[VASSILIADES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

MICHALAKIS KALLIA *alias* SHIALIS,
Appellant,

v.

THE REPUBLIC,
Respondent.

(*Criminal Appeal No.* 3098).

Possession of cannabis sativa—Joint possession—The Narcotic Drugs Law, 1967 (*Law No.* 3 *of* 1967) *sections* 6, 21 *and* 24 (1) (2)—*Regulation* 5 *of the Narcotic Drugs Regulations,* 1967—*The Criminal Code, Cap.* 154, *section* 20—*Conviction—Appeal against conviction dismissed—Findings of trial Court and inferences drawn therefrom sustained.*

Joint possession—Joint possession of cannabis sativa—See hereabove.

Narcotic Drugs—Possession—Cannabis sativa—See hereabove.

The facts sufficiently appear in the judgment of the Court whereby it dismissed the appellant's appeal against his conviction by the Assize Court of Limassol of possessing jointly with others cannabis sativa contrary to sections 6, 21 and 24 (1) (2) of the Narcotic Drugs Law, 1967 and regulation 5 of the Narcotic Drugs Regulations, 1967 (*supra*). The charge also referred to section 20 of the Criminal Code Cap. 154, governing complicity to the commission of offences. The Supreme Court dismissing the appeal held that the findings of the trial Court as well as the inferences drawn therefrom must be sustained.

Appeal against conviction.

Appeal against conviction by Michalakis Kallia *alias* Shialis who was convicted on the 19th May 1969, at the Assize Court of Limassol (Criminal Case No. 353/69) on one count of the offence of possessing cannabis sativa contrary to sections 6, 21 and 24 (1) and (2) of the Narcotic Drugs Law, 1967 (Law 3 of 1967) and Reg. 5 of the Narcotic Drugs Regulations 1967 and was sentenced by Malachtos, P.D.C., Kakathimis and Boyiadjis, D.JJ., to 9 months' imprisonment.

A. S. Myrianthis with *J. Phaedonos*, for the appellant.

S. Nicolaides, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant was charged jointly with two other persons before the Assize Court of Limassol with possessing cannabis sativa contrary to sections 6, 21 and 24(1)(2) of the Narcotic Drugs Law 3/67 and regulation 5 of the Narcotic Drugs Regulations. The charge also referred to section 20 of the Criminal Code (Cap. 154) governing complicity to the commission of offences. The appellant was the second accused in the information ; and we shall refer to him as the appellant. The first accused was a coast-guard, about 35 years of age ; and the third accused a woman of easy morals of about 52 years of age.

In the first count in the information, the three accused were jointly charged for the possession of 1.5 grams of the drug in question. In the second count, the first accused was charged alone, with the possession of 66 grams of the same drug. The first accused pleaded guilty to both counts and was convicted accordingly. The appellant and the third accused pleaded not guilty ; and their case went to trial on the issues arising from their plea.

After a strongly contested trial lasting for several days, the Assize Court convicted both the appellant and the third accused ; and then proceeded to sentence all three accused as follows :—Accused 1 to one year's imprisonment on the first count and two years on the second, to run concurrently ; and the appellant and accused 3 to nine months' imprisonment each, on the first count. The first accused appealed against sentence ; but we are not concerned with his case in the appeal before us. The appellant before us appealed against conviction. The third accused did not appeal at all. When called upon to make his defence at the trial, the appellant elected to make a statement from the dock ; and called no witnesses. His statement, according to the record, reads :—

> " On that day I went to Andreas Mesrappas (restaurant) where I met accused No. 1 and No. 3. They invited me to treat me and I went and sat at their table and we consumed a bottle of brandy. When they got up to leave I asked accused No. 1 to take me home. I got into the car and on our way all these incidents with the Police took place without my knowing whether they had anything in their possession, nor did I throw any piece of paper. I am innocent. Nothing else, Your Honours ".

