D.J., to pay a fine of £50.

K. Saveriades, for the appellant

K. Talarides, Counsel of the Republic, for the respondent

The judgment of the Court was delivered by

VASSILIADES, P. We find it unnecessary to call upon counsel for the Police.

The appellant was charged under section 113 (2) of the Criminal Code (Cap. 154) for making, in connection with a criminal investigation, contradictory statements tending to prove the guilt or innocence of another person. He was convicted as charged; and sentenced to £50 fine, or two months imprisonment in default.

Section 113 is found in the part of the Criminal Code dealing with offences relating to the Administration of Justice, where sections 110–112 deal with perjury, section 114 with giving false information to a police officer, section 116 with fabricating evidence, etc.

The material part of section 113 (2) under which the appellant was charged and convicted, reads:

“ Any person who, having made a statement to any person entitled or authorised to investigate into the commission of any offence, subsequently on his examination as a witness makes any statement tending to prove the guilt or innocence of any person inconsistent with, or contradictory to, the first mentioned statement, is guilty of a misdemeanour and is liable to imprisonment for three years or to a fine not exceeding fifty pounds or to both ”.

This provision which describes the offence created by sub-section (2) (a different offence to that created by section 113 (1) and section 110) is followed by a proviso in the same sub-section (113 (2)) as to the mode of proving the offence. The material wording in this part of the sub-section, recast for easier reading, is:

“ upon the trial of any person for an offence under this section it shall not be necessary to prove the falsity of either of the inconsistent or contradictory statements, but, upon proof that both the statements were made by him, the Court if it considers that the statements or either of them, were made with a view to deceive the Court or the person to whom the statements or either of them were or was made, and thereby improperly to prove the guilt or innocence of any person of the offence in relation to which the statements were made, shall convict the accused.”

The purpose of the legislator in making these provisions in this part of the Criminal Code, was apparently, to protect the course of Justice, by making it a punishable offence for any person knowingly and intentionally to make statements in Court tending to prove the guilt or innocence of

1968
June 21
—
COSTAS
PANAYIOTOU
v.
THE POLICE

any person in connection with a crime, which contradicts statements made earlier to a person investigating into the commission of an offence.

The material facts in this case are :—

In February, 1967, a police sergeant investigating under the provisions of the Criminal Procedure Law (Cap. 155, section 4 et seq.), into the commission of bribery involving another policeman and the appellant, obtained a statement from the latter, in which, *inter alia*, the appellant said that he received from a leather-merchant £100.—, in the presence of the policeman in question, out of which the appellant retained £50, and gave the other £50 to the policeman. The appellant moreover said to the investigating sergeant that the £100 were received on the suggestion of the policeman with whom he shared the money.

Sometime later, at the trial of the policeman before the District Court, in August 1967, for the bribery in question the appellant contradicted the contents of his statement to the sergeant ; he told the Court that he never received £100 from the leather-merchant ; that he never gave £50 to the policeman : and that he never had such a conversation with him.

For making these contradictory statements (the former to the sergeant—tending to prove the guilt of the policeman — and the latter to the Court, tending to prove the policeman's innocence in the bribery), the appellant was prosecuted in the present case under section 113(2) of the Criminal Code.

At the closing of the case for the prosecution, appellant's advocate submitted that his client should not be called upon for his defence as the prosecution had failed to make out a *prima facie* case against him.

The learned trial Judge found some difficulty in applying the section to the facts of the case before him, as his notes show :

“ I have found he says - section 113 (2) of Cap. 154 a rather difficult provision to explain, and even harder to apply to the facts before me. The crux of the matter is whether a statement made under caution by a person under suspicion can constitute a statement within the meaning of this section.”

Eventually, the Judge answered this question in the affirmative ; and we think he was right. After discussing further the wording of the section, the Judge ruled as follows :—

“ In the end I come to the conclusion that where a third party is incriminated in a statement, and the

incriminator is subsequently called as a witness at the trial of such person, it is immaterial for the purposes of section 113 (2) that the latter when making the statement was under suspicion or arrest."

1968
June 21
—
COSTAS
PANAYIOTOU
v.
THE POLICE

And he called upon the appellant to make his defence. The appellant elected to say nothing; and his advocate addressed the Court. The Judge's notes do not show clearly the case which appellant's advocate tried to make as a defence after the Judge's ruling.

In a carefully considered judgment, however, the learned Judge discussed further his difficulties in the application of section 113 (2) to the facts before him and concluded that in his view :—

" the contents of exhibit 3, a statement made in relation to the circumstances under which the sum of £100 was obtained from the said Panayiotou, has the tendency to incriminate police constable Apostolou of the offence of extortion At the trial no explanation whatever has been given as to the contradiction. The accused elected to say nothing. The contradiction as such is strong evidence of the intention to deceive within the meaning of the proviso in section 113 (2) of Cap. 154 From the evidence before me I find the accused guilty as charged."

From this conviction the present appeal was taken on the grounds stated in the notice of appeal as follows :—

1. The verdict was based on a wrong decision of Law (sic).
2. The trial Court misdirected itself as to the law applicable to, and as to the facts surrounding the case."

After hearing exhaustive argument from counsel for the appellant this morning, we found it unnecessary to call on counsel for the respondent. The particulars of the offence charged, have been established beyond any doubt. And far from being persuaded by counsel for the appellant that the conviction is wrong, we think that the learned trial Judge was right, both on the facts and the law. We take the view that the proper application of the section under which the appellant was charged, leads directly—upon his own statements—to one result only, that of his conviction. And we dismiss the appeal.

Appeal dismissed.