

1981 September 18

[TRIANAFYLLIDES, P., L. LOIZOU, DEMETRIADES, JJ.]

- 1. ANDREAS SAVVIDES,
- 2. TAKIS KINANIS,

Appellants,

v.

THE POLICE,

Respondents.

(Criminal Appeals Nos. 4131, 4132).

Criminal Procedure—Appeal against conviction—Non-support of conviction by prosecution counsel on appeal—Responsibility still with the Court of Appeal to decide whether conviction can stand.

During the hearing of the appeals against the conviction of the appellants of the offence of stealing Counsel for the respondents stated that he could not support the convictions. * 5

Held, that this Court is not bound by the views of Counsel for the respondents as regards the outcome of these appeals and the responsibility is still left with this Court to decide in such circumstances whether a conviction can stand even without the support of Counsel handling the prosecution case on appeal; that having considered all the material on record this Court has come to the conclusion that, indeed, the convictions of the appellants were not warranted either in law or in fact by the evidence adduced before the trial Court for, among others, the reasons stated by Counsel for the respondents, which coincide with arguments advanced by Counsel for the appellants; accordingly the convictions of the appellants must be set aside. 10 15 20

Appeals allowed.

* The reasons for adopting such a course appear at pp 7-8 post

Cases referred to:

Isaias v. Police (1966) 2 C.L.R. 43 at pp. 46-47.

Appeals against conviction.

5 Appeals against conviction by Andreas Savvides and another who were convicted on the 3rd March, 1980 at the District Court of Limassol (Criminal Case No. 10262/79) on one count of the offence of stealing contrary to sections 255, 262 and 20 of the Criminal Code, Cap. 154 and were bound over by Korfiotis, D.J. in the sum of £100.— for three years to come up for judgment if called upon.

E. Efsthathiou, for the appellants.

M. Photiou, for the respondents.

15 TRIANTAFYLLIDES P. gave the following judgment of the Court. Both the appellants were convicted of the offence of stealing two gallons of petrol and were bound over in the sum of C£300.— for three years to come up for judgment if called upon to do so.

20 They appealed against their convictions by means of the present appeals — (appellant 1 by criminal appeal No. 4131 and appellant 2 by criminal appeal No. 4132) — which were heard together in view of their nature.

25 During the hearing of these appeals, and after counsel for the appellants had addressed the Court, counsel for the respondents stated, very fairly indeed, that he could not support the convictions of the appellants. He gave divers reasons for adopting this course among which are, mainly, the following: That the findings of trial Judge, on which he based his decision to convict the appellants were not supported by the evidence and, especially, that 30 there was no evidence at all justifying the conviction of appellant 2; that essential ingredients of the aforesaid offence of stealing two gallons of petrol had not been established, in the light, particularly, of the special circumstances of this case in which the appellants came to be 35 lawfully in possession of quantities of petrol which they

were transporting as bailees from Larnaca to Paphos by means of two tanker vehicles driven by them; and that the appellants were wrongly charged by the same count with stealing petrol together, instead of each one of them being charged by a separate count with stealing petrol from his own tanker.

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We are, of course, not bound by the views of counsel for the respondents as regards the outcome of these criminal appeals.

It is pertinent, in this connection, to refer to the case of *Isaias v. The Police*, (1966) 2 C.L.R. 43, in which Vassiliades P. said (at pp. 46-47) the following:

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“We, however, still have to consider whether the statement of learned counsel for the Republic, that he cannot support the conviction, is sufficient for us, under any circumstances, to allow an appeal of this nature, and quash a conviction.

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Having given the matter careful consideration, we take the view that the responsibility is still left with this Court to decide in such circumstances, whether a conviction can stand even without the support of counsel handling the prosecution case on appeal. We think that if in the opinion of this Court the evidence on record, and the other matters upon which the trial Court based the conviction, is sufficient to support it, this Court will not interfere. A conviction resulting from a proper trial by the competent Court, can only be quashed if this Court is positively satisfied that there are sufficient reasons for setting aside the conviction”.

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Having carefully considered all the material on record we have come to the conclusion that, indeed, the convictions of the appellants were not warranted either in law or in fact by the evidence adduced before the trial Court for, among others, the reasons stated, as above, by counsel for the respondents, which coincide with arguments advanced by counsel for the appellants.

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We have, therefore, decided to set aside the convictions of the appellants.

Appeals allowed.

Convictions set aside.