1987 January 15

[TRIANTAFYLLIDES P, LORIS STYLIANIDES JJ.]

PAMBOS MAVRIDES,

Appellant,

v.

THE POLICE,

Respondents

(Criminal Appeal No. 4815)

Knowingly living on the earnings of prostitution—The Criminal Code Cap. 154—Section 164(1)(a)—Meaning of «earnings of prostitution»

The appellant was convicted of knowingly living in part on the earnings of prostitution contrary to s. 164(1)(a) of Cap. 154. The appellant was the manager of a dancing group, comprising seven Philippinese girls, who came to Cyprus in virtue of an agreement, whereby whilst in Cyprus, the appellant would pay to each one of them £150.- per month and provide food, lodging and costumes for them and in consideration he would be hiring their services as a dancing group to various night clubs getting the relevant payment himself directly from the person running the night club.

The services of the group were successively hired to three night clubs in consideration of £15.- per night for each one of the members of the group. The trial Court found that some of the girls, whilst at a night club, were on occasions accompanying customers with view to having sexual intercourse, that the relevant arrangements were made by the waiters or even the person running the night club and that on each occasion the customer paid £50.- i.e. £30.- to the club for drinks and £20 to the specific girl.

In elaborating on what is meant by «knowingly living wholly or in part on the earnings of prostitution» the trial Judge referred to the dicta of Viscount Simonds in *Shaw v. D.P.P.* [1961] Cr. App. Rep. 113 in dealing with s. 30(1) of the Sexual Offences Act, 1956 which is almost identical with section 164(1)(a) of Cap. 154.

The trial Court concluded that as the element of prostitution of three of the girls (Prosecution witnesses 2,3 and 4) was established, as the appellant knew the surrounding facts of such prostitution and as the £15.- per night were money emanating at least partly from such prostitution, the said amount of £15.- per night constituted «earnings of prostitution» within the ambit of the said dicta in *Shaw*, supra.

Held, allowing the appeal (1) The payment of the seven members of the group was made in consideration of legitimate services offerred by the group to the night club, notably dancing, and had nothing to do with any money

earned by the three girls when indulging in their aforesaid illicit activities, a fact absolutely unconnected with the appellant The said amount of £15 was received by the appellant in accordance with his aforesaid agreement with the members of the group in consideration of the £150 per month salary and of providing food, lodging and costumes

(2) In the light of the above the said amount of £15 per night cannot be held as constituting «earnings of prostitution» within the ambit of *Shaw*, supra

Appeal allowed

Cases referred to

Shaw v D P P [1961] Cr App Rep 113

Appeal against conviction and sentence.

Appeal against conviction and sentence by Pambos Mavrides who was convicted on the 15th November, 1986 at the District Court of Larnaca (Criminal Case No.9524/86) on one count of the offence of knowingly living in part on the earnings of prostitution contrary to section 164(1)(a) of the Criminal Code, Cap. 154 and was sentenced by Arestis, D.J to five months' imprisonment.

N. Clerides, for the appellant

A. Vladimirou, for the respondents

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Loris, J.

LORIS J.: The present appeal is directed against the judgment in Larnaca Criminal Case No. 9524/86, whereby the appellant, who was jointly charged with another person, was found guilty of the offence of knowingly living in part on the earnings of prostitution, contrary to s.164(1)(a) of the Criminal Code, Cap.154, and was sentenced by Arestis D.J. to five months' imprisonment.

The appellant, a manager of a dancing group, consisting of seven girls from Philippines was jointly charged (as accused No.1) with ex-accused No.2 namely Florteliza Necessito, the Chief of the Ballet on five separate counts with:

(A) Procuring to prostitution four distinct girls of the ballet (Counts One to Four), contrary to the provisions of s.157(b) of the Criminal Code, and

(B) knowingly living on the earnings of prostitution (Count 5) contrary to the provisions of s.164(1)(a) of the Criminal Code.

