

[GRIFFITH WILLIAMS AND HALID, JJ.]

CHARALAMBOS THEODOROU YANNOULATOS

AND ANOTHER,

Appellants,

v.

THE POLICE,

*Respondents.**(Criminal Appeal No. 1766.)*

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v.
THE POLICE.

The Gambling Law, 1896, section 5—Shop—Judgments by District Courts—Cyprus Courts of Justice Order 1927, Clause 92—Power of District Courts to grant bail—Courts of Justice Laws, 1935 and 1938, section 38 (5).

The appellants were on the 17th May, 1943 convicted of gambling and sentenced to two months imprisonment to commence on 17th June, 1943. The chief ground of appeal was that the tailor's shop where the gambling took place was not a place to which the public had access.

Held: A tailor's shop is a shop within the prohibition of section 5 of the Gambling Law, 1896. Clause 92 of the Cyprus Courts of Justice Order 1927, gives no power to pass sentence to take effect in *futuro*. The power of District Courts to grant bail is subject to section 38 (5) of the Courts of Justice Laws, 1935 to 1938.

Appeal from the District Court of Paphos against conviction and sentence.

J. Clerides (with *N. J. Nicolaidis*) for the appellants.

P. N. Paschalis, Acting Solicitor-General, for the respondents.

The facts are set out in the judgment of the Court which was delivered by:—

GRIFFITH WILLIAMS, J.: This is an appeal by two out of four of those found guilty against the convictions and sentences of the District Court, Paphos, in a prosecution for gambling. The first appellant was found guilty of allowing gambling at his shop contrary to section 5 of Law 10 of 1896, and the second appellant with gambling contrary to section 2 of Law 10 of 1896 as amended by Law 25 of 1942. The two other accused found guilty of gambling have not appealed. The two appellants were on the 17th May, 1943, each sentenced to two months' imprisonment to commence from 17th June, 1943.

The facts shortly were as follows: appellant 1 is a tailor and has a tailor's shop at Paphos. On the afternoon of Monday, 12th April, the Police having received information, raided the shop of appellant 1 at about 4.30 to 5 p.m. to discover if gambling was taking place there. On arriving at the shop the Police found the door shut. They knocked and were immediately admitted by appellant 1. They proceeded to the inner room (or *separé*), which was separated by a partition wall from the main shop. The door of this room was closed, but it was immediately opened from inside. There was evidence to the effect that this door could not be opened from the outside. Inside the Police found 7 persons: the two appellants and three others charged with them, and the two witnesses Kyprianos Papa Demetriou and Georghios Haji Savva. There was a table in the middle of the room and 3 or 4 chairs around it. On the table was a bottle of brandy and two cups containing drink. The police searched those present and found 2 dice in a pocket of the witness Kyprianos; they also found money in the pockets of some of those present. The shop bore a notice that it was only working up to midday that day. It was the customary weekly half holiday in Ktima,

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When the case was heard Kyprianos Papa Demetriou, one of those found on the premises and who was considered an accomplice by the Judge of the Court below, was called as chief witness for the prosecution. It was in his pocket that the instruments of gambling, namely, the dice were found.

At the close of the case for the defence the Judge called three other witnesses whose names appeared on the charge sheet but who had not been called by the prosecution. One of these was Georghios Haji Savva who was clearly an accomplice; and the others were two Police Constables who added nothing to the police evidence already given.

In his judgment the learned judge said that though the chief witness Kyprianos was, without doubt, an accomplice, he considered the surrounding circumstances sufficient corroboration of his evidence. These circumstances were:— The presence of all the accused and witnesses together in the inner room of the tailor's shop with the door shut; the fact that dice were found in the pocket of one of those present and that they had money amongst them; the conduct of the accused in saying they were having a drinking party, whereas there were on the table only two cups with brandy in them and a newly opened bottle of brandy from which it appeared that nothing had been drunk.

The appeal against conviction has been argued before us on four grounds, namely: (1) that the Judge should not have called these witnesses after the close of the defence; (2) that two accomplices, namely, witnesses Kyprianos and Georghios cannot corroborate each other, and that without the evidence of Georghios, who was called by the Court, there was insufficient corroboration to satisfy Clause 205 of the Cyprus Courts of Justice Order, 1927, as amended by section 8 of the Court of Justice Amendment Law, 1934; (3) that the finding of dice in the pocket of an accomplice raised no presumption under section 5A of the Gambling Laws, 1896-1942, that the premises were kept or used for the purpose of gambling; (4) that to be an offence gambling must be carried on either in an open space or in some place of public resort and that the shop of a tailor is not such place—particularly after closing hours.

The Court has carefully considered all the arguments in support of the above grounds ably put to the Court by Mr. Clerides. It finds it unnecessary to decide the question raised in the first ground of appeal as to whether the calling of witnesses by the Court is governed by the same limitations as in England, as it appears that the Court below found sufficient evidence to convict without taking account of the 3 witnesses it called after defence closed. For the same reason it is unnecessary for the Court to consider the question of whether in Cyprus one accomplice can corroborate another, which is raised in ground 2 of the appeal.

As the chief evidence is that of an eye-witness, Kyprianos, there is no need for the prosecution to rely on any presumption that might arise under section 2 of the gambling laws, 1896-1942. So there is no need for us to come to a decision on ground 3 of the appeal.

It has been pointed out by Mr. Paschalis for respondents that it is not open to the appellants to depart from the written ground 4 of appeal—namely: that a tailor's shop is not a place of public

resort, and argue that at the time in question, that is during closing hours, the shop was not a place of public resort. We agree with this view. We consider that a tailor's shop is a shop within the prohibition of section 5 of the Gambling Laws, as any member of the public with legitimate business is entitled to enter it during business hours.

We have come to the conclusion that the learned judge of the Court below took a reasonable view of the facts in holding that the circumstances in which the accused were found in the shop of the 1st appellant were such as to corroborate the evidence of the accomplice Kyprianos sufficiently at law to comply with clause 205 of the Cyprus Courts of Justice Order, 1927, as amended, and that a tailor's shop is included in section 5 of the Gambling Laws. We think, therefore, that the appellants were rightly convicted.

The appellants appeal against sentence; but we do not think the quantum of punishment inflicted excessive or so excessive as to warrant interference by this Court. As, however, it seems to us that the Judge in the Court below acted *ultra vires* when after passing sentence he postponed its operation, we have to consider the matter of sentence.

The District Court derives its power to pass judgment from clause 92 of the Cyprus Courts of Justice Order, 1927. But this clause gives no power to pass sentence to take effect in *future*; and without such express power the Court can only inflict a sentence of imprisonment by naming the amount of imprisonment the prisoner is to undergo. Nor had the Court power in this instance to grant bail. The District Court's power to grant bail is governed by subsection 5 of section 38 of Courts of Justice Law, 1935, as amended by Law 29 of 1938. This subsection enacts that after conviction and sentence no District Court shall have power to admit to bail otherwise than as provided in section 23 (5). And Section 23 (5) refers only to occasions where the District Court has agreed to state and sign a case for the opinion of the Supreme Court. Hence it appears that the sentence on the appellants was irregular; it should have been imposed to take effect immediately, and the appellants should not have been admitted to bail.

The Court having come to the conclusion that the appellants were rightly convicted dismisses the appeal against conviction. The appellants having received no punishment, the Court varies the sentence to one of six week's imprisonment each as from to-day.

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