[JACKSON, C.J., AND DUPRE, Ag. J.]

(April 30 and May 1, 1945)

SALIH ERTOGRUL, *Appellant,*

v.

REX, *Respondent.*

(*Criminal Appeal No.* 1800.)

Criminal Law—Evidence—Admissibility—Letter addressed to accused—Conspiracy.

A letter addressed to an accused person is admissible against him, though he did not actually receive it until after the offence had been committed, provided that there is proof of an actual conspiracy and some proof, enough to raise a strong presumption, that the accused participated in it.

The appellant was convicted by the Assize Court of Nicosia of conspiring with two other persons, who were convicted at the same time, to commit a felony. The actual conspiracy was a conspiracy to break into the premises of the Ottoman Bank in Nicosia, and to steal money and valuable securities from the Bank. The attempt to break into the Bank was made on the 7th January, 1945, and on that occasion the appellant took no part in the attempt and was not present at it. The date of the conspiracy alleged against him was "between 15th November and the 24th December, 1944."

The principal oral evidence against the appellant was that of a witness named Rifat whom the Court treated as an accomplice. The other facts of the case on the point referred to in the headnote (on which alone the case is now reported) appear sufficiently in the judgment.

G. N. Chrysafinis with *M. Michaelides* for the appellant.

P. N. Paschalis, Crown Counsel, for the respondent.

JACKSON, C.J.: The oral evidence corroborating the evidence of witness Rifat was confined to the police evidence that we have mentioned relating to the 9th April, but there was another piece of documentary evidence, namely, two letters, which the Court considered to be admissible against this appellant.

Now, if these letters are admissible there can be no possible doubt about the guilt of the accused, and that was indeed frankly admitted by his counsel who, throughout this appeal, presented the arguments for his client with scrupulous fairness.

These letters are as follows. The first of them is a letter dated the 2nd January, 1945, and it was written by the principal accused to the appellant. It was a registered letter, and there can be no doubt at all that it was an entirely genuine document, that it was written by the principal accused, and that it was addressed to the appellant. The appellant never received it until a date

after the commission of the offence, when he was already in custody, and if it is admissible against him at all certain conditions, to which we shall presently refer, have to be fulfilled. The letter is in these terms and was written on the 2nd January last:

"Dear Salih, Owing to the moonlight I did not come; on Saturday at 12 o'clock I shall come." That would mean the 6th January, the day on the night of which the attempt was actually made. "Find out if the boy sleeps in and prepare the door. If there is any news write to me at the Central Hotel at Ktima."

Now, that, we think it would be impossible to deny, would be very strong evidence against the appellant that he was implicated in this conspiracy, if the letter is admissible against him.

There was another letter which is dated the 6th of January, from Paphos, and was addressed to the appellant and was found in his shop. The Assize Court came to the conclusion that the actual date upon the letter must be a mistake for the 5th, that was the day before the attempt was actually made, because the letter bears the postmark of having been received in Nicosia on the 6th January. It was found in the shop of the appellant but here again he did not actually receive it until after the offence had been committed. It says: "On Saturday at one o'clock I shall instal the engine", and that phrase the Assize Court took as a cryptic reference to the commission of the crime.

Now, these letters which were clearly admissible against the principal accused who was the writer of them, would not, in law, be admissible against the appellant unless certain conditions had been fulfilled. These conditions are that there must be proof of an actual conspiracy and some proof, enough to raise a strong presumption, that the appellant participated in it.

The authority for that statement is to be found in a case which was quoted by the appellant's advocate in the course of this appeal, the case of *Rex* v. *Whittaker* (1914) 3 K.B., p. 1283.

Now, there can be no doubt that there was ample evidence of a conspiracy. The very fact that the attempt upon the Bank was made can be taken as very strong evidence of that, and I do not think that it was at any time disputed in this appeal that there was ample evidence of the existence of a conspiracy. But it was contended that these letters were not admissible against the appellant because there was not that degree of evidence which the law requires to show that the appellant participated in the conspiracy.

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The evidence that he did, apart from these letters, was the evidence of the accomplice. In order to entitle the Court to receive that evidence, it had to be corroborated to a certain extent. We have already dealt with that point and, in our opinion, the corroboration provided by the independent evidence of the meeting of these three persons on the 9th April, notwithstanding that it was seven months before the date of the alleged conspiracy, was sufficient corroboration to entitle the Court to believe that part of the evidence of Rifat which implicated the accused. That being so, there was, in our opinion, sufficient presumption of the appellant's complicity in this conspiracy, established by other evidence, to entitle these letters to be admitted against him.

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[JACKSON, C.J., AND HALID, J.]

(May 2, 3 and 12, 1945)

CHRYSANTHOS IOANNOU, *Appellant,*

v.

THE POLICE, *Respondents.*

(*Criminal Appeal No.* 1801.)

Criminal Law—Theft—Attempting to steal—Passing of property—Specific appropriation from bulk—Increase of sentence.

The appellant, as secretary of a co-operative society, took delivery from the Government store at Ktima of 4,000 okes of wheat in bulk for distribution among a considerable number of farmers including the two complainants. He obtained that quantity on presentation of the Agricultural Officer's list of approved applications for seed. More than two-thirds of the wheat delivered to the appellant was bought with the co-operative society's money and the rest with various sums of money collected from persons who wanted seed.

In the case of the first complainant the appellant, before going to take delivery of the seed at Ktima, collected from him the sum of two pounds being the price of 60 okes of wheat, namely the quantity which the complainant was entitled to receive in accordance with the Agricultural Officer's list of allocations. When the complainant went to collect the seed allotted to him, he himself put wheat into his sack from the quantity of wheat delivered to the appellant and the latter after weighing the sack told complainant that it contained more than 60 okes. Thereupon, at the instance of the appellant, wheat was taken out of the sack until, when about six okes had been removed, the appellant told the complainant that the weight was correct. This was subsequently found to be 56 okes instead of 60.

The second complainant's name appeared in the Agricultural Officer's list as having been allotted 50 okes of wheat, but no money had been collected from him before the appellant went to take delivery of the seed, and there was no evidence of any