After hearing the case for the prosecution, the learned trial Judge ruled on a submission of 'no case' that the prosecution failed to make out sufficiently a prima facie case against both accused on Counts 1, 3 and 4, but called upon both accused to defend themselves on Counts 2 (procuring to prostitution Myrna Pombita - one of the girls of the ballet) and 5 (knowingly living on the earnings of prostitution).

Finally the appellant was acquitted and discharged on Count 2, but he was found guilty on Count 5. Ex-accused 2 was acquitted and discharged on Counts 2 and 5 as well.

The Court below proceeded and passed a sentence of five months' imprisonment on appellant on Count 5, as aforesaid.

The present appeal is directed against conviction and sentence but learned counsel for appellant confined his forceful argument against conviction only.

The salient facts of this case with particular reference to Count 5, on which the appellant was found guilty, are very briefly as follows:

The appellant was at all material times a manager of a dancing group named «Erotica International Ballet», comprising of seven Philippinese girls of which ex-accused No.2 was the «chief of the ballet». The dancing group in question was brought to Cyprus from Philippines by the appellant on 1.1.1986 under an agreement concluded at Manilla - Philippines, at about October 1985, by the appellant (who had travelled to the Philippines for this purpose) and each one of the members of the group.

In virtue of the said agreement the appellant would pay to each member of the group, whilst in Cyprus, £150.- per month provide food, costumes and lodging for them and in consideration thereof he would be hiring their services as a dancing group to various night clubs in Cyprus getting the relevant payment himself directly from the person running the night club.

The services of the group were hired by the appellant to three successive night clubs, namely «Chez Nous» at Larnaca, «Trocatero» at Nicosia and «Silver Moon» at Larnaca from the beginning of January 1986 up to the end of July 1986.

It is common ground that throughout the said period the appellant was getting directly from the person running each one of the said night clubs the fixed sum of £15.- per night for each one of the members of the dancing group. On occasions when the appellant was absent such payment was made by the person running the night club to the appellant through the «chief of the ballet» ex-accused No.2.

Independently of the facts herein above stated, which were accepted by the court below, the learned trial judge made some more findings of fact in relation to the offences of procuring to prostitution that is, Counts one to four on the charge sheet on which the appellant was ultimately acquitted.

These latter findings of fact were inter alia the following:

(a) Some of the girls of the dancing group, whilst at the Night Club, were on occasions accompanying Customers of the Club to places outside the club premises with a view to having sexual intercourse with them.

(b) Arrangements for such outings were made beforehand between waiters serving in the club or even the person running the club and customers.

(c) On such arrangement been cocluded the customer would be paying in advance £50.- to the club out of which £30.- would go to the club for drinks and £20.- to the specific girl of the dancing group who would accompany the customer of the club for the illicit purpose aforesaid.

At this stage we shall confine ourselves in observing that these latter findings of the learned trial judge may point at procuring to prostitution of the four specific girls of the dancing group, referred to in Counts one to four, by the waiters serving at the night clubs in question, or even by the person running the night club, but definitely not by the appellant. And the trial judge who had before him the evidence adduced as a whole, was not satisfied that the appellant was procuring the girls in question to prostitution; hence the acquittal of the appellant on the first four counts, for procuring.

The learned trial judge then elaborated at length on the legal aspect of the case and in deciding what is meant by «knowingly living wholly or in part on the earnings of prostitution» (as envisaged by s.164(1)(a) of our Criminal Code Cap. 154) adopted the dicta of Viscount Simonds in delivering the judgment of the House of Lords in *Shaw v. D.P.P.* [1961] Cr. App. R. 113, where the noble Lord in dealing with s.30(1) of the Sexual Offences Act 1956* which was** almost identical to our s. 164(1)(a) of Cap. 154 stated the following at p.143 of the report: «I think that (apart from the operation of sub-section (2)) a person may fairly be said to be living in whole or in part on the earnings of prostitution if he is paid by prostitutes for goods or services supplied by him to them for the purpose of their prostitution which he would not supply but for the fact that they were prostitutes. I emphasise the negative part of this proposition, for I wish to distinguish beyond all misconception such a case from that in which the service supplied could be supplied to a woman whether a prostitute or not. It may be that circumstances will be equivocal, though no example readily occurs to me. But a case which is beyond all doubt is one where the service is of its nature referable to prostitution and to nothing else.»

