

1969
April 8

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

ELEFTHERIOS
NICOLAOU
v.
THE POLICE

ELEFTHERIOS NICOLAOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3080*).

Criminal Procedure—Costs of Prosecution—Order to pay such costs part of punishment of the appellant—But most of those costs were incurred in establishing the case against co-accused—Therefore the appellant should pay only his fair share of costs—Order varied accordingly.

Costs in criminal cases—Order for costs made by trial Judge in the exercise of his discretion—Interference by Court of Appeal justified in the present case—See, also, hereabove.

Appeal—Order for costs made by trial Judge—Discretion—Interference by Court of Appeal justified in the present case—See, also, hereabove.

The facts sufficiently appear in the judgment of the Court.

Appeal against sentence.

Appeal against sentence by Eleftherios Nicolaou who was convicted on the 31st day of January, 1969, at the District Court of Nicosia, sitting at Morphou, on two counts of the offences of public insult and disturbance contrary to sections 99 and 95, respectively, of the Criminal Code Cap. 154 and was sentenced by HjiConstantinou, D.J., to £4 fine on each count and he was further ordered to pay £9.090 mils costs of prosecution.

E. Vrahimi (Mrs.), for the appellant.

A. Frangos, Senior Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :—

VASSILIADES, P.: The only question left for decision at this stage, is the question of costs.

Counsel for the appellant, by a notice to the Registrar, informed the Court that the appeal would be confined to this point only. No question of principle is involved in this matter ; and we think that learned counsel for the police, very properly, left the matter to the Court, agreeing that most of the costs incurred in this prosecution went to the witnesses called to establish the charge against the co-accused of the appellant who is not now before us.

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This Court is very reluctant to interfere with an order for costs made by the trial Judge in the exercise of his discretion in the matter. In this case, however, the position as it develops, at this stage, is different to what it was before the trial Judge at the time when he made the order. Clearly most of the costs in this prosecution, were incurred for the purposes of the case against the other accused ; appellant's co-accused. We think that the order for costs made in this case, as indeed in most cases, was intended to be part of the punishment. And that the object of the trial Judge was to add the costs to the fine imposed. Nevertheless, we think that this appellant should not be made to bear more than the costs incurred to establish the charge against him ; or a fair proportion in the total costs incurred by the prosecution. This, we think, would be, in the circumstances of this case, an amount of £3 ; and as the non-payment of costs would incur a liability for imprisonment, we think that the order for costs should be varied so that the appellant should have to pay only £3.- out of the total of £9.- costs. The rest of the costs to be paid by the State out of public funds. Appeal allowed to that extent. Order varied to read : Appellant to pay £3.- of the costs of prosecution or seven days imprisonment in default. The other part of the sentence imposed on the appellant by way of fine, to stand.

*Appeal partly allowed ; order
for costs varied.*