

1983 February 2

[TRIANTAFYLIDES, P., DEMETRIADES, SAVVIDES, JJ.]

DEMOS ERMOGENOUS,

Appellant

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 4377*)

Criminal Procedure—Evidence—Trial in criminal cases—Witness allowed to testify that he reached conclusion that appellant guilty of offences charged—Trial Court relying on such conclusion in convicting the appellant—Unwarranted and undue interference by trial Court in the course of cross-examination of prosecution witnesses—Course adopted by trial Court contrary to the basic principles governing the conduct of a criminal trial in general and the proof of guilt in particular and contrary to Article 12.5 (d) of the Constitution—Conviction set aside—Not a case in which to apply the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155 or to order a new trial.

Constitutional Law—Human rights—Fair trial—Right to cross-examine a prosecution witness—Article 12.5 (d) of the Constitution.

15 In the course of the trial of the appellant of the offences of inducing a witness to give false evidence and of attempting to steal money the military officer who acted as the investigating officer was allowed by the trial Court to testify that, after having taken statements from nearly all the main prosecution witnesses,
20 he reached the conclusion that the appellant was guilty of the offences in question and the trial Court relied on his conclusion in convicting the appellant. Also when counsel appearing for the appellant, suggested to the said investigating officer, while cross-examining him, that he had pressed and exhorted
25 prosecution witnesses to give to him statements implicating the appellant, the trial Court warned counsel not to put such questions again in cross-examination.

Upon appeal against conviction:

Held, that the investigating officer was wrongly allowed by the trial Court to testify as above and that the course which was adopted in this respect by the trial Court was obviously contrary to basic principles governing the conduct of a criminal trial in general and the proof of guilt in particular; that, further, the appellant was unwarrantably and unduly hampered in the exercise, through his counsel, of a right which constitutes an essential element of fair trial, namely the right to cross-examine a prosecution witness, which is safeguarded by Article 12.5 (d) of our Constitution; and that, accordingly, the conviction must be set aside as this case cannot be treated as one in which the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155 can be applied; and that as the appellant has served already a considerable part of his sentence this is not a case in which the interests of justice require the making of an order for a new trial of the appellant.

Appeal allowed.

Cases referred to:

Stylianou v. Republic (1979) 2 C.L.R. 109. 20

Appeal against conviction sentence.

Appeal against conviction and sentence by Demos Ermogenous who was convicted on the 6th December, 1982 by the Military Court sitting at Nicosia (Case No. 309/82) on one count of the offence of inducing a witness to give false evidence contrary to section 118 of the Criminal Code, Cap. 154 and on one count of the offence of attempting to steal money contrary to sections 255, 262 and 366 of the Criminal Code, Cap. 154 and was sentenced to three month's imprisonment on each count as from the 18th December, 1982. 25 30

E. Efsthathiou with *Sp. Efsthathiou*, for the appellant.

P. Ioulianou, for the respondents.

TRIANAFYLLIDES P. gave the following judgment of the Court. The appellant has appealed against his conviction by the Military Court, on the 6th December 1982, of the offence of inducing a witness to give false evidence, contrary to section 118 of 35

the Criminal Code, Cap. 154, and of the offence of attempting to steal money—approximately C£10—contrary to sections 255, 262 and 366 of Cap. 154.

5 The appellant was sentenced to three months' imprisonment as from the 18th December 1982.

10 It is abundantly clear from the record before us that the military officer, who had acted as the investigating officer in this case, was wrongly allowed by the trial Court to testify that, after having taken statements from nearly all the main prosecution witnesses, he reached the conclusion that the appellant was guilty of the offences in question and the trial Court went on to rely on his conclusion in convicting the appellant. In our opinion the course which was adopted in this respect by the trial Court was obviously contrary to basic principles governing the conduct of a criminal trial in general and the proof of guilt in particular.

15 Moreover, when counsel appearing for the appellant, as the accused, suggested to the said investigating officer, while cross-examining him, that he had pressed and exhorted prosecution witnesses to give to him statements implicating the appellant, the trial Court warned counsel not to put such questions again in cross-examination. In our opinion the appellant was thus unwarrantably and unduly hampered in the exercise, through his counsel, of a right which constitutes an essential element of fair trial, namely the right to cross-examine a prosecution witness, which is safeguarded by Article 12.5 (d) of our Constitution.

20 In the light of the foregoing we have reached the conclusion that the conviction of the appellant in respect of both offences has to be set aside as we cannot treat this case as one in which we could apply the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155, on the ground that notwithstanding the errors of the trial Court there has not actually occurred a miscarriage of justice (see, inter alia, in this respect, *Stylianou v. The Republic*, (1979) 2 C.L.R. 109).

35 We have been asked by counsel for the respondent to order a new trial and we have duly considered this possibility.

In the light, however, of the principles applicable to such matter (see, again the *Stylianou* case, supra) and, especially, as the appellant has served already a considerable part of his sentence, we are not prepared to find that this is a case in which the interests of justice require the making of an order for a new trial of the appellant. 5

In the result this appeal is allowed and the conviction of, and sentence passed on. the appellant are set aside.

Appeal allowed.