His version, on the correctness of which the fate of the appeal practically turns, was that the appellant happened to be in the car of the first accused with the friends with whom he had just finished a nice meal without knowing that there was any drug in the car or with them. They had kindly agreed to drive him to his house ; and this is what they were doing at the material time, *i.e.* when the police patrol surprised them. The incidents with the police, to which he refers, constitute the background of the case ; and took place as follows :—

While the first and third accused were having a meal with drink at a bar-restaurant in Limassol on the evening of December 2, 1968, the appellant, who happened to be in the same restaurant, was invited to join them. He did so ; and the three of them consumed a bottle of brandy between them with their food. After their meal all three entered into the car of the first accused who drove the car to a side-street some distance away. It was seen parked some 7 yards inside a side-street at a crossing, soon after 9 p.m., by a police patrol who, apparently knowing the car and the persons who might be in it, went to see what was going on. On noticing the approach of the police, the first accused drove the car off, inspite of a call from the police to stop. Seeing the first accused in Court with an amputated right forearm below the elbow and an invalid left hand, we were surprised to hear that he was the driver of the car in question. One wonders how could he have been issued with a driving licence. Be that as it may however, the first accused drove off fast and managed to give a run to the police car for a distance of over 300 yards in town streets until, eventually, the police overtook and stopped the car.

During the chase something which looked like a crumpled piece of paper was dropped from the car in which the appellant and his friends were trying to run away. The police stopped, picked up that paper and continued the chase. It was later found to contain a small quantity of cannabis sativa which the police suspected when they gave chase. On searching the car there and then, in the presence of all the accused, the police found some more of the same drug, wrapped up in a piece of nylon-paper, apparently thrown or dropped at the driver's feet. No drug was found on the persons of any of the three people in the car. During the chase the female accused was sitting in the front seat besides the driver, while the appellant was sitting at the back.

One of the police witnesses, who was driving the police-car stated that he " saw a hand being held out through the left rear window of the car dropping something on the road ". He stopped the car, collected that something and continued the chase. Counsel for the appellant tried to make a point by arguing that other witnesses in the police car did not see that hand. The trial Court accepted the evidence of the driver police man and found accordingly. We cannot see what difference this discrepancy (if one could describe it as such) between the police witnesses, can make to the case of the appellant. One might think that it was quite natural for the persons trying to avoid the police car, that they would make the chasers notice that the suspects dropped something so that the police might stop to pick it up, thus creating a better opportunity to the car of the accused to achieve its purpose of running away. Be that as it may, however, it is unnecessary to say anything more in this connection, than to state that the finding of the trial Court, on the evidence before them, was perfectly open to them ; and that it appears to us to be quite a reasonable and satisfactory finding.

The article which the police suspected to be the drug in question (and which eventually proved to be so) found as stated above, caused the police to arrest the three accused, caution them and take them to the station. The first accused had the frankness of admitting straightaway that the contents of those two paper wrappings were the prohibited drug cannabis sativa. He, moreover, said that he had some more of it at his house where he led the police and delivered the quantity stated in the second count. We really cannot see how can anyone suggest that what was found in the car was not the prohibited drug ; or throw doubt on the correctness of the inference drawn by the trial Court that, in the circumstances, the object of parking the car at the side-street was to enable the persons in the car to make use of the drug.

The statements made by the three accused when the police stopped their car and their conduct at the time constitute strong evidence in this connection. Appellant's reaction, as far as the evidence goes, was completely passive when the police searched the car and found the drug. And his explanation to the police was that the first accused gave it to the others. He never protested to what the other two said in his presence regarding the matter ; apparently considering that, in the circumstances, it would be useless and unreasonable for anyone to do so.

Appellant's case, as presented to us on his behalf, is that he accepted a lift to his house in the car of the first accused ; and that when the car was stopped to enable him to get off, the police suddenly arrived and the car ran away carrying with it this innocent passenger in that car. No attempt was made at the trial to substantiate the allegation that the car had stopped anywhere near appellant's house when the police tried to check it at that side-street. No protest was even suggested to have been made by the appellant when the police stopped the car, found the drug and charged the persons in it with possession of the prohibited drug. Apart from all the other evidence, such conduct is inconsistent with the innocence claimed ; and the finding of the Assize Court in this connection is, we think, perfectly justified.

Upon these findings of the trial Court, there can be no doubt whatsoever that the possession of the drug at the material time (when the car was parked and when trying to escape the police) was the joint possession of all three persons in the car ; and that they were rightly charged as accomplices in the commission of the offence under section 20 of the Criminal Code.

The appeal must, therefore, be dismissed. The sentence to run according to law, from the determination of the appeal.

Appeal dismissed.