Reverting to the facts of the case before him, the trial judge concluded that (a) as the element of prostitution in respect of prosecution witnesses 2,3 and 4 was established, (b) as the appellant knew the surrounding facts of the «prostitution» of the aforesaid three witnesses, (c) as the £15.- per night the appellant was getting from the person running the night club for each one of the members of the dancing group, were money emanating at least partly from the prostitution of the three witnesses aforesaid, (d) the said amount of £15.- collected by the appellant as aforesaid, constituted «earnings of prostitution» within the ambit of the dicta in the case of *Shaw v. D.P.P.* (supra). Relying on the above reasoning the court below found the appellant guilty of living partly on the earnings of prostitution.

Learned leading counsel appearing for the appellant strenuously argued before us that the verdict of the trial judge is in

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* *"s.30(1) It is an offence for a man knowingly to live wholly or in part on the earnings of prostitution "*

** *The Sexual Offences Act 1956 is being replaced by the Sexual Offences Act 1967 and the relevant section is s 5*

direct conflict to his own findings of fact and it is in no way warranted by them. He further submitted that the court misconceived and wrongly applied the principle enunciated in *Shaw v. D.P.P* (supra) set out above.

Learned counsel for the appellant pointed out that it was common ground accepted by the trial judge that (i) The appellant was getting directly from the owner of the night club the fixed amount of £15.- for each one of the 7 dancing girls of the group per night (and not only for each one of the three prosecution witnesses) in consideration of his providing food, costumes and lodging plus £150.- per month to each one of the seven members of the ballet pursuant to the agreement aforesaid.

(ii) The said amount of £15.- per night for each one of the seven dancing girls of the group, was a fixed amount paid to the appellant by the owner of the club pursuant to an agreement between the night-club owner and the appellant for the hiring of the services of all seven artists as dancers in the night club.

(iii) The finding of the trial court to the effect that three out of the seven artists were accompanying night-club customers outside the club premises for purposes of prostitution is in no way connected with the appellant as it is clear from the said finding that the arrangements for the illicit purpose aforesaid were made between waiters serving in the club or even the person running the club and the customers. In other words if there was any procuring of the aforesaid three witnesses for purposes of prostitution, such procuring emanated from waiters serving in the club or even the person running same and not from the appellant who was acquitted by the trial court on all counts of procuring.

We have carefully gone through the record and the judgment of the trial judge. We have examined with utmost care the reasoning followed in order to arrive at his verdict and we hold the view that the conviction under consideration cannot stand for the following reasons:

The amount of £15.- per night for each one of the seven members of the dancing group was paid by the night club owner to the appellant who was the manager of the dancing group. This payment was made in consideration of legitimate services offerred by the dancing group to the night club, notably dancing, and it had nothing to do with money earned by any one of the three

members of the group when indulging in their aforesaid illicit activities, a fact absolutely unconnected with the appellant

The amount of £15 - per girl, per night, was being received by the appellant as a manager of the group, in consideration of appellants providing food, lodging, costumes and a montly salary of £150 - to each one of the seven members of the dancing group, under a contract produced and accepted by the trial Court as already stated at the beginning of this judgment

The said amount of £15 - per night for each member of the ballet collected by the appellant from the night club owner as aforesaid, cannot therefore, by any stress of imagination be held as constituting «earnings of prostitution» within the ambit of the dicta in the case of *Shaw v D P P* (supra)

For all the above reasons the appeal is allowed, the conviction and sentence are hereby set aside and the appellant is accordingly acquitted and discharged

Appeal allowed Appellant acquitted and discharged.