[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

CHARLES MITCHELL LIVINGSTON,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3361).

Criminal Law—Indecency—Section 176 *of the Criminal Code, Cap.* 154—*Appellant sitting naked on balcony of house he was residing—Issue of credibility of witnesses—No error by trial Judge regarding such issue.*

Statutes—Construction—"Likely" in the definition of "publicly" in section 4 *of the Criminal Code, Cap.* 154.

Words and Phrases—"Likely" in the definition of "publicly" in section 4 *of the Criminal Code, Cap.* 154.

Indecency—See under "Criminal Law".

Cases referred to:

Dowling v. *South Canterbury Electric Power Board* (1966) N.Z.L.R. 676 at p. 678.

Appeal against conviction.

Appeal against conviction by Charles Mitchell Livingston who was convicted on the 10th July, 1972 at the District Court of Kyrenia (Criminal Case No. 807/72) on one count of the offence of indecency contrary to section 176 of the Criminal Code Cap. 154 and was bound over by Pitsillides, D.J. in the sum of £50.- for 6 months to come up for judgment if and when called upon and he was further ordered to pay the sum of £12.500 mils costs.

Appellant appeared in person.

N. Charalambous, Counsel of the Republic, for the Respondents.

The facts sufficiently appear in the judgment of the Court delivered by:-

TRIANTAFYLLIDES, P.: The Appellant was convicted, by the District Court of Kyrenia, of the offence of indecency, contrary to section 176 of the Criminal Code, Cap. 154, because on the 6th June, 1972, at Lapithos, he sat naked on a balcony of a house where he was residing; according to the evidence adduced by the prosecution, he was seen there by two eye-witnesses, who were at the time in a public place, namely a road.

The Appellant in making his defence before the trial Court stated that the railings of the balcony were covered with rugs and so he could not have been seen by any person in a public place; he added that though he did sit naked on the balcony—that being his habit in the morning when having his breakfast—when he was moving on the balcony he had the middle part of his body covered with a towel.

The trial Court rejected the Appellant's statement that the railings were covered with rugs and also rejected, in this respect, the evidence of two defence witnesses who were called by the Appellant.

We have been invited by the Appellant to hold that the trial Court was wrong in believing the two aforesaid prosecution eye-witnesses, because they were the owners of the house of which the Appellant was a sub-tenant and they wanted to cause him to leave the house so that they could regain possession of it; this matter was amply stressed at the trial and it must have been within the contemplation of the learned trial Judge. Also, the Appellant has invited us to hold that the trial Court was wrong in disbelieving one of his said two defence witnesses—the tenant of the house, who had sublet it to him—on the ground stated by the trial Court, namely, that he had reasons to want to assist the Appellant who was his tenant and to be against his landlords, that is the two prosecution eye-witnesses.

The trial Judge, who had in mind all the foregoing regarding the witnesses for both sides and who watched their demeanour in giving evidence, and who, also, had before him police evidence corroborating the evidence of the two prosecution eye-witnesses who saw the Appellant sitting naked on the

balcony without its railings being covered by rugs, decided, as already stated, to treat as credible the evidence of the said eye-witnesses.

We see no reason at all for which we could hold that the trial Judge erred regarding the issue of credibility of the witnesses who testified before him.

There remains to be dealt with the question of whether there has been proved that the act of indecency was committed by the Appellant "publicly", as required under section 176 of Cap. 154: " Publicly" is defined in section 4 of Cap. 154 as being applicable to, *inter alia*, an act "so done in any place not being a public place as to be likely to be seen by any person in a public place".

The Appellant was sitting naked on his balcony—which was not a public place—in such a manner that he was seen by persons who were in a public place, namely a road.

The Appellant has argued that "likely" does not mean merely "possibly", but that it means "in all probability"; and that it was merely "possible" that he could be seen from a road while being naked on the balcony.

In a case decided in New Zealand, *Dowling* v. *South Canterbury Electric Power Board* (1966) N.Z.L.R. 676 (at p. 678, per Henry J.)—the full report of which is not available but which is referred to in " Words and Phrases Legally Defined", 2nd ed., vol. 3, p. 164—it was held as follows, in relation to whether a tree was likely to cause damage:

> " A tree is likely to cause damage when the reasonable probabilities are that it will cause damage unless it gets timeous attention".

Approaching likewise the word "likely" in the definition of "publicly" in section 4, we entertain no doubt, on the basis of the evidence on record as accepted by the trial Judge, that the reasonable probabilities were that persons in a road would see the Appellant sitting naked on his balcony and, therefore, he was rightly convicted.

We would like to observe in favour of the Appellant that there is nothing to show that he sat naked on the balcony with the intention of offending the feelings of decency or morality

of other people; but, unfortunately for him, he came within the ambit of the relevant provision of Cap. 154—section 176—and the very lenient manner in which the trial Court treated him (binding him over in the sum of £50 for six months to come up for judgment if called upon to do so) shows that the offence was correctly regarded as not involving any moral turpitude on Appellant's part.

In the light of all the foregoing this appeal is dismissed.

Appeal dismissed.